Landmark Cases of High Courts

14	Smita Maan Vs Regional Passport Office	High Court of Delhi	WP(C) 1408/2023	19.04.2023	178-199
15.	Shail Sohni Vs. Sanjeev Kumar	High Court of Delhi	WP(C) 845/2014	05.02.2014	200-210
16.	Rajni Maindiratta Vs. Directorate Education	High Court of Delhi	WP(C) No. 7911/2015	08.10.2015	211-215
17.	Dy. Commissioner of Police Vs D K Sharma	High Court of Delhi	WP(C) No. 12428 of 2009	15.12.2020	216-218
18.	B.S. Mathur Vs PIO	High Court of Delhi	WP(C) No. 295 of 2011	03.06.2011	219-228
19.	Naresh Trehan Vs Rakesh Kumar Gupta	High Court of Delhi	WP(C)-85/2010	24.11.2014	229-257
20.	Jagjit Pal Singh Virk Vs. Union of India& Anr.	High Court of Delhi	WP(C)-5052/2022	11.01.2023	258-267
21.	Ehteshan Qutubuddin Siddiqui Vs. CPIO, MHA	High Court of Delhi	WP(C)-10258/2020	03.02.2023	268-278
22.	Brij Mohan Vs. CIC & Ors.	High Court of Delhi	WP(C)-606/2017	05.10.2023	279-286
23.	Adarsh Kanojia Vs. Union Of India	High Court of Delhi	(LPA-696/2023)	11.10.2023	287-293
24.	Nisha Priya Bhatia Vs. CPIO, Directorate of Estates, Ministry of Urban Development	High Court of Delhi	WP(C)-11301/2017	26.04.2023	294-300
25.	CPIO, Central Economic Intelligence Bureau Vs. G.S. Srinivasan	High Court of Delhi	WP(C)-10124/2021	25.01.2023	301-305
26.	Ministry of External Affairs Vs. Soma Pandey	High Court of Delhi	WP(C)-3928/2020	24.01.2023	306-313
27.	Union of India Vs. CIC & Anr.	High Court of Delhi	LPA No-734/2018	22.03.2022	314-324
28.	Poorna Prajna Public School Vs CIC	High Court of Delhi	WP(C) 7265/2007	25.09.2009	325-334

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : EXAMINATION MATTER

Date of decision: 13th July, 2012

LPA No.229/2011

UNION PUBLIC SERVICE COMMISSION ....Appellant
Through: Mr. Naresh Kaushik & Ms. Aditi Gupta, Advs.

Versus

ANGESH KUMAR & ORS. ..... Respondents
Through: Mr. Rajesh Kumar Tiwari, Respondent No.2 in person.
Mr. B.V. Niren, Adv. for R-13.

AND

W.P.(C) NO.3316/2011

DURGESH KUMAR TRIPATHI & ORS. ....Petitioners
Through: Mr. Devendra Sharma, petitioner No.3 in person.

Versus

UNION PUBLIC SERVICE COMMISSION & ANR... Respondents
Through: Mr. Naresh Kaushik & Ms. Aditi Gupta, Advs.
Mr. Mohit Jolly, Adv. for R-2.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. LPA No.229/2011 impugns the order dated 04.02.2011of the learned Single Judge in Review Petition No.51/2011 preferred by the respondents seeking review of the order dated 13.01.2011 disposing of W.P.(C) No.218/2011 preferred by the respondents.

2. The twelve respondents in LPA No.229/2011 had appeared in the Civil Services Preliminary Examination held on 23.05.2010 by the appellant Union Public Service Commission (UPSC) and were unsuccessful therein. They sought certain information under the Right to Information Act, 2005 and which information was denied to them by the Public Information Officer of the appellant UPSC. Aggrieved therefrom, they filed W.P.(C) No.6931/2010 which was dismissed vide order dated 08.10.2010 on account of pendency then of SLP No.23250/2008 preferred by the appellant UPSC before the Supreme Court against the judgment dated 03.09.2008 of a Division Bench of this Court in LPA No.313/2007 titled UPSC Vs. Shiv Shambhu entailing the same question. The respondents thereafter filed SLP No.32443/2010 to the Supreme Court. The Supreme Court vide order dated 18.11.2010 dismissed SLP No.23250/2008 of the UPSC, for the reason of the change effected by the UPSC in the pattern of examination with effect from the year 2011. Thereafter the Supreme Court vide order dated 03.12.2010 disposed of the SLPNo.32443/2010 preferred by the respondents observing that since SLP No.23250/2008 against the judgment dated 03.09.2008 of the Division Bench of this Court had been dismissed though as infructuous, the case of the respondents herein will also be governed by the said judgment dated 03.09.2008.

3. The respondents on the basis of said order dated 03.12.2010 of the Supreme Court again sought the information from the appellant UPSC and upon not meeting with any success, filed W.P.(C) No.218/2011, from which this appeal arises, seeking a direction to the appellant UPSC to disclose the following information:

(i) details of marks (raw and scaled marks) obtained by the selected candidates in their respective optional subjects of the Civil Services Preliminary Examination, 2010;

(ii) details of the marks (raw and scaled) obtained by the respondents themselves in the said examination;

(iii) the cut off marks of each optional subject in the said examination.

4. The aforesaid writ petition was disposed of vide order dated 13.01.2011 observing, finding and holding as under:

(i) that in view of the respondents having earlier applied under the RTI Act for the information and having thereafter preferred a writ petition in this Court and SLP in the Supreme Court, the respondents were not required to again follow the procedure under the RTI Act;

(ii) that the law having been settled by the Supreme Court, there was no need to relegate the respondents to the process under the RTI Act;
(iii) On the plea of the counsel for the appellant UPSC that raw marks were not available and thus could not be disclosed and that model answers were available only for some of the questions, it was observed that whatsoever was not available with the UPSC need not be disclosed;
(iv) no prejudice would be caused to anyone by disclosure of the result of the candidates who had qualified;
(v) that the model answers as available with the UPSC were also liable to disclosure, in accordance with the various dictas on the subject.
The appellant UPSC was accordingly directed to make the disclosure.

5. The respondents filed an application for review of the aforesaid order primarily challenging the statement of the counsel for the appellant UPSC that raw marks and the model answers for all the questions were not available. It was their contention that the appellant UPSC as per its rules was required to maintain the same for the prescribed period and which period had not expired.

6. The learned Single Judge vide impugned order dated 04.02.2011 on the said review application observed, found & held:
(i) that the marks as appearing on the answer sheets are raw marks;
(ii) that the answers sheets are required to be preserved for one year and thus the raw marks ought to be available with the UPSC;
(iii) the contention of the appellant UPSC that raw marks did not subsist upon being scaled and thus could not be disclosed was rejected. It was held that the raw marks have to be necessarily available;
(iv) that since all the questions in the examination were of objective type, there could be no possibility of the model answers of any of them being not available;
UPSC was accordingly directed to disclose the raw marks as well as the model answers of the questions in the examination.

7. Notice of this appeal was issued and the operation of the order dated 04.02.2011 of the learned Single Judge stayed.

8. W.P.(C) No.3316/2011 is filed, also seeking a direction to the UPSC to disclose the same information as subject matter of LPA No.229/2011 relating to the same examination and qua the nine petitioners therein. While the said petition was pending before the learned Single Judge, it was pointed

out that the controversy therein was the same as in LPA No.229/2011. Accordingly the said writ petition was transferred to this Bench and the counsel for the petitioners in the writ petition has raised the same arguments as the counsel for the respondents in the LPA.

9. As would be apparent from the above, the respondents prior to filing the writ petition from which this appeal arises had filed a writ petition for the same relief but which writ petition was dismissed owing to the question entailed therein pending consideration before the Supreme Court in SLP No.23250/2008 preferred by the appellant; the respondents also had then preferred SLP No.32443/2010 and which SLP as aforesaid was disposed of with a direction that the respondents would be entitled to the same relief as given by the Division Bench of this Court vide judgment dated 03.09.2008 in LPA No.313/2007. It thus becomes necessary to first examine the said LPA No.313/2007. The same was preferred against the judgment dated 17.04.2007 of the Single Judge in W.P.(C) No.17583/2006. In the said writ petition also, the same disclosure as in the present proceedings was sought from the UPSC, though pertaining to the Civil Services (Preliminary) Examination, 2006 and UPSC had contested the demand for such disclosure on the same grounds as being urged herein.

10. It is the case of UPSC, that the Civil Services Examination comprises of two parts, i.e. the Preliminary Examination and the Main Examination which is followed by interview; that the Preliminary Examination is in the nature of a screening test to select twelve to thirteen times the number of vacancies in the order of merit; that the Preliminary Examination comprises of two papers, one of General Studies which is compulsory and an optional paper from out of 23 subjects offered; that since different examinees opt for different optional paper, UPSC has developed a methodology to make the marks obtained in each subject comparable; through this methodology, scaling of marks is done so that the marks obtained in different subjects are comparable with each other; scientific formula is used for such scaling of marks; said scientific formula has been further changed and modified by the experience, to suit the needs and requirement of UPSC; that insofar as the marks of compulsory subject are concerned, no scaling is applied; that prior to the examination, no cut offs can be presumed and the cut offs that are implemented are only post examination; the marks in the Preliminary Examination are not counted in the Main Examination.

11. It is further the plea of UPSC that revealing the cut off marks and the keys to the question papers would enable unscrupulous persons to engineer and arrive at the scaling system which is kept secret by the UPSC; that if the scaling system adopted by the UPSC is disclosed, then the entire system would be undermined and defeat the selection.

12. The learned Single Judge in judgment dated 17.04.2007 in W.P.(C) No.17583/2006 found, observed and held, that the UPSC in a counter affidavit filed in the Supreme Court had already disclosed the scaling method adopted by it and thus the said scaling method could no longer be said to be secret or confidential; that there was no merit in the contention of UPSC that disclosure of cut off marks would undermine the selection process; that the disclosure of cut off marks of one year would not effect the examination of a subsequent year which is independent; that the data of one year has no bearing on the following years. Accordingly, holding that the scaling method already stood disclosed and there was no bar to the disclosure of the cut off marks and the model answers, direction for disclosure thereof was issued.

13. UPSC, as aforesaid preferred LPA No.313/2007 against the aforesaid judgment and which was dismissed on 03.09.2008. The SLP No.23250/2008 preferred by the UPSC to the Supreme Court has also been dismissed though as infructuous but without setting aside the judgments dated 17.04.2007 and 03.09.2008 (supra) of the Single Judge and the Division Bench of this Court. Rather, when SLP No.32443/2010 preferred by the respondents came up before the Supreme Court, the same was disposed of with a direction that the respondents shall be entitled to the relief as given by the High Court in the said judgments.

14. In the aforesaid factual scenario, we are unable to find any scope for further adjudication inasmuch as the Supreme Court has already directed the information as aforesaid to be supplied to the respondents. Once it is held that the UPSC is bound to supply the said information, W.P.(C) No.3316/2011 will also have to be allowed inasmuch as the same information is sought therein. Though undoubtedly the petitioners in W.P.(C) No.3316/2011 ought to have first followed the procedure prescribed under the RTI Act but the petition having been entertained and having remained pending in this Court and this Court being required to adjudicate the controversy in any case in LPA No.229/2011, need is not felt to at this stage relegate the petitioners to following the procedure under the RTI Act.

15. The counsel for the UPSC before us has also urged that raw marks are an intermediary stage and ought not to be treated as information and only after scaling / actualization can the marks scored be computed and UPSC is not liable to disclose such intermediary marks. It is also argued that the counter affidavit in the Supreme Court on the basis whereof it has been held that the method of scaling already stands disclosed, does not in fact disclose the same and the scaling system is thus not in public domain.

16. We are afraid, the latter of the aforesaid argument cannot be entertained at least before this Court. The Single Judge in judgment dated 17.04.2007 (supra) held that the method of scaling stood disclosed in the counter affidavit in the Supreme Court and we do not find any argument to have been raised by UPSC before the Division Bench that the method of scaling had not been so disclosed. There is no discussion whatsoever in the judgment dated 03.09.2008 of the Division Bench in this regard. Again, if it was the case of UPSC that the method of scaling had not been disclosed and this Court had wrongly presumed the same to have been disclosed, the UPSC ought not to have got its SLP dismissed as infructuous and ought to have got the said matter adjudicated by the Supreme Court. On the contrary, the Supreme Court by dismissal of the SLP of the UPSC and by order dated 03.12.2010 in the SLP of the respondents has expressly directed the disclosure of the method of scaling. After the matter has been dealt with by the Supreme Court, through speaking order, it is not for this Court to re-examine the same.

17. We are even otherwise of the view that there could be no secrecy or confidentiality about the method of scaling / actualization adopted by an examiner. The very objective of the RTI Act is transparency and accountability. The counsel for the UPSC has been unable to show as to how the disclosure of the scaling / actualization method prejudices the examination or affects it competitiveness. The Supreme Court in U.P.P.S.C. Vs. Subhash Chandra Dixit AIR (2004) SC 163 approved of the practice of scaling / actualization, though in the subsequent decision in Sanjay Singh Vs. U.P.P.S.C. AIR (2007) SC 950, certain reservations were expressed with respect thereto. Be that as it may, though the non-disclosure of the method devised for scaling / actualization till declaration of the result may be justified, it cannot be said to be justified after the result is declared. The Supreme Court in The Institute of Chartered Accountants of India Vs. Shaunak H. Satya (2011) 8 SCC 781 has held that the answer scripts and the answer keys are liable to disclosure after the result of the examination has

been declared. If it were to be held that there is any secrecy / confidentiality about the raw marks and the method of scaling, the possibility of errors therein or the same being manipulated cannot be ruled out. An examinee is entitled to satisfy himself / herself as to the fairness and transparency of the examination and the selection procedure and to maintain such fairness and transparency disclosure of raw marks, cut off marks and the scaling method adopted is a must.

18. We therefore do not find any merit in LPA No.229/2011and dismiss the same. Axiomatically, W.P.(C) No.3316/2011 is allowed and the UPSC is directed to within eight weeks hereof disclose the information sought therein.

19. Though UPSC has indulged in re-litigation but giving benefit of doubt to UPSC that the resistance to disclosure is an after effect of the pre- RTI era, we refrain from imposing any costs on UPSC.

Sd/-
RAJIV SAHAI ENDLAW, J

Sd/-
ACTING CHIEF JUSTICE

JULY 13 , 2012

$~20 to 23

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

Date of Decision: 17th August, 2021

\+ **W.P.(C) 2211/2021 & CM APPL. 16337/2021**

AMIT MEHARIA ..... Petitioner

Through: Mr. Sachin Datta, Sr. Advocate with Mr. Abinash Aggarwal, Advocate

versus

COMMISSIONER OF POLICE & ORS. ..... Respondents

Through: Ms. Tara Narula with Ms. Aparajita Sinha, Advs. for R-1 to 3.

21 WITH

\+ **W.P.(C) 2246/2021 & CM APPL. 16335/2021**

AMIT MEHARIA ..... Petitioner

Through: Mr. Sachin Datta, Sr. Advocate with Mr. Abinash Aggarwal, Advocate

versus

COMMISSIONER OF POLICE & ORS. ..... Respondents

Through: Ms. Tara Narula with Ms. Aparajita Sinha, Advs. for R-1 to 3.

22 WITH

\+ **W.P.(C) 2247/2021 & CM APPL. 16333/2021**

AMIT MEHARIA ..... Petitioner

Through: Mr. Sachin Datta, Sr. Advocate with Mr. Abinash Aggarwal, Advocate

versus

COMMISSIONER OF POLICE & ORS. ..... Respondents

Through: Ms. Tara Narula with Ms. Aparajita Sinha, Advs. for R-1 to 3.

23 AND

\+ **W.P.(C) 2249/2021 & CM APPL. 16334/2021**

AMIT MEHARIA ..... Petitioner

Through: Mr. Sachin Datta, Sr. Advocate with Mr. Abinash Aggarwal, Advocate

versus

COMMISSIONER OF POLICE & ORS. ..... Respondents

Through: Ms. Tara Narula with Ms. Aparajita Sinha, Advs. for R-1 to 3.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.

2. The present four petitions have been filed by the Petitioner challenging the impugned order dated 5th January, 2021 passed in Second Appeal by the Central Information Commission (*hereinafter 'CIC'*) in four separate cases arising out of four applications under the Right to Information Act, 2005 (*hereinafter "RTI Act, 2005"*). The said RTI applications dated 28th June, 2018 were filed by the Petitioner herein, seeking information relating to the complaints lodged by his estranged wife, Ms. Abhilasha Malhotra, impleaded as Respondent No.4 herein, against her previous two husbands and their family members.

3. The Petitioner was married to Respondent No.4 Ms. Abhilasha Malhotra on 10th December, 2017. Various disputes arose between the parties in their matrimonial life leading to various complaints and proceedings. The following proceedings are stated to be pending between the Petitioner and Respondent No.4.

i) A matrimonial suit being ***Mat. Suit. No. 05/2019 (formerly numbered as Mat. Suit. No. 1759/2018)*** was filed by the Petitioner before the District Judge, Alipore, Kolkata seeking a decree of nullity of marriage on the ground that the marriage between the Petitioner and Respondent No.4 was voidable as being violative of Section 25(iii) of the Special Marriage Act, 1954 (*hereinafter "SMA, 1954"*) as the Petitioner's consent to the marriage was obtained by fraud.

ii) A criminal complaint filed by Respondent No.4 against the

Petitioner being ***FIR No.78/2018*** under Section 498A/406/377/34 of the Indian Penal Code, 1860 pending before the Mahila Court, Dwarka, Delhi, where the Charge Sheet has been filed against the Petitioner and his family members.

iii) A General Diary entry dated 09th March 2018 lodged by the father of the Petitioner at the Alipore Police Station, Kolkata in respect of the matrimonial disputes between the Petitioner and Respondent No.4.

4. The present petitions arise out of the RTI query which was filed by the Petitioner under Section 6(1) of the RTI Act, 2005.

I. The particulars of the information sought by the Petitioner under the first RTI application are set out hereunder:

> *"(b) Particulars of information required*
> *(i) Details of information required :*
>
> ***a. Whether any complaint was lodged by Abhilasha Malhotra, resident of 361, Mandakini Enclave, Alaknanda, New Delhi 110019. P. S. Chittaranjan Park under Section 154 Cr. P.C and Section 498A/ 406/377/34 Indian Penal Code?***
> *b. Steps undertaken pursuant to the complaint*
> *c. Status of the complaint*
> *d. Copy of the investigation report*
>
> *(ii) Period for which information asked: January, 2013 to December, 2015 (both months inclusive)*
>
> *(iii) Other details"*

II. The particulars of the information sought by the Petitioner under the second RTI application are set out hereunder:

> *"(b) Particulars of information required*
>
> ***(i) Details of information required: Whether any complaint has been lodged before CAW, Delhi by Abhilasha Malhotra, resident of 361, Mandakini Enclave, Alaknanda, New Delhi 110019. P. S. Chittaranjan Park.***
>
> *Kindly provide following information*
>
> *a. Copy of the complaint lodged by Abhilasha Malhotra.*
> *b. Copy of the office order for the enquiry in this regard.*
> *c. Name of the members of the enquiry committee.*
> *d. Date of Enquiry.*
> *e. Copy of the enquiry report.*
> *f. Final decision of the competent authority*
>
> *(ii) Period for which information asked: January, 2013 to December, 2015 (both months inclusive).*
>
> *(iii) Other details"*

III. The particulars of the information sought by the Petitioner under the third RTI application are set out hereunder:

> *"(b) Particulars of information required*
>
> *(i) Details of information required:* ***Please refer to complaint lodged on 04th January, 2016 by Abhilasha Malhotra (Wife)*** *resident of 361, Mandakini Enclave, Alaknanda, New Delhi 110019 P.S. Chittaranjan Park against Pranav Kumar (Husband), resident of 309,*

Prime Lavender Apartment, Panathur Road, Kadubeesanahalli, Hali Police Station, Bangalore 560087 AND Flat No.101, Om Sai Diamond, 6th ACRS, Rajshree L/O, Munnekolala, Marathahalli, Bangalore-560037 ***before CAW, Delhi.***

Kindly provide following information

a. Copy of the complaint lodged by Abhilasha Malhotra
b. Copy of the office order for the enquiry in this regard
c. Name of the members of the enquiry committee,
d. Date of Enquiry.
e. Copy of the enquiry report.
f. Final decision of the competent authority

(ii) Period for which information asked: January, 2016 till date

(iii) Other details"

IV. The particulars of the information sought by the Petitioner under the fourth RTI application are set out hereunder:

"(b) Particulars of information required

(i) Details of information required:
(a) ***A copy of the complaint lodged on 18th May, 2016 by Abhilasha Malhotra (Wife)*** *- 361, Mandakini Enclave, Alaknanda, New Delhi 110019. P.S. Chittaranjan Park against Pranav Kumar (Husband) - 309, Prime Lavender Apartment, Panathur Road, Kadubeesanahalli, Hali Police Station, Bangalore 560087 AND Flat No.101, Om Sai Diamond, 6th ACRS, Rajshree L/O,*

> *Munnekolala, Marathahalli, Bangalore-560037* ***before CAW, Delhi under Section 154 Cr.PC and Section 498A/406/377/34 Indian Penal Code being FIR No. 81/2016.***
>
> *b. Steps undertaken pursuant to the complaint.*
> *c. Status of the complaint.*
> *d. Copy of the investigation report.*
>
> *(ii) Period for which information asked: May, 2016 till date.*
>
> *(iii) Other details."*

5. The CPIO, Special Police Unit for Women and Children (*hereinafter "SPUWAC"*), Nanakpura, New Delhi, by its Reply dated 12th July 2018 rejected the request on the ground that the disclosure of the said information would be barred under Section 8(1)(j) of the RTI Act, 2005. The relevant extract from the CPIO's Reply is set out below:

Copy of requisite documents can't be provided as per section 8(1) (j) of RTI Act, 2005 as disclosure of same would cause unwarranted invasion of the privacy of the individual and there is no larger public interest in disclosing the information.

6. The Petitioner filed the First Appeal under the RTI Act, 2005 before the Respondent No.3/First Appellate Authority, SPUWAC which, vide order dated 12th September 2018, again rejected the said request with the following findings:

> *"I have carefully considered the submission of the appellant made in his appeal dated* ***08.08.2018*** *and PIO's order dated* ***12.07.2018.***

> *I, therefore, do not find any reason to interfere with the reply given by the PIO/SPUWAC as PIO/SPUWAC has provided the correct information on Point raised in the RTI application as per available record in SPUWAC, within the stipulated period of RTI Act-2005. It is submitted that appellant is third party and information sought by appellant can't be provided in view of Sec. 8(1) (j) of RTI Act as disclosure of same would cause unwarranted invasion of the privacy of the individual and there is no larger public interest in disclosing the information. Moreover, reply given by the PIO/SPUWAC was complete and sufficient.*
>
> *The appeal is hereby disposed off…"*

7. Thereafter, the Petitioner filed a Second Appeal before the CIC which was rejected by the impugned order dated 5th January 2021. During the proceedings before the First Appellate Authority, a short status report was also filed by the Delhi Police wherein the details of the first, second and third complaints of the Respondent No.4 filed against both her ex-husbands and the present husband i.e., the Petitioner, were revealed before the Appellate Authority. In the impugned order, which was passed on 5th January, 2021, the Second Appellate Authority/CIC upheld that the information sought was covered under Section 8(1)(j) of the RTI Act, 2005. However, it did direct the Respondent therein to provide the said status report to the Petitioner. The operative portion of the impugned order is set out below:

> *"Upon hearing the averments of both parties and after perusal of the detailed submissions filed by the Appellant, the commission finds no infirmity with the*

> *view of the Respondent in denial of information invoking Section 8(1)(j) of the RTI Act. During the course of hearing, the Appellant raised concerns that his estranged wife may file documents to his disadvantage and hence he wanted to prepare his defence through the documents sought in RTI applications. He is reminded that once the matter is before the Trial Court, he shall get ample opportunity to seek from the court, all necessary documents used against him, to defend his case.*
>
> *Under the circumstances, the Commission hereby directs the Respondent to provide a comprehensive status report about the complaints filed by Smt. Abhilasha Malhotra before the Delhi Police, upon submitting the matter before the concerned Court. The Respondent shall provide this status report to the Appellant within three weeks of receipt of this order and the Respondent shall submit a compliance report in this regard before the Commission by 31.01.2021. It is made clear that non-adherence of these directions shall attract penal action as per law.*
>
> *The above four appeals are on a common subject matter and hence are decided by a common order."*

8. The submission on behalf of the Petitioner in this case is that the Respondent No.4 has already undergone two marriages and the third marriage was with the Petitioner. According to Mr. Datta, learned senior counsel for Petitioner, the Respondent No.4 has indulged in fraud against the Petitioner inasmuch as almost identical allegations have been levelled by Respondent No.4 against all three husbands. Thus, in order to establish his case as regards the voidability of the marriage on the ground of fraud under Section 25(iii) of the Special Marriage Act, 1954, the details of the previous two marriages, the complaints lodged thereunder, the FIR, if any, and the

settlements entered into therein would be extremely relevant. He further submits that a perusal of Section 8(1)(j) of the RTI Act, 2005 would show that if the information has no relation to any public activity or it is necessary to disclose it in the larger public interest, the said information should be disclosed.

9. Mr. Datta, ld. Senior Counsel further submits that there would be no invasion of privacy inasmuch as the wife is well-aware of all the allegations she had made, and therefore, the fact that the said allegations would come out in public domain, or would be revealed to the Petitioner for use in other proceedings, would not be violative of her privacy. Finally, he submits that the stand of the Respondent that FIRs are not in public domain is belied by the fact that the ***FIR No. 78/2018*** which is filed by the Respondent No.4 against the Petitioner himself, is easily downloadable from the Delhi Police website, whereas the other FIRs are not being revealed to him. This, according to Mr. Datta, clearly shows that the exception of the privacy would not apply inasmuch as the allegations are very similar to each other. He also relies upon the Judgment of the Supreme Court in ***CIC vs. High Court of Gujarat [(2020) 4 SCC 702]*** to argue that the second FIR being ***FIR No. 81/2016*** against the second husband and his family members was the subject matter of a quashing petition before the Delhi High Court, and thus, it is a part of the judicial records. Therefore, he submits that the Petitioner should be permitted to avail of the same.

10. On the other hand, Ms. Tara Narula, ld. counsel appearing for the Respondent/GNCTD, submits that the information which is sought is sensitive information as the offences which are alleged against the husbands are both under Section 498A and Section 377 of IPC, which are considered

as sensitive information and are also related to alleged sexual offences. Thus, these FIRs ought not to be published in public domain. She submits that if the FIR against the Petitioner is in the public domain, the same could only be an inadvertent error. She further submits that the status report has already been filed in a sealed cover before the Court which would reveal that the first complaint filed against the first husband has already been settled, and in fact, there was no FIR which was registered pursuant to the said complaint. Insofar as the second complaint against the second husband is concerned, the same was registered as ***FIR No. 81/2016***. However, the same was also settled in the mediation proceedings and the said FIR was also quashed by the Delhi High Court, vide Order dated 24th February 2020 in ***Crl. M.C. No.3106/2018.***

11. Ms. Tara Narula, ld. Counsel submits that the events which transpired during the mediation proceedings and the mediator's reports, especially in matrimonial proceedings, are all confidential in nature and cannot be disclosed to any third party. Finally, she submits that under Section 91 of the Code of Criminal Procedure, 1973 in respect of the criminal case pending before the Mahila Court, Dwarka, Delhi, as also in the civil suit which is stated to have been filed by the Petitioner, the Petitioner has remedies before the respective fora to seek summoning of the relevant records from the Delhi Police, and the RTI route is not the correct route which should be adopted by the Petitioner. Specific reliance is placed upon the judgment of the Supreme Court in ***Registrar, Supreme Court v. R.S. Misra [2017 SCC OnLine Del 11811]*** where the Supreme Court has clearly observed that if the documents can be obtained in other proceedings, and the intention is not to achieve transparency, then the provisions of the RTI Act cannot be invoked.

12. Ms. Narula, ld. Counsel for Respondent also submits that the Petitioner has already availed of another writ petition being ***W.P. Crl. 1046/2021*** in respect of the investigation and the charge sheet which has now been sought under the RTI application. The said writ was disposed of by directing the Petitioner to raise all issues before the Trial Court. The relevant portion of the said order dated 02nd June 2021 is set out below:

> *"4. Though, the complainant is not a party in the present writ petition, however, I hereby dispose of the present petition by giving liberty to the petitioner to raise all issues before the Trial Court and take steps as per law."*

13. The present case is a peculiar case where the Petitioner is the third husband of the Respondent No.4. A civil suit being ***Mat. Suit No. 05 of 2019*** titled ***Amit Meharia v. Abhilasha Malhotra & Ors.***, which was filed by the Petitioner under the provisions of Section 25(iii) of the SMA, 1954 is stated to have been dismissed by the Alipore Court vide Judgment dated 10th December, 2020, and according to Mr. Datta, ld. Counsel, one of the reasons for the rejection was the non-availability of the information and particulars relating to the fraud. An appeal against the said suit is stated to be pending before the Calcutta High Court being ***FAT No. 330 of 2020*** titled ***Amit Meharia v. Abhilasha Malhotra & Ors.*** Insofar as the criminal complaint filed by Respondent No.4 is concerned, the same is also pending trial before the Mahila Court, Dwarka, Delhi. It is in these proceedings that the Petitioner claims to be requiring the information sought.

14. Section 8(1)(j) of the RTI Act reads as under:-

> "*(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or*

> *which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."*

15. The Court has perused the status report, the complaints and other annexures filed along with the status report which shows that the first complaint was filed by Respondent No. 4 against her first husband which was amicably resolved by the parties, second complaint lodged against the second husband which was converted into ***FIR No. 81/2016*** and Charge Sheet dated 24th December 2018 and thereafter quashed by the Delhi High Court vide Order dated 24th February 2020 in ***Crl. M.C. No.3106/2018***, and finally, a third complaint against the present Petitioner which was converted into ***FIR No. 78/2018*** and Charge Sheet dated 08th January 2021.

16. A perusal of all these FIRs and complaints therein would show that allegations have been made by the Respondent No. 4 against both her ex-husbands as also the in-laws etc. Thus, the privacy which is to be considered in this case is not just the privacy of Respondent No.4 alone, but in fact, that of the said husbands against whom complaints were filed as well as the in-laws etc. The personal information in this case does not relate only to the Petitioner or Respondent No.4 but also to those other persons who were the subject matter of the said complaints and FIR. Thus, the exception under Section 8(1)(j) of the RTI Act, 2005 would clearly apply in the present case.

17. Insofar as the two pending proceedings between the Petitioner and

Respondent no.4 and the requirement of the information for the proper adjudication of the said proceedings are concerned, the Petitioner has already been given two status reports;

- The first status report was given to the Petitioner during the RTI proceedings;
- The second status report was filed before this Court openly;

18. The first and the second report above, clearly set out the basic facts relating to the two earlier marriages. The same are not repeated herein for the sake of protecting the privacy of all the parties involved. A third status report was filed in a sealed cover, along with several documents, before this Court. Such documents which are referred to therein and needed, can be summoned or sought, before the courts where the proceedings are pending. The Petitioner has his own remedies which he can avail, in accordance with law, both before the Calcutta High Court, for discovery/interrogatories etc. Even in the criminal case, which is pending before the Mahila Court, Dwarka, Delhi, there are remedies under Section 91 or Section 173 of the Code of Criminal Procedure, 1973. In this case, the Investigating Officer can also produce the documents, produced before this Court in a sealed cover, as the same may be relevant. The court also has the power to summon these documents from the police authorities.

19. The Supreme Court has clearly observed in ***Registrar, Supreme Court v. R.S. Misra [2017 SCC OnLine Del 11811]*** that the provisions of the RTI Act are for achieving transparency and not for making available information to be used in other proceedings, especially if there are other remedies available to the persons who seek the information, under another statute. The

relevant extract reads as under:

> ***"xxx xxx xxx***
>
> ***53.*** *The preamble shows that the RTI Act has been enacted only to make accessible to the citizens the information with the public authorities which hitherto was not available. Neither the Preamble of the RTI Act nor does any other provision of the Act disclose the purport of the RTI Act to provide additional mode for accessing information with the public authorities which has already formulated rules and schemes for making the said information available. Certainly if the said rules, regulations and schemes do not provide for accessing information which has been made accessible under the RTI Act, resort can be had to the provision of the RTI Act but not to duplicate or to multiply the modes of accessing information.*
>
> ***54.*** *This Court is further of the opinion that if any information can be accessed through the mechanism provided under another statute, then the provisions of the RTI Act cannot be resorted to as there is absence of the very basis for invoking the provisions of RTI Act, namely, lack of transparency. In other words, the provisions of RTI Act are not to be resorted to if the same are not actuated to achieve transparency."*

20. Thus, the Petitioner in the present case is already in possession of the status report which was directed to be provided to the Petitioner by the Second Appellate Authority/CIC. The said status report is on record and reveals the details of all the earlier proceedings without going into the particulars and allegations which were made against the said third parties. This status report, combined with the remedies which are available to the Petitioner, clearly show that the Petitioner is not remediless in respect of the

information which is sought. The Petitioner can clearly avail of his remedies in accordance with law, both before the Calcutta High Court, as also before the Mahila Court, Dwarka, under Section 91 and Section 173 of the Code of Criminal Procedure, 1973.

21. Accordingly, this Court is of the opinion that the impugned order does not warrant any interference inasmuch as the information sought is governed by Section 8(1)(j) of the RTI Act, 2005. However, the fact that these petitions have been rejected would not in any manner adversely affect the Petitioner's rights to seek his remedies in accordance with law, both before the Calcutta High Court and before the Mahila Court, Dwarka, Delhi where the criminal complaint filed by Respondent No.4 against the Petitioner, is pending.

22. The Petitioner is permitted to place the open status reports, which have been provided by the Delhi Police, before the said appropriate fora and seek summoning of the remaining relevant records which shall then be considered by the said courts in accordance with law. The status report filed before this Court, in a sealed cover along with annexures, is directed to be returned to the Counsel for the Delhi Police, by the Court Master. The same shall not constitute a part of the judicial record.

23. Needless to add, the observations in this order would not affect any of the said remedies available to the Petitioner before the respective fora.

24. With these observations, the present petition, with all pending applications, is disposed of with no orders as to costs.

PRATHIBA M. SINGH
JUDGE

AUGUST 17, 2021/*mw/mr/AD*
(corrected & printed 23rd August 2021)

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

%

Date of Decision: 08.11.2013

\+ W.P.(C) 5812/2010

UPSC ..... Petitioner

Through: Mr Vardhman Kaushik and Mr Naresh Kaushik, Advs.

versus

PINKI GANERIWAL .... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

Vide application dated 12.09.2008, the respondent sought the following information from the CPIO of the petitioner-UPSC:-

> "a) Subject matter of information:-
>
> Selection list of eleven number of Dy Director of Mines Safety (Mining) by UPSC in pursuance of ref no of F.I./287/2006/R-VI contained in advertisement no 8/03 (Employment News 28 April-4May 2007)
>
> (b) The period to which the information relates:-
>
> Year 2008-09

(c) Specific details of information required:-
Please provide the seniority cum merit list of selected eleven number of Dy Director of Mines Safety (Mining) by UPSE in pursuance of ref no of F.I./287/2006/R-VI contained in advertisement no 08/03 (Employment News 28 April-4 May 2007) for appointment in Director General of Mines Safety, Dhanbad under Ministry of Labour and Employment, New Delhi. The list should contain the details of date of birth, institution & year of passing their graduation, field experience of company and marks obtained in interview and caste of the candidate.

2. The information (a) and (b) above has already been provided to the respondent. As regards information at (c) above, the petitioner has already provided the list of the recommended candidates along with their *inter se* seniority-cum-merit and the same is available at page 43 of the paper book. The petitioner, however, has declined to provide information such as date of birth, institution and year of passing graduation, field experience, marks obtained in interview and the caste of the selected candidates.

3. The Central Information Commission vide impugned order dated 07.06.2010, while dealing with the plea of the petitioner that being personal information of the selected candidates, the aforesaid

information is exempt from disclosure under Section 8(1)(j) of the Right to Information Act, *inter alia*, held as under:-

> "In this case although the information can arguably be treated as personal information, under no circumstances can information given for participation in a public activity like a public examination be deemed to have no relationship to such public activity.
>
> Shri Kamal Bhagat, Jt. Secretary, has argued that it is not the practice in the UPSC to disclose interview results for those candidates as are not selected. In this case, however, appellant Ms. Pinki Ganeriwal has asked for information only regarding 'selected' candidates. This information which was not received by the appellant on the ground taken by the CPIO, UPSC, will now be provided to appellant Ms. Pinki Ganeriwal within 10 working days from the date of receipt of this decision notice. The appeal is thus allowed. There will be no costs, since appellant has not been compelled to travel to be heard, and the responses of CPIO, although held to be inadequate, were made according to the time mandated and as per CPIO's genuine understanding of the law, and therefore not liable to penalty."

4. A similar issue came up for consideration before this Court in *W.P.(C) No. 6508/2010* titled ***UPSC vs. Mator Singh***, where the

respondent before this Court had *inter alia* sought information such as particulars (name, qualification and experience) of eligible applicants for appointment to 7 post of Principal (female) reserved for Scheduled Castes in response to UPSE special advertisement No. 52/2006. The CPIO declined to provide the aforesaid information and the first appeal filed by the respondent was also dismissed. In a second appeal filed by the respondent, the Central Information Commission directed disclosure of the aforesaid information. Setting aside the order passed by the Commission, this Court, *inter alia*, held as under:-

> "5. A similar issue came up for consideration before the Hon'ble Supreme Court in Union Public Service Commission Vs. Gourhari Kamila 2013 (10) SCALE 656. In the aforesaid case, the respondent before the Apex Court had sought *inter alia* the following information:
>
> "4. How many years of experience in the relevant field (Analytical methods and research in the field of Ballistics) mentioned in the advertisement have been considered for the short listing of the candidates for the interview held for the date on 16.3.2010?
>
> 5. Kindly provide the certified xerox copies of experience certificates of all the candidates called for the interview on 16.3.2010 who have

claimed the experience in the relevant field as per records available in the UPSC and as mentioned by the candidates at Sl.No. 10(B) of Part-I of their application who are called for the interview held on 16.3.2010."

The Central Information Commission directed the petitioner-UPSC to supply the aforesaid information. Being aggrieved from the direction given by the Commission, the petitioner filed WP (C) No.3365/2011 which came to be dismissed by a learned Single Judge of this Court. The appeal filed by the UPSC also came to be dismissed by a Division Bench of this Court. Being still aggrieved, the petitioner filed the aforesaid appeal by way of Special Leave. Allowing the appeal filed by the UPSC, the Apex Court *inter alia* held as under, relying upon its earlier decision in Bihar School Examination Board Vs. Suresh Prasad Sinha (2009) 8 SCC 483:

"One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated answer books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted

the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8(1)(e)would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it."

The Apex Court held that the Commission committed a serious illegality by directing the UPSC to disclose the information at points 4 & 5 and the High Court also committed an error by approving the said order. It was noted that neither the CIC nor the High Court recorded a finding that disclosure of the aforesaid information relating to other candidates was necessary to larger public interest and, therefore, the case was not covered by the exception carved out in Section 8 (1) (e) of the RTI Act.

6. In the case before this Court no finding has been recorded by the Commission that it was in the larger public interest to disclose the information with respect to the qualification and experience of other shortlisted candidates. In the absence of recording such a finding the Commission could not have directed disclosure of the aforesaid information to the respondent."

5. In the present case, the information such as date of birth, institution and year of passing graduation, field experience and caste is

personal information of the selected candidates. There is no finding by the Commission that it was in larger public interest to disclose the aforesaid personal information of the recommended candidates. Even in his application seeking information, the respondent did not claim that any larger public interest was involved in disclosing the aforesaid information. In the absence of such a claim in the application and a finding to this effect by the Commission, no direction for disclosure of the aforesaid personal information could have been given.

6. For the reasons stated hereinabove, the impugned order dated 07.06.2010 passed by the Central Information Commission is hereby set aside.

The writ petition stands disposed of. No order as to costs.

V.K. JAIN, J

NOVEMBER 08, 2013
BG

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: May 21, 2019
Judgment delivered on: July 01, 2019

\+ W.P.(C) 776/2016 & CM. No. 3376/2016

BALJEET SINGH

..... Petitioner

Through: Mr. Vikram Saini, Adv. with Ms. Chhaya Sharma and Mr. Tarun Goyal, Advs.

versus

THE PIO, INDUSTRIAL TRAINING INSTITUTE, JAHANGIR PURI & ANR

..... Respondents

Through: Mr. S.K. Tripathi, ASC for GNCTD with Mr. Shashank Tiwari, Adv. for R1

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this petition is to an order passed by the CIC dated November 24, 2015, whereby the CIC has directed the respondent no.1 herein to provide to the respondent no.2, OBC certificate of the petitioner.

2. The challenge to the order is on the ground that respondent no.2 is a neighbor and co-sharer in the property of the petitioner and has no cordial relationship due to a property dispute. Therefore, in order to harass and put pressure on

petitioner and his family to come for a settlement in the property dispute, an application for seeking information has been filed. According to the petitioner, respondent no.2 is not a bona fide information seeker for the said reason.

3. It is contended by the learned counsel for the petitioner that the CIC has failed to appreciate that neither the PIO nor the Appellate Authority has disposed of the RTI Application, therefore, in the absence of any decision taken by any authority, the appeal before the CIC was not maintainable. Hence, the CIC without considering the background of the case, and the fact personal information is protected under Section 8 of the RTI Act directed the Department of the petitioner to supply the same while passing the impugned order, which is untenable.

4. According to the learned counsel for the petitioner the caste and educational certificate of an employee are in the nature of personal information about a third party. Hence, this type of information is exempted from disclosure. He would rely upon the Judgment of the Supreme Court in the case of ***Girish Ramchandra Deshpande v. Central Information Commissioner and Ors. (2013) 1 SCCC 212***.

5. Respondent no.1 has filed its counter-affidavit to state that respondent no.2 has filed his first RTI application at ITI, Jahangir Puri, Delhi on May 16, 2013 and August 12, 2013 in which the post of Baljeet Singh, petitioner herein was not mentioned clearly and accordingly reply was sent to Sh. Pratap Singh, respondent no.2 by the PIO. It is also stated that the petitioner was aware regarding the RTI filed by respondent no.2

and he has accordingly submitted a written request to the PIO / HOO and by giving reference to the property case requested not to share his personal information with any person. Respondent no.2 not being satisfied with the reply of PIO dated September 2, 2013 moved to the first Appellate Authority to obtain the record in respect of the petitioner. Then the first Appellate Authority supplied all the existing relevant records with the first Appellate Authority to the respondent no.2 with a direction, if the respondent no.2 is not satisfied, he may move the second Appellate Authority, i.e., CIC. However, instead of moving the second Appellate Authority, respondent no.2 filed various complaints to the first Appellate Authority and other higher authorities of the department to obtain the personal record of the petitioner which lingered on / delayed the matter in the department as respondent no.2 dragged the family dispute in his complaint, which resulted in valuable time of the department spoiled by the respondent no.2 as he wanted to settle his personal grudge against the petitioner instead of moving towards second appeal in CIC. It is also stated that the CIC passed the order November 24, 2015 after having heard the submissions of both the parties and in compliance thereof ITI Jahangir Puri, Delhi supplied the copy of the OBC certificate by blocking the address and other personal information of the petitioner Sh. Baljeet Singh to respondent no.2 Sh. Pratap Singh. Even though, the petitioner has submitted a written representation dated December 18, 2015 to defer the supply of the personal record to the respondent no.2 which was received by PIO on December 21, 2015, meanwhile,

the PIO has already obeyed with the order of the CIC. Therefore, there was no reason to consider the written representation of the petitioner dated December 18, 2015.

6. An issue has arisen whether the OBC certificate has been received by the respondent no.2 from the department pursuant to the order of the CIC as according to the department, the certificate which has not returned back undelivered is deemed to have been delivered.

7. Be that as it may, respondent no.2 has filed a counter-affidavit before this court wherein he has justified the impugned order of the CIC. He in his counter-affidavit has not stated that the order of the CIC has been complied with. In any case, the counsels appearing for the petitioner and the respondent no.1 have reiterated the stand taken by them in their respective pleadings.

8. The issue which arises for consideration is whether the OBC certificate of the petitioner can be directed to be given by the CIC. To answer this question, it is necessary to reproduce the prayer clause in the writ petition as under:

"In view of the above mentioned facts and circumstances of the case, it is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

a) Call the record for perusal of this Hon'ble court.

b) Issue a writ/ order/direction/instructijon in the nature of certiorari quashing the impugned order dated 24.11.2015 passed by CIC, in the interest of justice.

c) Or in alternate, direct the respondent no.l should not disclose the personal information of the petitioner to anyone in future.
d) Any other writ or further order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of the justice"

9. From the above, it is clear that the petitioner in substance has challenged the order of the CIC. Alternatively, he has prayed that the respondent no.1 should not disclose the personal information of the petitioner to anyone in future. In other words, if the information as directed to be given has been supplied by the respondent no.1 to the respondent no.2 then there is a compliance of the order of the CIC. If in the eventuality, the said information has not been received by respondent no.2, then the same should not be given. The question is whether, respondent no.1 can still give the information to the respondent no.2. The answer to this question would surely be, whether the information, like the caste certificate can be directed to be given. It is the case of the petitioner that the caste certificate is a personal information qua him and such certificate being a personal information cannot be given. Learned counsel for the petitioner has relied upon the Judgment of the Supreme Court in the ***Girish Ramchandra Deshpande (supra),*** wherein in Paras 12 to 14, the Supreme Court has held as under:

"12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are

qualified to be personal information as defined in clause (j) of Section 8(1)of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

13. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

14. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act."

10. From the law laid down by the Supreme Court it is seen the information like memos / show-cause notices / orders of censure / punishment as sought by the respondent no.2 qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. Similarly, the details disclosed by a person in his income tax returns were also held to be personal information

which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless the CPIO / SPIO / Appellate Authority is satisfied that larger public interest justifies the disclosure of such information.

11. In the case in hand, the respondent no.2 has sought the caste certificate issued to the petitioner. The information is a personal information as the caste to which the petitioner belongs is an issue inter-se between the respondent no.1 and the petitioner i.e. between employer and employee and this aspect is governed by service rules. The disclosure of which has no relationship to any public activity. In fact, it is held so by a Coordinate Bench of this court in ***UPSC v. Pinki Ganeriwal, W.P.(C) 5812/2010*** decided on November 8, 2013, wherein in Para 5 of the Judgment it is held as under:

> *"5. In the present case, the information such as date of birth, institution and year of passing graduation, field experience and caste is personal information of the selected candidates. There is no finding by the Commission that it was in larger public interest to disclose the aforesaid personal information of the recommended candidates. Even in his application seeking information, the respondent did not claim that any larger public interest was involved in disclosing the aforesaid information. In the absence of such a claim in the application and a finding to this effect by the Commission, no direction for disclosure of the aforesaid personal information could have been given."*

12. Further, it is also not the conclusion of the Tribunal that in the larger public interest such information is required to be disclosed.

13. I may at this stage refer to certain observations made by the Division Bench of this court while dealing with a similar issue in the case of ***Shri Harish Kumar v. Provost Marshal-Cum-Appellate Authority and Anr., LPA 253/2012*** decided on March 30, 2012 wherein in Paras 11 and 12 it is held as under:

> *"11. A Division Bench of this Court in Paardarshita Public Welfare Foundation Vs. UOI AIR 2011 Del. 82, in the context of Section 8(1)(j) (supra) and relying upon Gobind Vs. State of Madhya Pradesh (1975) 2 SCC 148, Rajagopal Vs. State of Tamil Nadu (1994) 6 SCC 632 and Collector Vs. Canara Bank (2005) 1 SCC 496 has held right to privacy to be a sacrosanct facet of Article 21 of the Constitution of India. It was further held that when any personal information sought has no nexus with any public activity or interest, the same is not to be provided. Finding the information sought in that case to be even remotely having no relationship with any public activity or interest and rather being a direct invasion in private life of another, information was denied. The full bench of this Court also in Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal AIR 2010 Del. 159 has held that the conflict between the right to personal privacy and public interest in the disclosure of personal information is recognized by the legislature by incorporating Section 8(1)(j) of the Act. It was further observed that personal information including tax returns, medical records etc. cannot be disclosed unless the bar against disclosure is lifted by establishing sufficient public interest in disclosure and disclosure even then can be made only after duly notifying the third party and after considering his views. It was yet further held that the nature of restriction on right to privacy is of different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending upon*

what is at stake; this is so because a public servant is expected to act for public good in the discharge of his duties and is accountable for them.(emphasis supplied) This Court in Vijay Prakash Vs. UOI AIR 2010 Del 7 also, where information of an estranged wife's service record was sought, held that the transparency values have to be reconciled with legal interest protected by law, such as other fundamental rights, particularly the fundamental right to privacy; relying on O.K. Ghosh Vs. Ex. Joseph MANU/SC/0362/1962 it was held that an individual does not forfeit his fundamental rights by becoming a public servant; that a distinction has to be drawn between official information and private information and private details of date of birth, Personal Identification Number etc. are to be disclosed only if such disclosure is necessary for providing knowledge of proper performance of the duties and tasks assigned to the public servant; not finding any public interest in the disclosure of information sought, the order of the CIC denying the information was upheld.

12. We are even otherwise pained to find that the provisions of the RTI Act are being used for personal vendetta and owing whereto the PIOs are under huge load and strain."

14. Accordingly, the petition filed by the petitioner, if in the eventuality, the information has not been disclosed by respondent no.1 pursuant to the order of the CIC, is liable to be allowed and the order of the CIC shall stand set aside.

CM. No. 3376/2016 (for Stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 01, 2019*/jg*

IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2173/2013 and CM 4120/2013

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MINISTRY OF RAILWAYS ..... Petitioner

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Through Dr Ashwani Bhardwaj, Advocate.

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versus

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K.G.ARUN KUMAR ..... Respondent

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Through Mr Nishe Rajen Shonker, Advocate

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for R1.

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CORAM:

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HON'BLE MR. JUSTICE VIBHU BAKHRU

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O R D E R

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21.11.2014

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The petitioner impugns an order dated 18.10.2012 passed by the Central Information Commission (hereafter ?CIC?), inter alia, directing that the respondent be permitted to inspect the answer sheets and also be provided the question papers with respect to the tests undertaken by the respondent.

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The controversy to be addressed is whether the petitioner is entitled to withhold the question papers of the written test as well as answer sheets and question papers of aptitude test taken by respondent.

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Briefly stated the facts are that the respondent had undertaken an aptitude test and written examination for being selected to the post of ?Assistant Station Master? (ASM) with the petitioner. The written examination was held on 13.06.2010 and the petitioner was selected for aptitude test which was conducted on 03.02.2011.

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According to the petitioner, he had faired well and thus, ought to have been selected. However, the petitioner was not among the final candidates selected for the appointment. Thereafter, the respondent filed applications under Right to Information Act, 2005 (hereafter the ?Act?) seeking information relating to the written examination as well as the aptitude test. By an application dated 09.06.2011, the petitioner sought information including the following information:-

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?(i) Copies of answer sheets and question of Aptitude test of mine and other 37 candidates who were all selected as per the final list, with the key used for evaluation.

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(ii) Copies of answer sheets and question papers of written test of mine and other 37 candidates who were all selected as per the final list, with the key used for evaluation.?

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In response to the aforesaid application dated 09.06.2011, the Assistant Public Information Officer (hereafter ?APIO?) sent a response on 21.06.2011 permitting the respondent to inspect his answer sheets of the written examination but denied the answer sheets and the question papers of the aptitude test.

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Aggrieved by the denial of information by APIO, respondent filed an appeal before the First Appellate Authority (hereafter ?FAA?) which was rejected on 07.07.2011. Thereafter, the respondent preferred a second

appeal before the CIC. The said appeal was disposed of by the order dated 18.10.2012.

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The learned counsel for the petitioner contended that psychological tests are designed to test the mental aptitude for safety category staff necessary for safety on the Indian Railways. It was further submitted that the aptitude tests, question papers and the OMR sheets are reused in different examinations conducted by Railway Recruitment Board and a disclosure of the aptitude question papers would effectively destroy the ability of the petitioner to use the aptitude question papers in future examinations. It is further submitted that it takes several years to design an aptitude test and the petitioner would be prejudiced if the respondent is provided such information.

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It was further contended by the learned counsel for the petitioner that even the copies of the question papers of the written examinations ought not be provided since the number of questions were limited and the same are also used in different tests.

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The controversy whether an examining body can be asked to disclose the question papers in circumstances where the number of questions are limited and are repeated, has been considered by this court in National Insurance Co. Ltd. v. Shri MSF Beig: W.P.(C) No.272/2012 decided on 20.11.2014 and it has been held that in such cases, the examining body cannot be compelled to disclose the question papers.

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Accordingly, the present writ petition is allowed and the CIC?s order directing the petitioner to provide copy of question papers or provide OMR sheets is rejected. However, the petitioner would be entitled to inspect his answer sheets for the written examination which the learned counsel for the respondent states has already been provided to the respondent.

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No order as to costs.

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VIBHU BAKHRU, J

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NOVEMBER 21, 2014

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

Reserved on: 17.08.2020
Pronounced on: 31.08.2020

\+ **LPA 207/2020**

DR. R. S. GUPTA .....Appellant

Through: Appellant in person.

versus

GOVT. OF NCTD & ORS. .....Respondents

Through: Mr.Gautam Narayan, ASC (GNCTD) with Ms.Dacchita Shahi, Advocate for respondent Nos.1 to 5.
Mr.Parvinder Chauhan and Mr.Nitin Jain, Advocates for respondent No.9.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G E M E N T

SANJEEV NARULA, J.

1. The present appeal under Clause X of the Letters Patent is directed against the final judgment and order dated 12th May, 2020 passed by the learned Single Judge in W.P.(C) 8352/2018 whereby appellant's writ petition impugning the order passed by respondent No.3, declining to furnish the requested information under the Delhi Right to Information Act, 2001 (hereinafter referred to as 'DRTI Act'), has been rejected.

2. Brief factual matrix leading to the filing of the present appeal is that the appellant filed an application under DRTI Act, 2001 before respondent No.5 (Director of Education, Delhi) and respondent No.6 (Mrs. Ranjana Daswal, Additional/Spl. Director (ASB/ACT-II), seeking information pertaining to Geeta Senior Secondary School No.2, Sultanpuri, Delhi. Appellant sought attendance record pertaining to himself for the period from April, 2015 to March, 2017 and also of the rest of the staff members serving in the same school. The copy of the attendance register pertaining to the appellant was provided to him, however at the same time information concerning the other staff members was declined on the ground that information requested was exempted under Section 8(1)(j) of the Right to Information Act, 2005. Aggrieved with the response received, appellant filed an appeal under Section 7 of DRTI Act before Public Grievance Commission ('PGC'), the designated appellate authority under the Act.

3. In the appeal proceeding, the Deputy Director of Education, Zone-XII filed reply and furnished a copy thereof to the appellant wherein *inter alia* it was stated as under:

> *"1. That for para 1 copy of attendance pertaining to the Appellant (Dr. R. S. Gupta) w.e.f April, 2015 to March, 2017 has already been provided to the Appellant on 5/05/2017 on depositing Rs. 120/- (Annexure R-1). The attendance of the rest of the staff members working in the school (Geeta Sr. Sec. School, Geeta Chowk, Sultanpuri, Delhi-110086) cannot be provided as it is the third party information and comes under section 8 (1) (J) of RTI ACT as there is no*

large public interest was involved for which this information was being sought."

4. Vide order dated 4th September, 2017, respondent No.6 was directed to confirm whether attendance record is submitted along with the monthly salary bills received from aided school for the release of salary through ECS ('Electronic Clearance System'). The relevant order reads as under:

"4.1 Competent Authority i.e. Additional Director(II), Directorate of Education is directed to clarify whether as per the Act and Rules or under any other order of the Directorate, it is mandatory for the aided schools to submit copy of attendance register every month to the Education Department. Competent Authority shall further clarify what documents are required to be submitted by the aided schools authorities for release of salary to the staff members. The clarification should be submitted to the Appellate Authority/Chairman (POC) before the next date of hearing.

4.2 A senior officer, well conversant with the facts of the case, must be deputed on the next date of hearing.
The next date of hearing in this appeal case is scheduled for Monday, 11th December, 2017 at 11:00 A.M."

5. On 9th February, 2018, Deputy Director of Education, Zone-XII submitted a reply to the following effect:

"OFFICE OF THE DY. DIRECTOR OF EDUCATION, ZONE-XII,
DISTT.NW-(B), Q- BLOCK, MANGOLPURI, DELHI-110083.

No.: Zone-XII/74 *Date: 09/02/2018*

To,
The Appellate Authority/ Chairman,
Public Grievance Commission,

Govt. of NCT of Delhi.
Subject: Reply Appeal No. 247/2017/PGC /DRTI/ Edn/ Dr. R. S. Gupta.
Sir,

With reference to the Appeal No. 247/2017/PGC/DRTI/Edn. as cited in the subject above. In this connection, the school authorities has submitted their reply on 16/11/2017,Ref. No. Geeta.-2/2017-18/461(Copy enclosed).

As per order No. F. DE 15 (265)/ACT/POLICY/2008/6718-6741 dated 05/09/2008 (Copy enclosed) under section 10 (2) of Delhi School Education Act, 1973, specifies that "the Managing Committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension. Gratuity, provident fund and other prescribed benefits with the Administrator shall disburse, or cause to be disbursed, with the last week of every month, the salary and allowances to the employees of aided schools" and whereas this power of the Administrator has been delegated to the Director of Education and whereas an undertaking has been given by the Department before the Hon'ble supreme Court in the matter of Environmental &Consumer Protection Foundation vs. Delhi Administration &Ors. Therefore, it is hereby ordered to disburse the salary to the employees of Aided Schools under the Directorate of Education through Electronic Clearance System from the month of September, 2008 onwards.

Thus, as per the order No. F. DE 15 (265)/ACT/POLICY/2008/ 6718-6741 dated 05/09/2008 (Copy enclosed) forwarding of the copy of attendance register of the staff school concerned need not be send alongwith the monthly salary bills to the Department. The following documents are being attached with the salary bills every month as per the information received from the school concerned.

1. Salary Form (GR-13).
2.GPF Deduction List.
3. DGEHS Deduction List.
4. K Form.

5. Income Tax Deduction List.
6. Vacancy Statement.
7. Variation Statement.
8. ECS List.
9. Challan @5IYo.
10. CHallan @ 8.33%
11.Form-A
12. Bill NPS.
Submitted please,"

6. On 12th February, 2018, on the basis of reply submitted before the appellate authority, the appeal was disposed of in the following terms:

"OFFICE OF THE APPELLATE AUTHORITY
DELHI RIGHT TO INFORMATION ACT 2001
PUBLIC GRIEVANCE COMMISSION
GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI

Date of hearing 12th February, 2018
Applicant *Dr. RS. Gupta*
R/o H.No. 677-A (First Floor)
Nyaya Khand-2, Indira Puram,
Ghaziabad, U.P. -201014
Competent Authority Additional Director of Education (Act-II)
Directorate of Education,
Old Secretariat, Delhi-110054
Appeal No. *247/2017/PGC/DRI/Edn.*
Application Filed on *25/05/2017*
Response of
Competent Authority No response received
Appeal Filed on 20/07/2017
First hearing in PGC 04/09/2017
Scheduled

1. ***Brief facts of the Appeal***

Dr. RS. Gupta filed Form-A during May, 2017, under the Delhi RTI Act, 2001, with the Competent Authority i.e. Additional Director of Education (Act-II), Directorate of Education, seeking information on total 3 counts.

Dr. RS. Gupta did not receive a response from the office of Additional Director of Education (Act-II), Directorate of Education, hence he filed an Appeal during July, 2017 before the Appellate Authority/PGC under Section 7 of Delhi Right to Information Act. 2001.

2. ***Proceedings in the Public Grievance Commission***

The Public Grievance Commission has so far convened two hearings on 4th September, 2017 and 12th February, 2018. At today's hearing on 12/02/2018, the attendance was as follows:

Present

Sh. Bharat Bhushan Gupta, DDE (Zone-XII), Dte. of Education

Relevant facts emerging during the hearing

3. 1 At the last hearing held on 04/09/2017, directions given by the PGC were as follows:

"Competent Authority i.e. Additional Director (Act-II), Directorate of Education is directed to clarify whether as per the Act and Rules or under any other order of the Directorate, it is mandatory for the aided schools to submit copy of attendance register every month to the Education Department. Competent Authority shall further clarify what documents are required to be submitted by the aided school authorities for release of salary to the staff members. The clarification should be submitted to the Appellate Authority/Chairman (PGC) before the next date of hearing. A senior officer, well conversant with the facts of the case, must be deputed on the next date of hearing".

3.2 At today's hearing on 12/02/2018, Sh. Bharat Bhushan Gupta, DDE (Zone-XII), Directorate of Education submitted a reply dated 09.02.2018 before the next Appellate Authority (copy placed in file). A copy of the same was given to the appellant during the hearing.

3.3 DDE (Zone-XII) further informed that as per the order No.F.DE15 (265)/ACT/POLICY/2008/6718-6741 dated 05/ 09/2008, issued by the Director (Education), copy of attendance register of the school staff concerned need not be sent alongwith the monthly salary bills to the Department. He has also mentioned the documents which are attached with the salary bills each month by the school.

4. ***Directions of the Appellate Authority/PGC.***

4.1 On perusal of the reply, it is observed that the department has provided satisfactory reply to the clarification sought by the Appellate Authority/PGC on the last date of hearing. With the above directions/ observations, the present appeal case is ordered to be disposed of before the Appellate Authority/ Member (PGC).

Sd/
(SUDHIR YADAV)
APPELLATE AUTHORITY/MEMBER (PGC)
21/03/18"

7. The appellant was still unsatisfied and impugned the order by filing a writ petition before this court. The learned Single Judge dismissed the same noting that the appellant had received his personal information and that there was no infirmity in the order refusing to furnish information pertaining to other staff members of the school. The learned Single Judge also noted that in view of section 22 of the RTI Act, Section 8(1)(j) and the principles stated in the said section would apply to the facts of this case. The relevant portion of the impugned order reads as under:

"10. It is clear from a perusal of the RTI application filed by the petitioner that he was seeking the complete copies of the school staff attendance registers. This has been rightly refused as the information pertains to private information of other employees and would tantamount to invasion of the Right to Privacy. The petitioner has

received his personal information. Accordingly, in my opinion, there is no infirmity in the impugned order to warrant any interference by this court.

11. It is also quite clear that under section 22 of the RTI Act the provisions of the said Act would have effect notwithstanding anything inconsistent contained in any other law for the time being in force or any instrument having effect by virtue of law other than the Act. Section 22 of the RTI Act reads as follows:-

> *"22. Act to have overriding effect.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."*

12. Keeping in view the said provisions and section 8(1)(j) of the RTI Act, the principles stated in the said section would apply to the facts of this case. Section 8(1)(j) of the RTI Act reads as follows:-

> *"8. Exemption from disclosure of information.—(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-*
>
> *(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*

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

13. Clearly giving personal information to the petitioner of other employees would be an invasion of the privacy of the individual. There is no larger public interest involved to warrant taking a different view.

14. Another plea raised by the petitioner was that some of the schools have in response to separate RTI applications confirmed that attendance record of the staff is sent to respondents No.5 and 6. Merely because some of the schools in response to the RTI Application sent by the petitioner have mentioned that they are sending the attendance sheet to the Govt. of NCT of Delhi cannot be a ground to give copies of the said attendance sheet to the petitioner. This plea of the petitioner is misplaced.

15. As far as the plea of the petitioner that the hearing was not given by the concerned functionary, respondents No.2 and 3 in their counter-affidavit which is sworn by the Deputy Secretary, Public Grievance Commission, Govt. of NCT of Delhi clearly states that the hearing was given by respondent No.3. Respondent No.3 has signed the order and dated it as 21.3.2018. I see no reason to disbelieve the said averment of respondentNo.2 and respondent No.3. This plea is rejected.

16. Even otherwise as noted above, there is no merit in the contentions raised by the petitioner.

17. There is no merit in the petition. Petition is accordingly dismissed."

8. The appellant, who appeared in person before us, assailed the order of the learned Single Judge by urging that the information sought by the appellant cannot be refused. He raised two-fold submission. Firstly, he

submits that the authority deciding the appeal was not empowered and authorized to do so. He argued that on 12th February, 2018 as well as on 21st March, 2018, there was no inherent power with respondent No.3 to act as the Appellate Authority. The specific authorization issued in this behalf being letter dated 20th March, 2018 was received by the department only on 22nd March, 2018. Till such time the authorization was received, the officer could not discharge the role and function of Appellate Authority. Secondly, he argues that respondent No.8 in the writ petition had submitted false information to PGC on 12th February, 2018, without approval of the competent authority. He argues that the reply placed on record is absurd and did not, in any manner justify the stand taken in the said communication, so as to deny the information to the appellant. Lastly, the appellant asserts that the information pertaining to himself has also not been supplied.

9. Mr. Gautam Narayan, learned ASC on behalf of the respondent No.1 and Mr. Parvinder Chauhan, learned Counsel on behalf of the school, who appeared on advance notice, submitted that the information sought by the appellant cannot be furnished, as the same is specifically covered under Section 8(1)(j) of the RTI Act. Without prejudice, Mr. Narayan submits that although personal information pertaining to the appellant has been furnished to him as recorded in the impugned order, yet in order to put the controversy at rest, he has no objection to provide the same once again, if the court were to issue such a direction. Learned ASC further submitted that it was not mandatory for aided schools to submit the copy of the attendance register every month to the Education

Department for the release of the salary to the staff members. He explained that now disbursal is done through the ECS system and therefore, furnishing of attendance register alongwith monthly bills is not a requirement. He further argued that such information is kept by the school and not forwarded to the Education Department. With respect to the competence of the appellate authority, he clarified that respondent No.3 was authorized to hear the appeal under the RTI Act as an 'appellate authority'. He also pointed out that vide notification dated 12th December, 2017, respondent No.3 had been appointed as a Whole Time Member of the Public Grievance Commission and could, therefore, authoritatively and legally discharge the functions of the Appellate Authority. Therefore, as on the date of the hearing, as well as deciding the appeal, he was fully competent and had the jurisdiction to pass the order. Later, vide order dated 20th March, 2018, he was appointed as the Head of the Department for the Commission as the post of the Chairman was vacant at that time. This appointment is being misconstrued by the appellant as the authorization to act as the appellate authority.

10. We have given due consideration to the submissions advanced by the parties and have carefully perused the record. Under section 7 of the DRTI Act, any person aggrieved by an order of the competent authority, or any person who has not received any order from the competent authority within thirty working days, may appeal to the Public Grievances Commission. The organizational structure of the Commission comprises of the chairman and members. The appeal was

decided by the Commission, through Respondent No.3 who was its member. Except for making a bald assertion, the appellant is unable to demonstrate as to how respondent No.3, who was member of the Public Grievance Commission, could not act as the Appellate Authority. The fact that respondent No.3 was declared as the Head of the Department for the Commission vide order dated 20th March, 2018, does not mean that authority to discharge the functions of the Appellate Authority stood conferred only from the said date by virtue of such appointment. Therefore, there is no merit in the contention of the appellant that the order dated 20th March, 2018 has been passed by an authority not competent to decide the appeal. We also do not find any merit in the contention of the appellant that the stand of the DOE before the Appellate Authority is not supported by the Policy document dated 05.09.2008 relied upon by them. The Department of Education has categorically stated on record that from 2008 onwards, salary to employees of aided schools is disbursed through the ECS, and therefore, it is not necessary to send a copy of the attendance register along with salary bills for such disbursal. We therefore, fail to understand how Department of Education, can be compelled to furnish the information that is not available in the records not maintained by them at least from September 2008 onwards. Further, the appellant is seeking attendance record of the other staff members of the Geeta Senior Secondary School No.2, Sultanpuri, Delhi. Since the information requested relates to attendance record, it would entail revealing medical and personal information of an individual. The attendance record is part of service record which is a matter between

the employee and the employer and ordinarily these aspects are governed by the service rules which fall under the expression "personal information". The disclosure of this information *ex-facie* has no relationship to any public activity or public interest and pertinently, the appellant is not able to explain or show any nexus between the personal information sought and the public interest involved, for seeking its disclosure. Thus, in our view, in absence of even a remote connection with any larger public interest, disclosure of information would be exempted as the same would cause unwarranted invasion of the privacy of the individual under section 8(1) (j) of the RTI Act. Petitioner has thus failed to establish that the information sought for is for any public interest, much less 'larger public interest'. Therefore, we are not inclined to entertain this appeal.

11. Before parting we may add that Appellant has argued that several Aided schools have stated that they are enclosing their monthly record of staff attendance register with their salary bills and hence, it is not the third-party information. We are not inclined to accept this contention in view of the categorical stand taken by the DOE. If some schools are volunteering their information to DOE, it does not mean that information qua the employees of the school in question does not pertain to a third party. Lastly, as is borne out from documents placed on record and as observed by the Learned Single Judge, we have no reason to accept Appellant's contention that he is not in receipt of information relating to his personal record. Nevertheless, since Mr. Narayan without prejudice has agreed to furnish the same, we direct

accordingly. Let the information pertaining to appellant's personal attendance record, that was provided earlier, be furnished to him once again, within 3 weeks from today. The appeal is dismissed with the above directions.

SANJEEV NARULA, J

MANMOHAN, J

AUGUST 31, 2020
v

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

\+ W.P.(C) 3530/2011

THE REGISTRAR, SUPREME COURT OF INDIA ..... Petitioner
Through: Mr. Sidharth Luthra, Senior Advocate with Ms. Maneesha Dhir, Mr. Abhishek Kumar, Mr. Nitin Saluja, Mr. Soumya Roop Sanyal, Ms. Advitiya Awasthi and Mr. Sidharth Agarwal, Advocates

versus

R S MISRA ..... Respondent
Through: Mr. Ramesh Singh, Advocate, Amicus Curiae.
Ms. Deepali Gupta, Advocate for respondent.

Reserved On : 27th September, 2017
% Date of Decision: 21st November, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J :

1. Present writ petition has been filed challenging the decision of the Central Information Commission (for short "CIC"), dated 11th May, 2011 passed in Appeal No. CIC/SM/A/2011/000237. The CIC vide the impugned order allowed the appeal of the respondent and directed the Central Public Information Officer, Supreme Court of India (for short "CPIO") to answer the queries 1 to 7 raised by the said respondent in his application dated 20th April, 2010. The CIC also directed the CPIO to provide information

pertaining to a judicial matter in which the respondent himself was a party, i.e. in Special Leave Petition (C) No. 8219-8220 of 2010 and was represented by a lawyer. The relevant portion of the impugned order is reproduced hereinbelow:-

> *"In view of the foregoing arguments, this Commission respectfully disagrees with the decision of the then Chief Information Commissioner that the PIO, Supreme Court may choose to deny the information sought under the RTI Act and ask an applicant to apply for information under Order XII of the SC Rules.*
>
> *This Bench further rules that all citizens have the right to access information under Section 3 of the RTI Act and PIOs shall provide the information sought to the citizens, subject always to the provisions of the RTI Act only.*
>
> *Where there are methods of giving information by any public authority which were in existence before the advent of the RTI Act, the citizen may insist on invoking the provisions of the RTI Act to obtain the information. It is the citizen's prerogative to decide under which mechanism, i.e. under the method prescribed by the public authority or the RTI Act, she would like to obtain the information.*
>
> *The Appeal is allowed. The PIO is directed to provide the complete information as available on record in relation to queries 1 to 7 to the Appellant before June 5, 2011."*

2. The respondent's application under Right to Information Act, 2005 (for short "RTI Act") dated 20th April, 2010 is reproduced hereinbelow:-

> *"Dated 20.04.2010*
>
> *To,*
> *The CPIO,*
> *Supreme Court of India,*
> *New Delhi,*

Sub: Information required under RTI Act, 2005 with due permission to get published my clear victimization in leading daily newspapers and role of courts.

Sir,

Details of Information required are as under:-

1. *Inform me the action taken and status report of my application dated 14.09.2009 to Hon'ble Chief Justice of India and his companion all 26 Judges for struck down Article 81(b) of Education Code of Kendriya Vidayalaya Sangathan Unconstitutional, unguided and ultra virus and void.*

2. *Inform me the action taken and status report of my letters dated 25.2.2010 to each Judge of Hon'ble Supreme Court for struck down of Article 81(b) of EC of KVS and its misuse in an arbitrary manner with ulterior motives being unconstitutional null and void without regular inquiry.*

3. *Inform me the action taken and status report of my application dated 22.3.2010 for deprivation of natural justice of W.P.(C) and SLP dismissed by all the courts without providing complete legible, readable typed copies of complete Inquiry Report and 69 (sixty nine) pages of the statement of the witnesses vide decision given by CIC and upheld by Hon'ble High Court of Delhi dispensing regularing inquiry rightly.*

4. *Inform me the action taken by Hon'ble Chief Justice, Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Mr. Justice Ashok Ganguli on my application dated 05.03.2010 in the matter of RS Misra Vs. UOI & Ors. for natural justice and malafidy of the case SLP (C) Nos. 8219-8220 of 2010 unheard.*

5. *Inform me the action taken by Hon'ble Chief Justice, Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Mr. Justice Ashok Ganguli against clear cut victimization by authorities of KVS without any evidence specific allegations, time, date and period on my application dated 15.3.2010 and without providing opportunities of natural justice. SLP (C) Nos. 8219-8220 of 2010 unheard.*

6. *Inform me the action taken by Hon'ble Chief Justice of India, Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Mr. Justice Ashok Ganguli against my application dated 30.3.2010 for malafide intention, contention and vindictive attitude of respondents regularly.*

7. *Inform me the action taken by Hon'ble Chief Justice of India on application of my wife Mrs. Rampati Misra against clear victimization of her husband Shri R.S. Misra before 7 days of retirement without regular inquiry and report of summary inquiry to be provided from the authorities of KVS on petition dated 26.3.2010 in the matter of RS Misra Vs. UOI & Ors.*

8. *Requisite fee Rs. 10.00 vide IPO No. 86E 954536 dated 10.09.2010 enclosed.*

9. *Inform me the law under which Tribunal, High Court and also Apex Court dutifully dismiss the case without examining facts, grounds and circumstances of alleged allegations from Manipuri girls through rumoured bad conduct fraudulent Manipuri lady Principal Mrs. Radharani Devi openly supported by KVS, CBI and CVC without enquiry.*

R.S. MISRA
APPLICANT
S-93, NEW PALAM VIHAR
PHASE-I
GURGAON-122017"

(emphasis supplied)

3. Though the respondent informed this Court that he was not in possession of any of the letters referred to, by him, in his RTI application, yet the petitioner had placed on record the letters dated 22nd March, 2010 and 26th March, 2010. Both the said letters read like a writ petition and the same have not been reproduced to avoid prolixity.

PETITIONER'S ARGUMENTS

4. Mr. Siddharth Luthra, learned senior counsel for petitioner contended that the CIC vide the impugned order, in Second Appeal, without considering whether the queries raised by the respondent in his RTI application were maintainable under the RTI Act, gave a general direction that all such queries should be answered by the CPIO on or before 5th June, 2011.

5. He submitted that the impugned order is contrary to prior decisions of CIC Benches of similar strength and even if the CIC was inclined to disagree with the prior decisions on the same issue, the case should have been referred to a larger bench. He pointed out that the CIC in a number of previous decisions had repeatedly held that access to documents filed on the judicial side can only be obtained through the mechanism of Supreme Court Rules (for short "SCR") and that the provisions of the RTI Act cannot override the SCR. He, however, stated that the CIC in the impugned judgment took a view contrary to the settled position of law and held that "*in accordance with Section 22 of the RTI Act, the provision of RTI Act shall override the Supreme Court Rules.*"

6. Learned Senior Counsel for the petitioner also submitted that there is no inconsistency between the SCR, 1966 and the RTI Act, 2005. He stated

that the SCR have been framed under Article 145 of the Constitution of India and they provide for regulating the practice and procedure of the Court and have the effect of law. He pointed out that the SCR provide for a mechanism for inspection and search of pleadings on payment of prescribed fees under Order XII. According to him, as it was open for the respondent in the present case to obtain certified copies of the order sheets, the CIC was not justified in directing the petitioner to furnish copies of the same free of cost.

7. Mr. Luthra contended that as there is no inconsistency between the RTI Act and the SCR, the RTI Act will not have an overriding effect over the SCR. Furthermore, according to him, since Order XII of the SCR and provisions of the RTI Act serve the same purpose, it would be a complete waste of public funds to permit information to be provided both under the RTI Act as well as the SCR, as erroneously held in the impugned judgment. In support of his submission, he relied upon judgment of this Court in ***Registrar of Companies and Others Vs. Dharmendra Kumar Garg and Another, (2017) 172 Comp Cas 412 (Delhi)***.

8. He also pointed out that the Karnataka High Court in ***State Public Information Officer and Deputy Registrar, High Court of Karnataka Vs. N. Anbarasan (ILR 2003 KAR 3890)*** has held that as some of the information sought in the said case was available under Karnataka High Court Act and Rules made thereunder, it was not open for the respondent to ask for copies of the same under the RTI Act. He stated that the information in respect to Item Nos. 6 to 17 in the said case related to Writ Petition No.17935/2006 and as the respondent was a party to the said proceeding, it

was open to the respondent to file an application, in accordance with the Rules, for certified copies of the order sheets or the relevant documents.

9. According to Mr. Luthra, the non-obstante clause in Section 22 of the RTI Act did not mean an implied repeal over all statutes. In support of his submission, he relied upon the judgment of the Supreme Court in ***R.S. Raghunath Vs. State of Karnataka, AIR 1992 SC 81*** wherein it has been held that "*the general rule to be followed in case of conflict between the two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied:*

i. The two are inconsistent with each other

ii. There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail."

10. Mr. Luthra lastly submitted that any interference with the work of a Judge in the discharge of his duties amounts to Contempt of Court. He contended that by way of the RTI application, the respondent sought to know in substance as to why his SLP had been dismissed, which is not permissible under any law. He pointed out that the Allahabad High Court in ***Baij Nath Prasad Vs. Madan Mohan Das, AIR 1952 All 108*** has held that a party making a private communication in the form of private letters was totally out of place in Courts, as it is likely to give rise to a feeling that he has familiarity with the presiding Magistrate.

RESPONDENT'S ARGUMENTS

11. Per contra, Ms. Deepali Gupta, learned counsel for the respondent stated that the impugned order dated 11th May, 2011 passed by the CIC was well reasoned and justified.

12. She submitted that as the SCR and the RTI Act co-exist, it is the citizens' prerogative to choose under which mechanism he would like to obtain information. She clarified that as both the laws, i.e. the RTI Act and SCR were consistent, the applicant had the prerogative of choosing the law under which he/she wanted to obtain information. She stated that for instance in a dispute between a workman and management, a workman had a right to proceed either under the Labour Law (Labour Court) or under the Service Law (CAT). She stated that similarly in a dispute pertaining to consumers, a person could proceed under the Civil Law or the Consumer Protection Act. Applying the same analogy, she stated that the applicant is free to choose a particular forum to pursue his/her remedies.

13. Ms. Deepali Gupta submitted that Rule 2, Order XII of the SCR appears to impose a restriction on access to information held by or under the control of a Public Authority which is prima facie inconsistent with the RTI Act. She pointed out that under Section 6(2) of the RTI Act an applicant is not to give reason for seeking the information and only nominal fee has to be paid. According to her, the same is not so under Rule 2, Order XII of the SCR, as good cause has to be shown. Hence, she submitted that purpose and reasons for seeking information are called for under the SCR.

14. She contended that the RTI Act provides for a specific time period in which information is to be provided. According to her, a procedure for

appeal is provided and penalty has been prescribed in case information is not provided. She stated that the SCR does not provide any such procedure. She also stated that under the RTI Act the information can be denied to an applicant only under Sections 8 and 9. However, in the present matter the information had been declined to the applicant without taking recourse either to Section 8 or 9 of the RTI Act and hence the same was against the statutory mandate.

15. Ms. Deepali Gupta submitted that Section 22 of the RTI Act being the non-obstante clause specifically provides that the said 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. Therefore, according to her, in accordance with Section 22 of the RTI Act, the provisions of the RTI Act shall override the SCR.

16. She further submitted that whereas the RTI Act is a substantive Law and a statutory enactment, the SCR are subordinate legislation, being Rules and Regulations framed under Article 145(1) of the Constitution, which lay down the procedure to provide certified copies of documents, etc. The scope of records that can be provided under Section 2(i) of RTI Act is much wider than the records that can be provided under the SCR. In support of her submission, she relied upon ***Dr. Vijay Laxmi Sadho vs. Jagdish, (2001) 2 SCC 247*** wherein it has been held "*Rules framed by the High Court in exercise of powers under Article 225 of the Constitution of India are only Rules of procedure and do not constitute substantive law*."

17. She submitted that the SCR have been framed under Article 145 of the Constitution to govern the Supreme Court proceedings but not to control

proceedings under the RTI Act. The Rules are framed to provide certified copies but not information and thus according to her the scope and object of the RTI Act and SCR are altogether different. Consequently, according to her, the finding of the CIC that, "*Therefore this Commission respectfully disagrees with the observation of the then Chief Information Commissioner and holds that Rule 2, Order XII of the SCR, appears to impose a restriction on access to information held by or under the control of a Public Authority, which is prima facie inconsistent with the RTI Act. Therefore in accordance with Section 22 of the RTI Act, the provisions of the RTI Act shall override the SCR*" is well reasoned and justified.

18. She lastly stated that the CIC had already held in case of ***Subhash Chandra Agarwal vs. Supreme Court of India, Appeal no. CIC/WB/ A/2008/00426 dated 6th January 2009*** that the contention of the respondent Public Authority that RTI Act is not applicable in case of Supreme Court cannot be accepted.

19. Since important questions of fact and law arose for consideration in the present matter, the Court appointed Mr. Ramesh Singh, Advocate as Amicus Curiae to assist it.

SUBMISSIONS OF AMICUS CURIAE

20. Mr. Ramesh Singh, learned Amicus Curiae submitted that the access to the information under SCR 1966 / SCR 2013, which includes right to inspection, search and copy is not the information covered / contemplated under the provisions of RTI Act, as Section 2(j) of the RTI Act is concerned with only that information which is under the exclusive control of the *'public authority'*. He submitted that this Court in ***Registrar of Companies***

Vs. Dharmendra Kumar Garg (supra) has interpreted Section 2(j) of the RTI Act in the said fashion.

21. He stated that even though a full Bench of this Court in ***Secretary General, Supreme Court of India Vs. Subhash Chandra Agrawal, (2010) 166 DLT 305*** defines the meaning of the words "*held by*" or "*under the control of*" in the aforesaid Section 2(j), yet it does not deal with the aspect of exclusive control as has been dealt with in the case of ***Registrar of Companies Vs. Dharmendra Kumar Garg*** (supra).

22. Learned Amicus Curiae submitted that Section 22 of the RTI Act does not contemplate overriding those legislations, which aim to ensure access to information. In fact, according to him, the said provision contemplates harmonious existence with the enactments which, like the RTI Act, also provide for dissemination of information. He submitted that Section 22 comes into operation only in case of inconsistency between any other law and the provisions of the RTI Act.

23. He stated that a Division Bench of this Court in ***Eliamma Sebastian Vs. Ministry of Home Affairs and Ors., MANU/DE/0650/2016*** has dealt with the interplay of Section 22 of the RTI Act vis-a-vis Section 139 of the Delhi Co-operative Societies Act, the latter provision dealing with *'Right to Information'* under the said Co-operative Societies Act, and has held *'that it does not necessarily mean that any other legislation, which aims to ensure access to information with respect to a private body, is overridden by Section 22 of the RTI Act*'. The Division Bench in the said decision further articulated the manner of accessing information first under the provisions of Delhi Co-operative Societies Act and thereafter under the RTI Act, qua that information which a Co-operative society may not possess. According to

him, the aforesaid interpretation/position fits in with the well settled legal position, namely of resorting to harmonious construction, which has also been applied in the context of Section 22 of the RTI Act.

24. He pointed out that cases in which Section 22 of the RTI Act had been invoked to direct access to information are those where the other statutes completely bar access to information. He stated that in ***CBSE Vs. Aditya Bandopadhyay, (2011) 8 SCC 497*** the bye laws provided for a complete bar as to *'disclosure or inspection of the answer books or other documents'*. Further, in ***Reserve Bank of India Vs. Jayantilal N. Mistry, (2016) 3 SCC 525*** the basic question formulated was *'whether the Right to Information Act 2005 overrides various provisions of the special statute which confer confidentiality in the information obtained by the RBI'*.

25. Learned Amicus Curiae submitted that when there is no inconsistency between the enactments/provisions and the RTI Act, the information is to be accessed only through the mechanism provided in the said enactments/ provisions. He further stated that as under SCR, dispensation of information is a part of the judicial function, exercise of which cannot be taken away by any statute. Consequently, he stated that, the only recourse is to accord an intra vires interpretation to Section 22 of the RTI Act, something, which the Courts have repeatedly adopted failing which, the RTI Act would have to be held to be unconstitutional insofar as it affects the functioning of the Courts in the discharge of its judicial functions under the SCR 1966/SCR 2013.

26. He submitted that the Supreme Court in ***K.M. Nanavati Vs. The State of Bombay, (1961) 1 SCR 497*** harmonized the power of the Governor under Article 161 of the Constitution of India, to order suspension of sentence with Order XXI Rule 5 of the SCR, to hold that the said power of the Governor

does not deal with suspension of the sentence during the time when the matter is sub-judice before the Supreme Court. The Supreme Court adopted the said approach on the ground that Article 161 will not operate when the matter is sub-judice, as the same can effectively interfere with the judicial function and therefore avoidance of such a possible conflict will incidentally prevent any invasion of the rule of law, which is the very foundation of the Constitution.

27. He also submitted that the aforesaid view in ***Nanavati's*** case was affirmed in ***SCBA vs. UOI, (1998) 4 SCC 409***, by holding that it is one thing to say that "*prohibitions or limitations in a statute*" cannot come in the way of exercise of jurisdiction under Article 142, but quite a different thing to say that while exercising jurisdiction under Article 142, Supreme Court can altogether ignore the substantive provisions of a statute.

28. Mr. Ramesh Singh stated that Section 28 of the RTI Act provides for the competent authority to make rules to carry out the provisions of this Act. He stated that the Delhi High Court had framed rules in terms of the said provisions, wherein Rule 5 provides that the information specified under Section 8 of the RTI Act shall not be disclosed, particularly such information which relates to judicial functions and duties of the Court and matters incidental and ancillary thereto. According to him, the said provision has been framed to carry out the provisions of the RTI Act.

29. The learned Amicus Curiae submitted that even though Article 145 of the Constitution of India (under which SCR 1966/ SCR 2013 have been framed) starts with the phrase "*subject to the provisions of any law made by Parliament*", which phrase has been interpreted to mean that Parliamentary law would prevail over Rules framed under Article 145, which Rules will be

subservient to the same [See in Re : ***Lily Isabel Thomas (1964) 6 SCR 229 at 233***], then also it cannot mean that the RTI Act (a Parliamentary law) will prevail over the power of the Court to decide on dissemination of information, inasmuch as Rules made under Article 145 are in aid of the powers given to the Supreme Court under Article 142 to pass judicial orders.

30. He stated that it has been held that function of a judge even in purely administrative/non-adjudicatory matters amounts to administration of justice as the said function is also in judicial capacity. In support of his submission, he relied upon ***Shri Baradakanta Mishra Vs. The Registrar, Orissa High Court, (1974) 1 SCC 374***.

31. The learned Amicus Curiae lastly submitted that even if the provisions of SCR dealing with dispensation of information is held to be inconsistent with the provisions of RTI Act, then also it is the provision of SCR which will prevail over the provisions of RTI Act.

COURT'S REASONING

UPON ANALYSIS OF THE FACTS OF THE PRESENT CASE, THIS COURT IS OF THE VIEW THAT IT IS STRANGE THAT DESPITE THE RESPONDENT CHALLENGING THE IMPUGNED TERMINATION ORDER AND ALLEGATIONS OF SEXUAL HARASSMENT LEVELLED AGAINST HIM BY WAY OF LEGAL PROCEEDINGS, HE NOT ONLY RE-AGITATED THE SAME ISSUES BUT ALSO QUESTIONED THE JUDICIAL ORDERS BY EITHER FILING LETTERS ON THE ADMINISTRATIVE SIDE OR APPLICATIONS UNDER THE RTI ACT

32. Having perused the paper book this Court finds that the respondent was holding the post of Postgraduate Teacher (Chemistry) in KVS and his services were terminated by the Commissioner of KVS under Article 81(b) of the Education Code on 05th November, 2003. The respondent challenged

the order of termination before the Central Administrative Tribunal in OA No.996 of 2006 which was dismissed. Writ petition No.3902 of 2008 before the High Court and SLP (C) No.8219 of 2010 before the Supreme Court filed by the respondent were also dismissed.

33. Thereafter the respondent sought information by way of an RTI application dated 20th April, 2010 as to why his SLP(C) 8219-8220 of 2010 had been dismissed and it was contended in the said application that the SLP had been decided against the principles of natural justice. The Review Petitions Nos. 963-964 of 2010 were also dismissed by the Apex Court on 15th July, 2010.

34. Subsequently, the respondent's other Special Leave Petition against the judgment and order dated 5th February, 2010 of the High Court in CM No.14140/2009 in WP(C) 3902/2008 was allowed and the said judgment is reported as ***R.S. Misra v. Union of India & Others: (2012) 8 SCC 558***.

35. From the facts on record, it is apparent that letters had been written by the respondent to the Hon'ble Judges of the Apex Court when they were seized of the respondent's case in their judicial capacity.

36. It seems strange to this Court that despite the respondent challenging the impugned termination order and allegations of sexual harassment by way of legal proceedings, he not only re-agitated the same issues but also questioned the judicial orders by either filing letters on the administrative side or applications under the RTI Act.

37. In fact, the respondent even sought quashing of Article 81(b) of Education Code of KVS as unconstitutional by way of applications on the administrative side and wanted to know the outcome of such applications under RTI Act! This is all the more unusual as the respondent is well

conversant with the judicial process inasmuch as he has filed more than double digit judicial proceedings before various forums and courts till date.

THE CIC SHOULD NOT HAVE DIRECTED THE PETITIONER TO SUPPLY INFORMATION, WITHOUT CONSIDERING WHETHER THE QUERIES RAISED WERE MAINTAINABLE UNDER THE RTI ACT. THIS COURT IS OF THE VIEW THAT WHERE THERE IS NO INFORMATION TO BE GIVEN OR APPLICANT IS SEEKING NON-EXISTENT INFORMATION OR WHERE THE QUERY IS INHERENTLY ABSURD OR BORDERING ON CONTEMPT, LIKE IN THE PRESENT CASE, THE CIC SHOULD NOT HAVE DIRECTED THE PETITIONER TO SUPPLY INFORMATION.

38. A Judge speaks through his judgments or orders passed by him. A Judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. If any party feels aggrieved by the order/judgment passed by a Judge, the remedy available to such a party is to challenge the same by a legally permissible mode.

39. No litigant can be allowed to seek information through an RTI application or a letter on the administrative side 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.

40. The Supreme Court in ***Khanapuram Gandaiah Vs. Administrative Officer & Ors. (2010) 2 SCC 1*** has held as under:-

> *"13. 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 judicial officers concerned were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly affect the independence of the judiciary. A Judge should be free to make independent decisions."*

41. Consequently, this Court is of the view that where there is no information to be given or the applicant is seeking non-existent information or where the query is inherently absurd or bordering on contempt, like in the present case, the CIC should not have directed the petitioner to supply information and that too without considering whether the queries raised were maintainable under the RTI Act.

THERE IS NO INHERENT INCONSISTENCY BETWEEN SCR AND RTI ACT. BOTH ENABLE THE THIRD PARTY TO OBTAIN THE INFORMATION ON SHOWING A REASONABLE CAUSE FOR THE SAME.

42. The restriction with regard to 'third party information' in SCR 1966 and 2013 is similar to restriction imposed under Sections 8(1)(j) and 11 of the RTI Act. Therefore, it cannot be said that there is any inconsistency between SCR and RTI Act, regarding providing information to the third party. Both the RTI Act and the SCR enable the third party to obtain the information on showing a reasonable cause for the same.

43. Not only that, the SCR are more advantageous with regard to charges and time for delivery of copies than the RTI Act.

THE NON-OBSTANTE CLAUSE UNDER SECTION 22 OF THE RTI ACT DOES NOT MEAN AN IMPLIED REPEAL OVER ALL STATUTES, BUT ONLY AN OVERRIDING PROVISION IN CASE OF AN INHERENT INCONSISTENCY. SINCE BOTH RTI ACT, 2005 AND THE SCR AIM AT DISSEMINATION OF INFORMATION, THE RTI ACT DOES NOT PREVAIL OVER THE SCR.

44. Undoubtedly, the Rule making power of the Supreme Court is "*subject to*" only two limitations, i.e. subject to the laws made by the Parliament and such rules cannot override the provisions of the Constitution. The law made by the Parliament, would prevail over the rules made by the Supreme Court, only if there is any provision of law made by the Parliament by which either the right to make a rule is restricted or which contain provisions contrary to the rules.

45. Section 22 of the RTI Act has an overriding effect over other laws in case there are inconsistencies. However, Section 22 of the RTI Act does not contemplate to override those legislations, which aims to ensure access to information.

46. In fact, it contemplates harmonious existence with the other enactments which, like the RTI Act, also provides for dissemination of information. In ***Namit Sharma Vs. Union of India, (2013) 1 SCC 745***, the Supreme Court has held as under:-

> *"79. Let us now examine some other prerequisites of vital significance in the functioning of the Commission. In terms of Section 22 of this Act, the provisions of the Act are to be given effect to, notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. This Act is, therefore, to prevail over the specified Acts and even instruments. The same, however, is only to the extent of any inconsistency between the*

two. Thus, where the provisions of any other law can be applied harmoniously, without any conflict, the question of repugnancy would not arise."

47. The non-obstante clause under Section 22 of the RTI Act does not mean an implied repeal over all statutes, but only an overriding provision in case of an inherent inconsistency. The Apex Court in ***Basti Sugar Mills Co. Ltd. Vs. State of U.P, (1979) 2 SCC 88*** has held as under:-

"23. ...."Inconsistent", according to Black's Legal Dictionary, means "mutually repugnant or contradictory; contrary, the one to the other so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other". So we have to see whether mutual coexistence between Section 34 of the Bonus Act and Section 3(b) of the U.P. Act is impossible. If they relate to the same subject-matter, to the same situation, and both substantially overlap and are co-extensive and at the same time so contrary and repugnant in their terms and impact that one must perish wholly if the other were to prevail at all — then, only then, are they inconsistent. In this sense, we have to examine the two provisions. Our conclusion, based on the reasoning which we will presently indicate, is that "inconsistency" between the two provisions is the produce of ingenuity and consistency between the two laws flows from imaginative understanding informed by administrative realism. The Bonus Act is a long-range remedy to produce peace; the U.P. Act provides a distress solution to produce truce. The Bonus Act adjudicates rights of parties; the U.P. provision meets an emergency situation on an administrative basis. These social projections and operational limitations of the two statutory provisions must be grasped to resolve the legal conundrum....."

48. Section 22 provides for repugnancy vis-a-vis provisions contained in the Official Secrets Act, 1923 and any other law for the time being in force,

which other law, by virtue of the principle of *ejusdem generis*, would also have to be of the same nature as the Official Secrets Act, 1923, namely, a statute contemplating lack of transparency/access to information. [***See: F.C.I Vs. Yadav Engineer & Contractor, (1982) 2 SCC 499, paras 4, 10, 12; Ishwar Singh Bagga Vs. State of Rajasthan, (1987) 1 SCC 101, para 9;*** *and* ***State of U.P. Vs. Harish Chandra and Co., (1999) 1 SCC 63, para 10***].

49. Since both the RTI Act, 2005 and the SCR aim at dissemination of information, there is no inherent inconsistency, other than the procedural inconsistency at the highest between the RTI Act and the SCR.

50. Furthermore, the SCR is a special law dealing with subject covered by the RTI Act. The Supreme Court in ***Justiniano Augusto De Piedade Barreto Vs. Antonio Vicente Da Fonseca and Otheres, (1979) 3 SCC 47*** has held as under:-

> *"12. ..... A special law is a law relating to a particular subject while a local law is a law confined to a particular area or territory. Used in an Act made by Parliament the word local may refer to a part or the whole of one of the many States constituting the Union. Though a law dealing with a particular subject may be a general law in the sense that it is a law of general applicability, laying down general rules, yet, it may contain special provision relating to bar of time, in specified cases, different from the general law of limitation. Such a law would be a special law for the purpose of Section 29(2). The rule of limitation contained in Section 417(4) of the Code of Criminal Procedure of 1898 was accordingly held to be a 'special law' in Kaushalya Rani v. Gopal Singh. Similarly, a law which may be a law of general applicability is yet a local law if, its applicability is confined to a particular area instead of generally the whole country....."*

51. Consequently, it is incorrect to state that the RTI Act would prevail over the SCR.

IF ANY INFORMATION CAN BE ACCESSED THROUGH THE MECHANISM PROVIDED UNDER ANOTHER STATUTE, THEN THE PROVISIONS OF THE RTI ACT CANNOT BE RESORTED TO.

52. The preamble of the RTI Act reads as under:-

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

53. The preamble shows that the RTI Act has been enacted only to make accessible to the citizens the information with the public authorities which

hitherto was not available. Neither the Preamble of the RTI Act nor does any other provision of the Act disclose the purport of the RTI Act to provide additional mode for accessing information with the public authorities which has already formulated rules and schemes for making the said information available. Certainly if the said rules, regulations and schemes do not provide for accessing information which has been made accessible under the RTI Act, resort can be had to the provision of the RTI Act but not to duplicate or to multiply the modes of accessing information.

54. This Court is further of the opinion that if any information can be accessed through the mechanism provided under another statute, then the provisions of the RTI Act cannot be resorted to as there is absence of the very basis for invoking the provisions of RTI Act, namely, lack of transparency. In other words, the provisions of RTI Act are not to be resorted to if the same are not actuated to achieve transparency.

55. Section 2(j) of the RTI Act reveals that the said Act is concerned only with that information, which is under the exclusive control of the 'public authority'. Providing copies/certified copies is not separate from providing information. The SCR not only deal with providing 'certified copies' of judicial records but also deal with providing 'not a certified copy' or simply a 'copy' of the document. The certification of the records is done by the Assistant Registrar/Branch Officer or any officer on behalf of the Registrar. In the opinion of this Court, in case of a statute which contemplates dissemination of information as provided for by the Explanation to Section 4 of the RTI Act then in such situation, public will have minimum resort to the use of the RTI Act to obtain such information.

56. There are other provisions of the RTI Act which support the said position, namely, Sections 4(2), (3) and (4) which contemplate that if an information is disseminated then the public will have minimum resort to the use of the RTI Act to obtain information. In the present case, the dissemination of information under the provisions of the SCR squarely fits into the definition of "*disseminated*" as provided in the aforesaid Explanation to Section 7(9) and the Preamble contemplate a bar for providing information if it *'disproportionally diverts the resources of the public authority'*.

57. Section 42 also provides that it shall be constant endeavour of every public authority to take steps in accordance with the requirements of sub-Section (1) thereof and to provide as much information suo-motu to the public at regular intervals through various means of communications including intervals so that the public has minimum resort to the use of the RTI Act to obtain information.

58. A Division Bench of this Court in ***Prem Lata CPIO Trade Marks Registry, Delhi Vs. Central Information Commission & Ors., 2015 SCC OnLine Del 7604*** in the context of accessing information from the Registrar of Trade Marks was concerned with the question whether information suo-motu being made available by a public authority through means of information including intervals in fulfillment of obligations under Section 4 of the Act can be requested for under Section 6 of the Act. For detailed reasons therein, it was held that neither can information already suo-motu made available by the public authority in discharge of obligations under Section 4(b) be requested for under Section 6 of the RTI Act nor the CPIO was required to reject the said request giving reasons. It was held that the

purport of the RTI Act is to make the information available to the public at large and the same can be deciphered also from Section 44 of the RTI Act providing for dissemination of information in a cost effective and easy mode to the extent possible. Consequently, information which is already available under any other statutory mechanism will not be covered under the provision of the RTI Act.

59. In the present case, maintaining two parallel machinery: one under SCR and the other under the RTI Act, would clearly lead to duplication of work and unnecessary expenditure, in turn leading to clear wastage of human resources as well as public funds. Also, request for hard copies of information (as contemplated under Section 7 of the RTI Act) in respect of those information which are already available and accessible in the public domain, under the mechanism contemplated under the SCR, will further lead to unnecessary diversion of resources and conflict with other public interest which includes optimal use of limited fiscal resources.

60. A Coordinate Bench of this Court in ***Registrar of Companies and Others Vs. Dharmendra Kumar Garg and Another*** (supra) has held as under:-

> *"35. The mere prescription of a higher charge in the other statutory mechanism (in this case Section 610 of the Companies Act), than that prescribed under the RTI Act does not make any difference whatsoever. The right available to any person to seek inspection/copies of documents under Section 610 of the Companies Act is governed by the Companies (Central Government's) General Rules & Forms, 1956, which are statutory rules and prescribe the fees for inspection of documents, etc. in Rule 21A. The said rules being statutory in nature and specific in their application, do not get overridden by the rules framed under the RTI Act with*

regard to prescription of fee for supply of information, which is general in nature, and apply to all kinds of applications made under the RTI Act to seek information. It would also be complete waste of public funds to require the creation and maintenance of two parallel machineries by the ROC - one under Section 610 of the Companies Act, and the other under the RTI Act to provide the same information to an applicant. It would lead to unnecessary and avoidable duplication of work and consequent expenditure.

xxxx xxxx xxxx xxxx

37. ....Nobody can go overboard or loose ones equilibrium and sway in one direction or assume an extreme position either in favour of upholding the right to information granted by the RTI Act, or to deny the said right."

61. A Division Bench of this Court in ***Eliamma Sebastian Vs. Ministry of Home Affairs and Ors.*** (supra) has similarly held as under:-

"17. The RTI Act is aimed at bringing within its ambit 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. This, however, in the Court's opinion does not necessarily mean that any other legislature, which aims to ensure access to information with respect to a private body (as per the RTI Act), is overridden by Section 22. The answer will have to be in the negative. The RTI is with respect to Public Authorities. Section 139 makes a separate distinct provision with respect to transactions of a cooperative society. The applicability of the RTI Act does not exclude the operation of the DCS Act, insofar as it enables access to information that is possessed by a cooperative Society. The latter can clearly be sourced by the person concerned from the Society, in view of Section 139.

18. In view of the above discussion this Court is of opinion that

> *the information which is in the possession of the Cooperative Society is accessible to its members and those interested, in Section 139 of the DCS Act. The absolute nature of this obligation to furnish information to those entitled to apply and receive is reinforced by the consequences which are spelt out in Section 139 (2). However, information which the Society may not possess, but pertaining to it, in the form of records with the Registrar of Cooperative Societies, have to be provided by the latter, under the RTI Act, as there is no doubt that such official - who discharges statutory functions- is a "public authority". However, the grounds of exemption spelt out under the RTI Act too would be attracted, wherever applicable."*

THE JUDICIAL FUNCTIONING OF THE SUPREME COURT OF INDIA IS SEPARATE/ INDEPENDENT FROM ITS ADMINISTRATIVE FUNCTIONING. THE DISSEMINATION OF INFORMATION UNDER THE SCR IS A PART OF JUDICIAL FUNCTION, EXERCISE OF WHICH CANNOT BE TAKEN AWAY BY ANY STATUTE. THE SCR WOULD BE APPLICABLE WITH REGARD TO THE JUDICIAL FUNCTIONING OF THE SUPREME COURT; WHEREAS FOR THE ADMINISTRATIVE FUNCTIONING OF THE SUPREME COURT, THE RTI ACT WOULD BE APPLICABLE.

62. Also, the judicial functioning of the Supreme Court of India is separate/independent from its administrative functioning. In the opinion of this Court, the RTI Act cannot be resorted to in case the information relates to judicial functions, which can be challenged by way of an appeal or revision or review or by any other legal proceeding.

63. The Supreme Court in ***Riju Prasad Sarma v. State of Assam: (2015) 9 SCC 461*** has held that when the High Court or the Supreme Court acts in its administrative capacity, then only it is considered to fall within the definition of "*State*" within the meaning of Article 12. The relevant portion of the said judgment is reproduced hereinbelow:-

> "*68. Hence, in accordance with such judgments holding that the judgments of the High Court and the Supreme Court cannot be subjected to writ jurisdiction and for want of requisite governmental control, judiciary cannot be a State under Article 12, we also hold that while acting on the judicial side the courts are not included in the definition of the State. Only when they deal with their employees or act in other matters purely in administrative capacity, the courts may fall within the definition of the State for attracting writ jurisdiction against their administrative actions only. In our view, such a contextual interpretation must be preferred because it shall promote justice, especially through impartial adjudication in matters of protection of fundamental rights governed by Part III of the Constitution.*"

64. In fact, the Supreme Court has framed rules with regard to dissemination of information under Article 145 of the Constitution of India, i.e. the SCR, 1966. The Rules under Article 145 of the Constitution have been framed in aid of the powers conferred to the Supreme Court under Article 142 of the Constitution to make such orders as is necessary for doing complete justice in any cause or matter pending before it. The SCR provide for regulating the practice and procedure of the Supreme Court.

65. It is pertinent to mention that during the pendency of the present petition, the SCR, 1966 was repealed and replaced by the SCR, 2013. Under the SCR, 1966, the relevant provision is Order XII, which deals with search/inspection of all pleadings and other documents or records in the case and for getting copies of the same on payment of prescribed fees and charges. The said provision has two parts, one dealing with requests by a party to any cause, appeal or matter and the other dealing with requests by a person who is not a party to the case, appeal or matter. While in the first case, the party concerned seems to be entitled to inspect the records and get

copies thereof as a matter of right, in the second case the said party, who is only entitled to copies (and not inspection or search) has to first make an application to the Court for the said purpose and the Court being satisfied that there is a good cause, may allow the said application thereafter.

66. Rule 2 of the SCR cannot be read in isolation and needs to be read along with Rule 1. Rule 1 of the SCR allows a party to a proceeding in the Supreme Court to apply and receive certified copies of all pleadings, judgment, decree or order, documents, etc. Therefore, both Rule 2 and Rule 1 of the SCR aim at dissemination of information. However, Rule 2 of the SCR, merely imposes a condition on a person who is not a party to the case (pending or disposed) to show a good cause to obtain a copy of the same.

67. Insofar as the SCR, 2013 is concerned, while Order X deals with *'inspection and search'* by the party to any cause, Order XIII deals with copies of the pleadings, judgments, decrees or orders, documents and deposition. Like the SCR, 1966 the said provision also has two similar parts; one dealing with requests by a party to any cause, appeal or matter and the other dealing with requests by a person who is not a party to the appeal or matter. Further, Rule 7 of the Order XIII deals with documents of any confidential nature and the restrictions regarding obtaining copies of the same.

68. Since under Order V Rule 37 under the SCR, 2013, the application of a person who is not a party to the case, appeal or matter, for inspection or grant or search for grant of copies, is exercised by a Single Judge sitting in Chamber, the obtaining of documents/inspection would fall within the judicial functioning of the Supreme Court and thus such information would be available under the SCR framed under Article 145 of the Constitution of

India.

69. The right/access to the information under the SCR which includes right of inspection, search of copies would all be judicial function of the Supreme Court, therefore such information would not be covered or contemplated under the RTI Act.

70. In ***Parashuram Detaram Shamdasani Vs. Sir Hugh Golding Cocke, AIR 1942 Bomb. 246*** the Bombay High Court has held that the discretion to allow inspection of the record of the Court has to be exercised judicially. The relevant portion of the aforesaid judgment is reproduced hereinbelow:-

> *"Under the Criminal Procedure Code, Section 548 gives to any person affected by a judgment or order passed by a criminal Court the right to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record on the terms specified in the section. Then Section 554 gives a right to Chartered High Courts to make rules for the inspection of the records of subordinate Courts. For many years after Section 548 was passed, there were no rules of this Court relating to inspection, and I understand that the practice was for a Magistrate or Judge to give inspection of the record of his Court as he thought proper. I have no doubt that, except as controlled by any rule made by the High Court, a Magistrate or Judge of a subordinate Court has a discretion to allow inspection of the record of his Court, but such discretion must be exercised judicially. In exercising his discretion, a Magistrate or Judge would be bound to have regard to the terms of Section 548, and in my opinion it would be difficult, and generally improper, for him to refuse inspection of any document of which a party was entitled to a certified copy under that section. The right to a certified copy seems to me to presuppose a right of inspection, because a party cannot be expected to make up his mind whether he wants to have a copy of a document, if he is not entitled in the first place to read it, and see what it is about. To require a party to take certified copies of all documents on the record in order to determine of*

> *which documents he really requires a copy would seem to involve unnecessary expense and trouble. Therefore, I think prima facie under Section 548 a party would have an implied right to ask the presiding Magistrate or Judge to allow him inspection of the record referred to in the section."*

71. Consequently, the decision to allow or deny inspection or to give copies of the judicial file is clearly a part of and/or in the course of discharge of judicial function.

72. This Court is also of the opinion that the SCR does not make sense unless they are read as indicating that, save when permitted under the Rules, documents on the Court file are not intended to be inspected or copied. That is the necessary corollary of the Rules granting only a limited right to inspect and take copies. The Chancery Division in ***394 Dobson and Another Vs. Hastings and Others, [1992] Ch. 394*** has held as under:-

> *"This is a committal application with an unusual background. It concerns the unauthorised inspection of a document on a court file, and the subsequent publication of information obtained from that inspection. The respondents are Mr. Max Hastings, the editor of "The Daily Telegraph", Miss Antonia Feuchtwanger, a journalist employed by "The Daily Telegraph", and the Daily Telegraph Plc. On 31 August and 3 September 1991 articles written by Miss. Feuchtwanger appeared in "The Daily Telegraph" newspaper. Both articles referred to a report submitted to the High Court by Mr. Burns, deputy official receiver, in proceedings brought by the official receiver.....*
>
> *With that introduction I turn first to the legal framework: the provisions in the rules of court relating to inspection of documents on the file maintained by the court for disqualification proceedings. Unfortunately, the history of this matter has been clouded a little by some confusion about which*

of two sets of rules is applicable to inspection of documents filed in disqualification proceedings: the Rules of the Supreme Court, or the Insolvency Rules. Indeed, one of the issues before me concerns which of these two sets is the relevant set.

The upshot of all this is that the relevant rules regarding inspection of the court file in the present case are the Rules of the Supreme Court. Under R.S.C., Ord. 63 rr. 4 and 4A any person, on payment of the prescribed fee, was entitled to search for, inspect and take a copy of the originating summons. The official receiver's report could be inspected and copied with the leave of the court, which might be granted on an ex parte application. The provision in the Insolvency Rules, for the inspection of the court file by a creditor of the company to which the insolvency proceedings relate, had and has no application.

Inspection of documents on the court file otherwise than in accordance with the rules.

The Rules of the Supreme Court do not expressly prohibit inspection and taking copies of documents otherwise than in accordance with the rules. What the rules do is to require parties to proceedings to file certain documents in the court office. Ord. 63 r. 4 provides that of the documents which must be filed, some are to be open to general inspection. Other documents may be inspected with the leave of the court. Rule 4 provides further that this requirement is not to prevent parties to proceedings from inspecting or obtaining copies of documents on the file. In my view these provisions do not make sense unless they are read as indicating that, save when permitted under the rules, documents on the court file are not intended to be inspected or copied. That is the necessary corollary of the rules granting only a limited right to inspect and take copies. In other words, a court file is not a publicly available register. It is a file maintained by the court for the proper conduct of proceedings. Access to that file is restricted. Non-parties have a right of access to the extent, provided in the

rules. The scheme of the rules is that, by being filed, documents do not become available for inspection or copying save to the extent that access to specified documents or classes of documents is granted either generally under the rules or by leave of the court in a particular case.

The purpose underlying this restriction presumably is that if and when affidavits and other documents are used in open court, their contents will become generally available, but until then the filing of documents in court, as required by the court rules for the purpose of litigation, shall not of itself render generally available what otherwise would not be. Many documents filed in court never see the light of day in open court. For example, when proceedings are disposed of by agreement before trial. In that event, speaking generally, the parties are permitted to keep from the public gaze documents such as affidavits produced in preparation for a hearing which did not take place. Likewise with affidavits produced for interlocutory applications which are disposed of in chamber. Again, there are certain, very limited, classes of proceedings, such as those relating to minors, which are normally not heard in open court. Much of the object sought to be achieved by a hearing in camera in these cases would be at serious risk of prejudice if full affidavits were openly available once filed.

73. Consequently, the SCR would be applicable with regard to the judicial functioning of the Supreme Court; whereas for the administrative functioning of the Supreme Court, the RTI Act would be applicable and information could be provided under it. The dissemination of information under the SCR is a part of judicial function, exercise of which cannot be taken away by any statute. It is settled legal position that the legislature is not competent to take away the judicial powers of the court by statutory prohibition. The legislature cannot make law to deprive the courts of their legitimate judicial functions conferred under the procedure established by

law.

74. Also, the RTI Act does not provide for an appeal against a Supreme Court judgment/order that has attained finality. It is clarified that queries under the RTI Act would be maintainable to elicit information like how many leaves a Hon'ble Judge takes or with regard to administrative decision an Hon'ble Judge takes; but no query shall lie with regard to a judicial decision/function.

THE CIC BY THE IMPUGNED ORDER COULD NOT HAVE OVERRULED EARLIER DECISIONS OF OTHER COORDINATE BENCHES OF THE SAME STRENGTH

75. This Court is in agreement with the submission of the learned Amicus Curiae and the learned senior counsel for petitioner that the CIC by the impugned order could not have overruled earlier decisions of other Coordinate Benches of the same strength. Judicial discipline required that if the CIC did not agree with the earlier settled legal position, it ought to have referred the matter to a larger Bench.

76. The Supreme Court in ***Gammon India Limited Vs. Commissioner of Customs, Mumbai, (2011) 12 SCC 499*** has held as under:-

> *"34. Before parting, we wish to place on record our deep concern on the conduct of the two Benches of the Tribunal deciding appeals in IVRCL Infrastructures & Projects Ltd. [(2004) 166 ELT 447 (Tri)] and Techni Bharathi Ltd. [(2006) 198 ELT 33 (Tri)] After noticing the decision of a coordinate Bench in the present case, they still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment, thereby creating a judicial uncertainty with regard to the declaration of law involved on an identical issue*

in respect of the same exemption notification.

35. It needs to be emphasised that if a Bench of a tribunal, in an identical fact situation, is permitted to come to a conclusion directly opposed to the conclusion reached by another Bench of the tribunal on an earlier occasion, that will be destructive of the institutional integrity itself. What is important is the tribunal as an institution and not the personality of the members constituting it. If a Bench of the Tribunal wishes to take a view different from the one taken by the earlier Bench, propriety demands that it should place the matter before the President of the Tribunal so that the case is referred to a larger Bench, for which provision exists in the Act itself.

77. A Co-ordinate Bench of this on an identical question of law, as involved in the present case, passed strictures against the same learned CIC, who passed the present impugned order. The relevant portion of the observations of the co-ordinate Bench in ***Registrar of Companies v. Dharmender Kumar Garg*** *(supra)*, are reproduced hereinbelow:-

"*56. In the present case, the Central Information Commissioner Mr. Shailesh Gandhi has also demonstrated complete lack of judicial discipline while rendering the impugned decisions. By no stretch of imagination, it cannot be said that the earlier decisions were not on the point. Particularly, the decision rendered by Sh. A.N. Tiwari in F. CIC/T/A/2007/0012 dated 12.04.2007 directly deals with the very same issue, and is an exhaustive, and detailed and considered decision. If the Central Information Commissioner Sh. Shailesh Gandhi had a different view in the matter - which he was entitled to hold, judicial discipline demanded that he should have recorded his disagreement with the view of Sh. A.N. Tiwari, Central Information Commissioner, and, for reasons to be recorded by him, required the constitution of a larger bench to re-examine the issue. He could not have ridden rough shot over the earlier decisions of Sh. A.N. Tiwari and Prof. M.M. Ansari, particularly when he was sitting singly to*

consider the same issue of law.

57. The consequence of the improper conduct of Sh. Shailesh Gandhi, Central Information Commissioner, is that there are now two sets of conflicting orders-taking diametrically opposite views, on the issue aforesaid. Therefore, unless the said legal issue is settled one way or the other by a higher judicial forum, it would be open to any other Information Commissioner to choose to follow one or the other view. This would certainly lead to confusion and chaos. It would also lead to discrimination between the querists/public authority, who are either seeking information or are defending the action under the RTI Act. One such instance, cited by learned counsel for the petitioner is in the case of Smt. Dayawati v. Office of Registrar of Companies, in CIC/SS/C/2011/000607 decided on 23.03.2012. In this case, once again the same issue had been raised. The Central Information Commissioner Smt. Sushma Singh has preferred to follow the view of Sh. A.N. Tiwari in the case of K. Lall v. Ministry of Company Affairs, Appeal No. CIC/AT/A/2007/00112 dated 14.04.2007."

78. Consequently, on this short ground the impugned judgment is also liable to be set aside.

79. Before parting with the case, this Court must admit that the level of debate in the present case was of a very high quality. This Court places on record its appreciation for the efforts put in by Mr. Siddharth Luthra, Ms.Deepali Gupta and, in particular, the Amicus Curiae, Mr. Ramesh Singh, who not only argued with clarity but also carried out a meticulous research on the legal issues involved.

CONCLUSION

80. Keeping in view of the aforesaid conclusions, the present writ petition is allowed and the order of the CIC dated 11th May, 2011 passed in Appeal No. CIC/SM/A/2011/000237 directing the CPIO to answer the queries raised by the respondent, is set aside.

MANMOHAN, J

NOVEMBER 21, 2017
js/rn

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.9.2014

CORAM:

THE HONOURABLE MR.JUSTICE N.PAUL VASANTHAKUMAR
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.26781 of 2013
& M.P.No.1 of 2013

The Public Information Officer,
The Registrar (Administration),
High Court, Madras. .. Petitioner

Vs.

1. The Central Information Commission,
Rep. by its Registrar,
Room No.306, 2nd Floor, "B" Wing,
August Kranti Bhavan,
Bhikaji Cama Place, New Delhi-110 066.

2. B.Bharathi .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records in Case No.CIC/SM/C/2012/900378 to 384, CIC/SM/C/2012/000600, 601, 970 to 975, 993 to 1000, 1120 to 1131, 1133, 1134, 1145 to 1152, 1162, 1163, CIC/SM/A/2012/900540, CIC/SM/A/2012/000955, 1558, 1776 to 1778 (53 cases) etc., order dated 23.1.2013 passed by the first respondent and quash the same.

For petitioner : Mr.V.Vijay Shankar
For respondents : R-1 - Central Information Commission
Mr.B.Bharathi - R-2 (party-in-person)

(The Writ Petition was reserved for orders on 1.9.2014)

ORDER

K.RAVICHANDRABAABU,J

The Public Information Officer (Registrar (Administration)), High Court, Madras is the writ petitioner. This Writ Petition is filed challenging the order passed by the Central Information Commission, New Delhi (first respondent herein), dated 23.1.2013, whereby the first respondent has directed the petitioner to furnish the information as sought for by the second respondent herein, insofar as six appeals are concerned. In respect of other 47 complaints are concerned, the first respondent-Commission directed

the petitioner to send statement of particulars regarding those complaints.

2. The case of the petitioner is as follows:

The second respondent, a native of Puducherry, has made several applications/queries under the provisions of the Right to Information Act, 2005 (hereinafter referred to as 'the RTI Act') to the Madras High Court, seeking information on various aspects. Out of several such applications/queries made by the second respondent, the first respondent has directed the petitioner to furnish the information as sought for by the second respondent in respect of the following six applications/queries:

(i) Details of action taken on his complaint, dated 1.6.2011 against the Chief Metropolitan Magistrate, Egmore, Chennai and the details of enquiry conducted thereon;

(ii) Details of recruitment rules for the post of Registrar General of High Court, details of constitution of Selection Committee, recommendation made by individual Judges and other information regarding the selection of various individuals as Registrar Generals;

(iii) Details of action taken on earlier application, dated 31.10.2011 regarding the appointment and selection of Registrar General;

(iv) Copies of several petitions/appeals filed by the second respondent and also the file notings made therein;

(v) Copy of earlier complaint, dated 10.12.2011 filed by the second respondent against the Chief Metropolitan Magistrate, Egmore, Chennai and the action taken thereon;

(vi) Information as to what action taken regarding the complaint filed by the second respondent, dated 20.9.2011 against inclusion of one Ms.Geetha Ramaseshan as Advocate in Crl.O.P.No.18804 of 2010 and the file notings thereon.

3. Out of those six queries made by the second respondent, queries (i) and (v) relate to the complaint made by the second respondent against the Chief Metropolitan Magistrate, Egmore, Chennai. Queries (ii) and (iii) relate to the selection and appointment of Registrar General of High Court.

4. Insofar as query (i) is concerned, it is the case of the petitioner that on receipt of the application, dated 5.12.2011 from the second respondent, the petitioner, through communication, dated 20.1.2012, asked the second respondent to come for inspection of

necessary files. It is the further case of the petitioner that though the inspection was fixed on 30.1.2012, the second respondent sought time and accordingly, on 1.2.2012, the second respondent was permitted to peruse the files regarding the action taken. However, in the meantime, the second respondent filed an appeal to the Registrar General of High Court complaining non-furnishing of information and the said appeal was dismissed by the Registrar General on 6.11.2012 by relying on the decision of the Supreme Court in S.L.P.No.27734 of 2012.

5. Insofar as query (v) is concerned, it is the case of the petitioner that the second respondent was already informed through communication, dated 28.3.2012 that his complaint, dated 10.12.2011 has been closed. However, the second respondent filed appeal to the Registrar General of this Court, wherein, an order came to be passed on 12.6.2012, holding that nothing further was to be done in this matter, as the second respondent was already informed on 28.3.2012 itself about the closing of his complaint, dated 10.12.2011.

6. Insofar as query (ii) is concerned, it is the case of the petitioner that the request of the second respondent was rejected by the petitioner on 25.11.2011 on the ground that earlier petition on similar lines, was rejected under Section 8(1)(j) of the RTI Act. However, the second respondent filed an appeal before the Registrar General and thereafter, filed further appeal before the first respondent herein, who in turn, by order dated 28.9.2012, directed furnishing of the required information. Thereafter, on 8.11.2012, the petitioner furnished query-wise information to the second respondent, stating that there are no recruitment rules for the post of Registrar General and that there is no Selection Committee for that purpose. Thus, it is the case of the petitioner that insofar as the query regarding the Registrar General is concerned, the required information has been supplied by the petitioner to the second respondent.

7. Insofar as query (iii) is concerned, it is the case of the petitioner that all the required information as pointed out in respect of query (ii), had been furnished to the second respondent on 8.11.2012.

8. Insofar as query (iv) is concerned, it is the case of the petitioner that the complaint petitions/queries made by the second respondent must be available with him, since they are the complaint petitions/queries made by himself and wherever those documents are available, the information was furnished to the second respondent, through proceedings dated 23.4.2012.

9. Insofar as query (vi) is concerned, it is the case of the petitioner that his request has been put up along with the case bundles in Crl.O.P.No.18804 of 2012, since the matter is sub-judice

and pending before the High Court

10. Not being satisfied with the intimation/information furnished by the petitioner in respect of the abovesaid six cases, the second respondent approached the first respondent-Commission by way of Second Appeals. Those six Second Appeals were taken along with 47 complaints filed by the second respondent himself for disposal by the first respondent.

11. After hearing both sides, the first respondent-Commission passed an order on 23.1.2013 and directed the petitioner herein to prepare a tabular statement listing all the complaints and representations received from the second respondent insofar as those 47 complaints received by the first respondent are concerned and further directed the petitioner to indicate with the particulars about the current status of the action taken in those complaints and send the statement to the first respondent-Commission within 20 working days from the receipt of the order. Insofar as six Second Appeals are concerned, the first respondent-Commission directed the petitioner to provide the desired information sought for by the second respondent by way of attested photocopies of the relevant documents including the file notings wherever available and any correspondence made. The first respondent-Commission further ordered that in case concerning the appointment of the Registrar General, the petitioner must provide the photocopy of the file notings, if any, from the file in which the proposal for appointment of the Registrar General had been processed and finalised. Likewise, the first respondent-Commission ordered to provide the photocopy of the relevant file notings, if any, from the file in which the second respondent's complaint against the appointment of the Registrar General was dealt with. In respect of the appointment of Public Prosecutors since 2006, the first respondent directed the petitioner to provide the photocopies of the letters containing the concurrence or otherwise of the High Court about specific individuals proposed by the State Government. After making such an order, the first respondent has also expressed a word of caution on the action of the second respondent. It is specifically observed by the first respondent that the disclosure of information must be commensurate and in conformity with the smooth functioning of the public authorities and this particular case shows how a single individual can overload a public authority and divert its resources rather disproportionately while seeking information. Sending numerous complaints and representations and then following those with the RTI applications, cannot be the way to redress such grievances, is the other observation made by the first respondent. Accordingly, the first respondent-Commission disposed of six Second Appeals and postponed the proceedings in respect of other 47 complaints for receiving the statement from the petitioner.

12. This Writ Petition is filed by the petitioner challenging the

order of the first respondent-Commission on the following grounds:

(a) Insofar as the query relating to the appointment of the Registrar General of the High Court is concerned, the petitioner has already informed the second respondent that there were no special recruitment rules for the post of Registrar General and there was no Selection Committee for making such recruitment. Likewise, in respect of the query concerning the action taken on the complaint against the Chief Metropolitan Magistrate, Egmore, Chennai, the second respondent was informed that no action was taken and the matter was closed.

(b) The information wherever available and permissible, had been provided to the second respondent. However, the very attitude of the second respondent in sending 53 applications to the High Court seeking information on various issues, shows that his aim is to derail the administration by misusing the RTI Act provisions and bring it to embarrassment and ridicule.

(c) The State Information Commission, by order dated 2.6.2012 in Order No.20854/A/2012, had also passed strictures in another proceedings against the offensive intimidatory act of the second respondent herein. The selection to the post of Registrar General which is a sensitive post in the administrative set up of the High Court, is not a matter to be discussed in public domain, especially through the information sought for under the RTI Act. The post is essentially one of trust reposed by the Honourable Chief Justice of High Court on a particular individual and such selection by the Honourable Chief Justice of High Court is vested under Article 229 of the Constitution of India and the same cannot be made the subject of public discussion. Any further disclosure of information on that issue is thoroughly unnecessary and unwarranted with no element of public interest. Non-furnishing of such information is protected by Section 8(1)(j) of the RTI Act.

(d) The second respondent in one of the queries has sought for copies of his own petitions and appeals. It is not known as to how the second respondent-complainant can seek for those particulars which are admittedly sent by him and presumably available with him.

13. The second respondent has filed counter affidavit. The crux of the averments made therein is as follows:

(a) Insofar as case (i) is concerned, he perused the file on 3.2.2012, but certified copies/copies of file notings or orders were not given as requested by him.

(b) Insofar as case (ii) is concerned, the information sought for by the second respondent on the selection of Registrar General is very important and the petitioner gave the misleading and partial information on 8.11.2012, that too after the issue of orders of the first respondent and till date, he has not received the full

information on the selection of the Registrar General of this High Court.

(c) Insofar as case (iii) is concerned, the information sought for is in respect of the stepwise action taken on his complaint to the Honourable Chief Justice on 31.10.2011 for a free and fair enquiry into the appointment of the present Registrar General. The information was denied on 4.4.2012, i.e. after 30 days and no hearing was extended to the second respondent.

(d) Insofar as case (iv) is concerned, the second respondent sought for the certified copies of his applications/complaints, because, he wanted to know the comments/orders passed by the competent authority to whom he submitted his application.

(e) Insofar as case (v) is concerned, he sought information on the stepwise action taken on his complaint against the Chief Metropolitan Magistrate, Egmore, Chennai and the information was denied by stating that his petition has been ordered to be closed.

(f) Insofar as case (vi) is concerned, the Assistant Public Information Officer disposed of the application submitted on 5.12.2011 by the second respondent, who is not competent to dispose of the same.

(g) The Public Information Officer/Registrar General of this Court did not act in accordance with the provisions of the RTI Act. The Public Information Officer of this Court cannot be exempted from the rules or provisions of the RTI Act. The second respondent's RTI applications are submitted for obtaining information on public interest such as appointment of the Registrar General, approval of the High Court to the Public Prosecutor, seniority list of the District Judges and information of stepwise action taken on his complaint to the Registrar General and the Registrar (Vigilance) and all his requests for information are genuine. The rejection of the information under Section 8(1)(j) of the RTI Act cannot be done without giving reason.

(h) The directions issued by the first respondent to disclose the procedure and file notes of the selection of the Registrar General is reasonable. The President of India or the Chief Justice or any public authority cannot do selection of the candidate as they please, whether it is a sensitive post or not. All the posts starting from Group D to All India Service are filled by proper selection procedure/recruitment rules. If the file notes of the selection of Registrar General are not released, then it leads to unwarranted suspicion on the selection of the Registrar General.

(i) The second respondent is seeking copies of his complaint or application to find out the action taken or order passed by the

competent authority to whom the complaint/letter was addressed. The copies of the complaints were sought because the second respondent did not have any copy. There is a collusion between the Police officials, Public Prosecutor, State Information Commission and Public Information Officer of this Court in stalling the flowing of due information to him and thereby, deny him justice.

14. Mr.V.Vijay Shankar, learned counsel appearing for the petitioner submitted that what are all the information that could be furnished to the second respondent, had been furnished, as stated in the affidavit filed in support of the Writ Petition, except the minutes of the Judges and file notings, which cannot be furnished to the second respondent. He further submitted that on 21.8.2014, the second respondent was informed once again about the action taken on his complaint against the Chief Metropolitan Magistrate, Egmore, Chennai. In all other respects, the learned counsel reiterated the contentions raised in the affidavit filed in support of the Writ Petition and in support of such submissions, he relied on the decision of the Supreme Court reported in 2012 (8) MLJ 122 (SC) (G.R.Deshpande Vs. Cen. Information Commr.) and the decisions of this Court reported in 2013 (5) MLJ 134 (Registrar General of High Court of Madras Vs. K.Elango), 2013 (5) MLJ 385 (Registrar General, High Court of Madras Vs. A.Kanagaraj), 2013 (5) MLJ 513 (Registrar General, High Court of Madras Vs. R.M.Subramanian) and 2013 (5) MLJ 694 (Registrar General, High Court of Madras Vs.K.U.Rajasekar).

15. Per contra, the second respondent who is appearing as party-in-person, reiterated the contentions raised in the counter affidavit and submitted that the information sought for by the second respondent cannot be with-held by the petitioner and the first respondent-Commission rightly passed an order directing the petitioner to furnish those particulars to him.

16. We have considered the submissions made by the learned counsel for the petitioner and the second respondent as party-in-person and perused the materials available on record.

17. The present Writ Petition revolves around the object and scope of the RTI Act, 2005 as well as the right of the second respondent to seek certain informations from the High Court and the entitlement of the petitioner to with-hold certain informations, out of all the informations sought for by the second respondent, on the ground that they are not permissible to be disclosed, which are discussed in detail below.

18. Before we go into the merits of the case, let us consider the relevant provisions of the RTI Act for the purpose of deciding this case, which read as follows:

The RTI Act defines "information" under Section 2(f) as follows:

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

Likewise, it defines "right to information"under Section 2(j) as follows:

> "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 3 of the RTI Act contemplates that all citizens shall have the right to information, subject to the provisions of the Act. The RTI Act was enacted to provide for setting out the practical regime of right to information to 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.

19. The scope and ambit of the RTI Act came up for consideration before the Honourable Supreme Court on several occasions and in the following decisions, the Supreme Court, after considering the same, has observed as follows:

(a) In the decision reported in 2010 (2) SCC 1 (Khanapuram Gandaiah Vs. Administrative Officer), the Honourable Supreme Court has observed that the applicant under the RTI Act cannot ask for any information as to why such opinions, advices, circulars, orders, etc., have been passed, especially in matters pertaining to judicial decisions, even though he is entitled to get copies of the same.

(b) In 2011 (8) SCC 497 (CBSE Vs. Aditya Bandopadhyay), the Honourable Supreme Court, while quoting the earlier decision reported in 2004 (2) SCC 476 (People's Union for Civil Liberties Vs. Union of India), held that the "right to 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. It is further observed therein in paragraph 25 that certain safeguards have been built into the RTI Act, so that 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.

(c) In the decision reported in 2012 (13) SCC 61 (Bihar Public Service Commission Vs. Saiyed Hussain Abbas Rizwi), the Honourable Supreme Court has considered the purpose, scheme and scope of the RTI Act, 2005 and found that the "right to information" is not uncontrolled right, but subject to dual check, namely inbuilt restrictions within the statute itself and secondly, Constitutional limitations enshrined under Article 21 of the Constitution of India. The relevant observations made in paragraphs 12, 14 and 15 of the said decision, read as follows:

> "12. Right to information is a basic and celebrated fundamental/basic right but is not uncontrolled. It has its limitations. The right is subject to a dual check. Firstly, this right is subject to the restrictions inbuilt within the Act, and secondly, the constitutional limitations emerging from Article 21 of the Constitution. Thus, wherever in response to an application for disclosure of information, the public authority takes shelter under the provisions relating to exemption, non-applicability or infringement of Article 21 of the Constitution, the State Information Commission has to apply its mind and form an opinion objectively if the exemption claimed for was sustainable on facts of the case."

> "14. Section 2(f) again is exhaustive in nature. The legislature has given meaning to the expression "information" and has stated that it shall mean any material in any form including papers, samples, data material held in electronic form, etc. Right to information under Section 2(j) means the "right to information" accessible under this Act which is held by or under the control of any public authority and includes the right to inspection of work, documents, records, taking notes, extracts, taking certified sample of materials, obtaining information in the form of diskettes, floppies and video cassettes, etc. The right sought to be exercised and information asked for should fall within the scope of "information" and "right to information" as defined under the Act."

"15. Thus, what has to be seen is whether the information sought for in exercise of the right to information is one that is permissible within the framework of law as prescribed under the Act. If the information called for falls in any of the categories specified under Section 8 or relates to the organisations to which the Act itself does not apply in terms of Section 24 of the Act, the public authority can take such stand before the Commission and decline to furnish such information. Another aspect of exercise of this right is that where the information asked for relates to third-party information, the Commission is required to follow the procedure prescribed under Section 11 of the Act."

(d) In the decision reported in 2012 (8) MLJ 122 (SC) (G.R.Deshpande Vs. Cen. Information Commr.), the Supreme Court observed in paragraphs 13 and 15 as under:

"13. ... The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

15. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8 (1)(j) of the RTI Act"

20. Keeping the above principles in mind, let us consider the present case. The issue involved in this case is as to whether the disputed information sought for by the second respondent and as directed by the first respondent-Commission to furnish, can be furnished or not. The said issue is no more "res-integra", in view of the earlier decisions of this Court in the following cases:

(a) It is relevant to notice that similar issue arose before a Division Bench of this Court in respect of the information relating to the employees of the Subordinate Courts/Judicial Officers, etc., in the decision reported in 2013 (5) MLJ 134 (Registrar General of High

Court of Madras Vs. K.Elango), wherein the Division Bench in paragraph 59 has observed that the notings, jottings, administrative letters, intricate internal discussions, deliberations etc., of the High Court cannot be brought under Section 2(j) of the RTI Act and furnishing of those information will certainly impede and hinder the regular, smooth and proper functioning of the institution. The relevant paragraphs 59 to 61 of the abovesaid decision are extracted hereunder:

> "59. Be that as it may, on a careful consideration of respective contentions and on going through the contents of the application dated 01.11.2010 filed by the 1st Respondent/Applicant, this Court is of the considered view that the information sought for by him in Serial Nos.1 to 9 pertaining to the internal delicate functioning/administration of the High Court besides the same relate to invasion of privacy of respective individuals if the informations so asked for are furnished and more so, the informations sought for have no relationship to any public activity or interest. Moreover, the informations sought for by the 1st Respondent/ Applicant, through his application dated 01.11.2010 addressed to the Public Information Officer of the High Court, Chennai, are not to a fuller extent open to public domain. Added further, if the informations sought for by the 1st Respondent/Applicant, through his letter dated 01.11.2010 addressed to the Public Information Officer of High Court, are divulged, then, it will open floodgates/Pandora Box compelling the Petitioner/High Court to supply the informations sought for by the concerned Requisitionists as a matter of routine, without any rhyme or reasons/restrictions as the case may be. Therefore, some self restrictions are to be imposed in regard to the supply of informations in this regard. As a matter of fact, the Notings, Jottings, Administrative Letters, Intricate Internal Discussions, Deliberations etc. of the Petitioner/High Court cannot be brought under Section 2(j) of the Right to Information Act, 2005, in our considered opinion of this Court. Also that, if the informations relating to Serial Nos.1 to 9 mentioned in the application of the 1st Respondent/Applicant dated 01.11.2010 are directed to be furnished or supplied with, then, certainly, it will impede and hinder the regular, smooth and proper functioning of the Institution viz., High Court (an independent authority under the Constitution of India, free from Executive or Legislature), as opined by this Court. As such, a Saner Counsel/Balancing Act is to be adopted in matters relating to the application of the Right to Information Act, 2005, so that an adequate freedom and inbuilt safeguard can be provided to the Hon'ble Chief Justice of High Court

competent authority and public authority as per Section 2 (e)(iii) and 2(h)(a) of the Act 22 of 2005 in exercising his discretionary powers either to supply the information or to deny the information, as prayed for by the Applicants/Requisitionists concerned.

60. Apart from the above, if the informations requested by the 1st Respondent/Applicant, based on his letter dated 01.11.2010, are supplied with, then, it will have an adverse impact on the regular and normal, serene functioning of the High Court's Office on the Administrative side. Therefore, we come to an irresistible conclusion that the 1st Respondent/Applicant is not entitled to be supplied with the informations/details sought for by him, in his Application dated 01.11.2010 addressed to the Public Information Officer of the High Court, Madras under the provisions of the Right to Information Act. Even on the ground of (i) maintaining confidentiality; (ii) based on the reason that the private or personal information is exempted from disclosure under Section 8(1)(j) of the Act, 2005; and (iii) also under Section 8(1)(e) of the Act in lieu of fiduciary relationship maintained by the High Court, the request of the 1st Respondent/Applicant, through his Letter dated 01.11.2010/Appeal dated 20.12.2010 under Section 19 of the Act to the Writ Petitioner/Appellate Authority, cannot be acceded to by this Court. Further, we are of the considered view that the 1st Respondent/Applicant has no locus standi to seek for the details sought for by him, as stated supra, in a wholesale, omnibus and mechanical fashion in the subject matter in issue, (either as a matter of right/routine under the Right to Information Act) because of the simple reason that he has no enforceable legal right. Also, we opine that the 1st Respondent/Applicant's requests, through his Application dated 01.11.2010 and his Appeal dated 20.12.2010, suffer from want of bona fides (notwithstanding the candid fact that Section 6 of the Right to Information Act does not either overtly or covertly refers to the 'concept of Locus').

61. To put it differently, if the informations sought for by the 1st Respondent/Applicant, through his letter dated 01.11.2010/Appeal dated 20.12.2010, are divulged or furnished by the Office of the High Court (on administrative side), then, the secrecy and privacy of the internal working process may get jeopardised, besides the furnishing of said informations would result in invasion of unwarranted and uncalled for privacy of individuals concerned. Even the disclosure of informations pertaining

to departmental enquiries in respect of Disciplinary Actions initiated against the Judicial Officers/Officials of the Subordinate Court or the High Court will affect the facile, smooth and independent running of the administration of the High Court, under the Constitution of India. Moreover, as per Section 2(e) of the read with Section 28 of the Right to Information Act, the Hon'ble Chief Justice of this Court is empowered to frame rules to carry out the provisions of the Act. In this regard, we point out that 'Madras High Court Right to Information (Regulation of Fee and Cost) Rules, 2007' have been framed vide R.O.C.No.2636-A/06/F1-SRO C-3/2008 in Tamil Nadu Gazette, No.20, dated 21.05.2008, Pt.III, S.2. Also, a Notification, in Roc.No.976 A/2008/RTI dated 18.11.2008, has been issued by this Court to the said Rules, by bringing certain amendments in regard to the Name and Designation of the Officers mentioned therein, the same has come into force from 18.11.2008."

(b) In the decision reported in 2013 (5) MLJ 513 (Registrar General, High Court of Madras Vs. R.M.Subramanian), a Division Bench of this Court observed in paragraphs 94 to 96 as follows:

"94. To put it succinctly, the copies of Minutes recorded by the Hon'ble Portfolio Judge, Pudukottai District dated 16.12.2010 and the Minutes recorded by the Hon'ble Chief Justice on 07.03.2011 in the Criminal Contempt Petition issue, cannot be furnished or supplied to the 1st Respondent/Petitioner, for the purpose of maintaining utmost confidentiality and secrecy of the delicate function of the internal matters of High Court. If the copies of the Minutes dated 16.12.2010 and 07.03.2011, as claimed by the 1st Respondent/Petitioner, are furnished, then, it will definitely make an inroad to the proper, serene function of the Hon'ble High Court—being an Independent Authority under the Constitution of India. Moreover, the Hon'ble Chief Justice of High Court [as Competent Authority - Public Authority under Section 2(e)(iii) and 2(h)(a) of the Act, 22 of 2005 and also Plenipotentiary in the Judicial hierarchy] can be provided with an enough freedom and inbuilt safeguards in exercising his discretionary powers either to furnish the information or not to part with the information, as prayed for by any applicant much less the 1st Respondent/Petitioner.

95. That apart, if the copies of the Minutes dated 16.12.2010 and 07.03.2011 are supplied to the 1st Respondent/Petitioner, then, the interest of the administration of the High Court will get jeopardised and also it will perforce the Petitioner/High Court to furnish

the informations sought for by the concerned Applicants/Requisitionists as a matter of usual course without any qualms or rhyme or reasons/restrictions. In effect, to uphold the dignity and majesty of the Hon'ble High Court - being an Independent Authority under the Constitution of India, some self-restrictions are to be imposed as regards the supply of internal/domestic functioning of the Hon'ble High Court and its office informations in respect of matters which are highly confidential in nature inasmuch as it concerns with the Intricate, Internal Discussions and Deliberations, Notings, Jottings and Administrative Decisions taken on various matters at different levels and as such, they are exempted from disclosure under Section 8(e)(i)(j) of the Right to Information Act, 2005. Even otherwise, they are not open to litigants/public without restrictions. No wonder, it can be fittingly observed that if Impartiality is the Soul of Judiciary, then, Independence is the Life Blood of Judiciary. Also that, without Independence, Impartiality cannot thrive/survive.

96. In short, if the informations sought for by the 1st Respondent/ Petitioner are furnished, then, it will prejudicially affect the confidential interest, privacy and well being of the High Court, in the considered opinion of this Court. In any event, the 1st Respondent/Petitioner cannot invoke the aid of Clause 37 of Amended Letters Patent dealing with 'Regulation of Proceedings' and also Order XII [pertaining to the entitlement of Certified Copies] of the Rules of the High Court, Madras, Appellate Side, 1965, since they are not applicable to him."

21. In this case, insofar as queries (i) and (v) are concerned, the information sought for by the second respondent is with regard to the action taken on his complaint against the Chief Metropolitan Magistrate, Egmore, Chennai. It is seen that insofar as query (i) is concerned, the petitioner has called upon the second respondent to peruse the files regarding the action taken on the second respondent's complaint, dated 1.6.2011. In the counter affidavit, the second respondent admitted that he perused the files on 3.2.2012 and however, certified copies/copies of the file notings or orders were not given to him. Insofar query (v) is concerned, it is seen that the petitioner has informed the second respondent on 28.3.2012 that his complaint, dated 10.12.2011 filed against the Chief Metropolitan Magistrate, Egmore, Chennai, had been closed. In fact, the said fact is not disputed by the second respondent. On the other hand, in the counter affidavit, the second respondent admitted that through communication, dated 28.3.2012, he was informed that his petition had been ordered to be closed. Apart from the abovesaid fact, during the pendency of the present Writ Petition, the Registrar (Vigilance) of

this Court has informed the second respondent through communication, dated 21.8.2014 about the action taken on his complaint against the Chief Metropolitan Magistrate, Egmore, Chennai, informing as follows:

"Sir,

Sub: Furnishing of information - Regarding.

Ref: Your complaint dated 02.06.2011 and 29.09.2011, 01.11.2011, 31.10.2011, 10.12.2011

I am to inform you that your complaint dated 02.06.2011 made against the Chief Metropolitan Magistrate (name not mentioned), Egmore, Chennai has been received and assigned Roc.No.409/2011/VC. On perusal of the complaint, the Hon'ble The Chief Justice has been ordered as "Report may be called for from Chief Metropolitan Magistrate, Egmore, Chennai and on perusal of the report submitted, the Hon'ble the Chief Justice has ordered as "Report may be accepted and closed."

Further I am to inform that the complaints dated 29.09.2011, 01.11.2011, 31.10.2011 and 10.12.2011 has been received and assigned Roc.No.6425/2011/VC/Tapal, 6428/2011/VC/Tapal, 6430/2011/VC/Tapal and 716/2012/VC/Tapal and they were ordered to be placed before the Hon'ble Administrative Committee and the Hon'ble Administrative Committee resolved to hold an enquiry pertaining to the allegations against the Subordinate Judicial Officer and staff members of the High Court by the Registrar (Vigilance) and on perusal of the enquiry report, the Hon'ble Administrative Committee has resolved to close the proceedings initiated.

Yours faithfully,
Sd/-
Registrar (Vigilance)"

22. Considering the above stated facts and circumstances, we find that the second respondent cannot have any grievance, as the petitioner has permitted the second respondent to peruse the files regarding the action taken and also informed him of the fact that his complaint had been ordered to be closed. However, the second respondent contends that the file notings and other minutes sought for in his complaint were not furnished. Such information cannot be furnished to the second respondent, as held by this Court in the decision reported in 2013 (5) MLJ 134 (cited supra).

23. Insofar as queries (ii) and (iii) are concerned, the second respondent was informed by the petitioner that there are no recruitment rules for the post of Registrar General and there is no Selection Committee for that post. In the absence of any such

information being available, the second respondent cannot compel the petitioner to furnish the same. Even otherwise, as already observed by the Division Bench of this Court in the decision reported in 2013 (5) MLJ 134 (Registrar General of High Court of Madras Vs. K.Elango), furnishing of those information with regard to the Registrar General which has been done by the Honourable Chief Justice of this Court, cannot be brought under the purview of Section 2(j) of the RTI Act, as, such information pertain to the internal intricate functioning/administration of the High Court and such information has no relationship with any public activity or interest. As observed by the Division Bench therein, certainly, furnishing of those information will hinder the regular, smooth and proper functioning of the institution, unnecessarily warranting scrupulous litigations. In fact, a perusal of the pleadings, more particularly, the application made by the second respondent as well as the counter affidavit filed in this Writ Petition, would show that the second respondent has not disclosed even the basic reason for seeking those informations. On the other hand, he has made those applications mechanically, as a matter of routine under the RTI Act. The Division Bench of this Court, in the said decision, has also observed that the first respondent in that Writ Petition who is similar to the present second respondent, has no locus-standi to seek for the details sought for by him, as he has no enforceable legal right. Further, posting a Senior District Judge as Registrar General by the Honourable Chief Justice is in exercise of powers conferred under Article 229 of the Constitution of India and the second respondent or any other person including other Judges, has no say in the said matter. The said issue is already settled by the Honourable Supreme Court in the decision reported in 1998 (3) SCC 72 (High Court Judicature for Rajasthan Vs. Ramesh Chand Paliwal) and in paragraph 38, the Honourable Supreme Court held that under the Constitutional Scheme, Chief Justice is the supreme authority and other Judges, so far as officers and servants of the High Court are concerned, have no role to play on the administrative side. The said position is reiterated in the subsequent decision of the Supreme Court reported in 2012 (1) MLJ 289 (SC) (Registrar General Vs. R.Perachi).

24. Insofar as query (iv) is concerned, we fail to understand as to how the second respondent is entitled to justify his claim for seeking the copies of his own complaints and appeals. It is needless to say that they are not the information available within the knowledge of the petitioner; on the other hand, admittedly, they are the documents of the second respondent himself, and therefore, if he does not have copies of the same, he has to blame himself and he cannot seek those details as a matter of right, thinking that the High Court will preserve his frivolous applications as treasures/valuable assets. Further, those documents cannot be brought under the definition "information" as defined under Section 2 (f) of the RTI Act. Therefore, we reject the contention of the second respondent in this aspect.

25. Insofar as query (vi) is concerned, admittedly, the matter is sub-judice and pending before the High Court in Crl.O.P.No.18804 of 2010. To that effect, already information had been furnished by the petitioner to the second respondent on 13.3.2012 informing that his petition has been put up along with the case bundle. Therefore, the second respondent is not entitled to get any information with regard to the proceedings pending before the Court of Law and if at all he wants any document relating to the pending case/cases, he has to only apply for certified copy and obtain the same in terms of the Rules framed by the High Court. No doubt, the second respondent is seeking information regarding the action taken against inclusion of one Ms.Geetha Ramaseshan as Advocate in Crl.O.P.No.18804 of 2010. Since his complaint has been put up along with the case bundle, which is pending before Court, the petitioner, certainly, is precluded from furnishing any information, as the matter is seized of by the Court in Crl.O.P.No.18804 of 2010 on its judicial side.

26. Considering the facts and circumstances of the present case as stated above and also going by the earlier decisions rendered by the Honourable Supreme Court and the Division Benches of this Court, cited supra, we are of the view that the present case is squarely covered by those decisions against the second respondent, and therefore, the second respondent is not entitled to get the information in respect of those six appeals by way of attested file copies of the relevant documents including the file notings and the correspondences made thereon. The impugned order of the first respondent-Commission in directing the petitioner to furnish those information, is erroneous and not sustainable, in view of the earlier decisions rendered by this Court and the Honourable Supreme Court as discussed supra. Hence, the impugned order passed by the first respondent-Commission insofar as six appeals are concerned, is liable to be set aside.

27. Insofar as the other 47 complaints wherein the first respondent-Commission has passed an order directing the petitioner to prepare a tabular statement listing all the complaints and representations received from the second respondent, are concerned, we are not in a position to understand as to what are those 47 complaints or applications made by the second respondent and what are the informations that are sought for in those queries. A perusal of the impugned order passed by the first respondent-Commission does not indicate any detail with regard to those 47 complaint cases. In the absence of those material details, we are not in a position to appreciate the order passed by the first respondent-Commission directing the petitioner to prepare a tabular statement listing all the complaints and the representations received from the second respondent being dealt with on the administrative and judicial sides of this Court and the current status of the action taken thereon.

Therefore, we are of the view that the impugned order of the first respondent is bereft of any material particulars insofar as those 47 RTI applications referred to in the impugned order and the direction issued to the petitioner in that regard is also not sustainable.

28. In fact, the first respondent-Commission itself has deprecated the practice of the second respondent herein in overloading the Registry of this Court by making several queries or complaints one after another and following the same under the RTI Act. Having found that the action of the second respondent in sending numerous complaints and representations and then following the same with the RTI applications; that it cannot be the way to redress his grievance; that he cannot overload a public authority and divert its resources disproportionately while seeking information and that the dispensation of information should not occupy the majority of time and resource of any public authority, as it would be against the larger public interest, the first respondent-Commission clearly erred in passing the impugned order in this Writ Petition, directing the petitioner to furnish the details to the second respondent as well as sending a tabular statement listing all the complaints and representations received from the second respondent.

29. For the foregoing reasonings, the impugned order of the first respondent-Commission is set aside and the Writ Petition is allowed. No costs. The Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CSIII)
Dated:19/9/2014

***Corrected Order as per**
th order of this Court
dated 23/09/14 and made herein
-s/d-
Assistant Registrar(CSIV)
Dated:23/9/2014

//True Copy//

Sub Assistant Registrar

cs
To
1. The Registrar,
   The Central Information Commission,
   Room No.306, 2nd Floor, "B" Wing,
   August Kranti Bhavan,
   Bhikaji Cama Place, New Delhi-110 066.

2. The Public Information Officer,
The Registrar (Administration),
High Court, Madras.

3.Mr.B.Bharathi,
NO.57,Kavi Kuil Street,
Ashok Nagar, Lawspet,
Puducherry-605 008

W.P.No.26781 of 2013

jsv(co)
pmk.19.9.2014
aa23/9/2014

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

Judgment reserved on: 22.05.2012

% Judgment delivered on: 01.06.2012

\+ **W.P.(C) 11271/2009**

REGISTRAR OF COMPANIES & ORS ..... Petitioners

Through: Mr. Pankaj Batra, Advocate.

versus

DHARMENDRA KUMAR GARG & ANR ..... Respondents

Through: Mr. Rajeshwar Kumar Gupta and Ms. Shikha Soni, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petition has been preferred by the Registrar of Companies, NCT of Delhi & Haryana (ROC) and its CPIOs Sh. Raj Kumar Shah and Sh. Atma Shah to assail two similar orders dated 14.07.2009 passed by the Central Information Commission (CIC) in complaint case Nos. CIC/SG/C/2009/000702 and CIC/SG/C/2009/000753. By these similar orders, the appeals preferred by the same respondent- querist were allowed, rejecting the defence of the petitioners founded upon

Section 610 of the Companies Act, 1956, and it was directed that the complete information sought by the respondent-querist in his two applications under the Right to Information Act (RTI Act) be provided to him before 25.07.2009. The CIC has also directed issuance of show-cause notice to the petitioner-PIOs under Section 20(1) of the RTI Act asking them to show-cause as to why penalty should not be imposed upon them for not furnishing information as sought by the querist within thirty days.

2. The querist-Shri Dharmendra Kumar Garg filed an application under the RTI Act on 28.05.2009 requiring the PIO of the ROC to provide the following information in relation to company No. 056045 M/s Bloom Financial Services Limited:

> *"1. Who are the directors of this company? Please provide their name, address, date of appointment and copies of consent filed at ROC alongwith F-32 filed.*
>
> *2. After incorporation of above company, how many times directors were changed? Please provide the details of documents files and copies of Form 32 filed at ROC.*
>
> *3. Please provide the copies of Annual Returns filed at ROC since incorporation to 1998*
>
> *4. On what ground prosecution has been filed. Please provide the details of prosecution and persons included for prosecution. Please provide the copies of Order Sheets and related documents.*
>
> *5. On what ground the name of Dharmender Kumar Garg has been included for prosecution?*
>
> *6. Please provide the copies of Form No 5 and other documents filed for increase of capital?*

7. How much fee was paid for increase of Capital of above company? Please provide the details of payment of fee at ROC.

8. Please provide the copies of Statutory Report and Special Leave Petition (Statement in lieu of prospectus) filed at ROC."

3. The PIO-Sh. Atma Shah responded to the said queries on 29.05.2009. In respect of queries No. 1, 2, 3, 6, 7 & 8, the stand taken by the PIO was as follows:

"that in view of the provisions of Section 610 of the Companies Act, 1956 read with Companies (Central Government's) General Rules and Forms, 1956 framed in exercise of powers conferred by clauses (a) & (b) of sub-section (1) of Section 642 of the Companies Act, 1956, the documents filed by companies pursuant to various provisions of the Companies Act, 1956 with the ROCs are to be treated as 'information in public domain' and such information is accessible by public pursuant to the provisions of Section 610 of the Companies Act, 1956. There is an in built mechanism under the provisions of the Companies Act, 1956 for accessing information relating to documents filed which are in the public domain on payment of fees prescribed under the provisions of the Companies Act, 1956 and the Rules made there under. Hence you can obtain the desired information by inspecting the documents filed by the company in this office before filing of documents online i.e. prior to 8/03/2006 at O/o Registrar of Companies, NCT of Delhi & Haryana, 131, Sector-5, IMT Manesar, Haryana and after 18/3/06 on the Ministry's website www.mca.gov.in. Further certified copies of the desired documents can also be obtained on payment of fees prescribed thereof. In view of this, the information already available in the public domain would not be treated as 'information held by or under the control of public authority' pursuant to Section 2(j) of the Right to Information Act, 2005. Therefore, the provisions of RTI Act, 2005 would not be applicable for providing inspection/copies of such documents/information to the

public."

4. The queries at serial Nos. 4 & 5, as aforesaid, were also responded to by the PIO. However, I am not concerned with the answers given in response to the said queries, as the legal issue raised in the present petition by the petitioners relates to the interplay between Section 610 of the Companies Act on the one hand, and the provisions of the RTI Act on the other hand. Not satisfied with the response given by the PIO Sh. Atma Shah, as aforesaid, the respondent-querist, without preferring a first appeal, straightway preferred an appeal before the CIC, which has been disposed of vide impugned order dated 14.07.2009 in complaint case No. CIC/SG/C/2009/000702.

5. The respondent-querist raised further queries in respect of the same company vide an RTI application dated 06.06.2009. This application was also responded to by the PIO Sh. Atma Shah on 23.06.2009. In this reply as well, in respect of certain queries, the PIO responded by placing reliance on Section 610 of the Companies Act and gave more or less the same reply, as extracted above. Since the respondent-querist was not satisfied with the said response, he preferred a petition before the CIC, once again by-passing the statutory first appeal provided under the RTI Act. This appeal was registered as complaint case No. CIC/SG/C/2009/000753.

6. Before the CIC, the petitioners contended that the information which could be accessed by any person by resort to Section 610 of the Companies Act is information which is already placed in the public domain, and it cannot be said that the said information is "held by" or is "under the control" of the public authority. It was contended that such information, as has already been placed in the public domain, does not fall within the scope of the RTI Act and a citizen cannot by-pass the procedure, and avoid paying the charges prescribed for accessing the information placed in the public domain, by resort to provisions of the RTI Act.

7. In support of their submissions, before the CIC the petitioners placed reliance on a departmental circular No. 1/2006 issued by the Ministry of Company Affairs, wherein the view taken by the Director, Inspection & Investigation was that in the light of the provisions of Section 610 of the Companies Act read with Companies (Central Government's) General Rules & Forms, 1956 (Rules), framed in exercise of powers conferred under clauses (a) & (b) of sub-Section 1 of Section 642 of the Companies Act, the documents filed by the Companies pursuant to various provisions of the Companies Act with the ROC are to be treated as information in the public domain. It was also his view that there being a complete mechanism provided under the provisions of the Companies Act for accessing information relating to documents filed, which are in public domain, on payment of fees

prescribed under the Companies Act and the Rules made thereunder, such information could not be treated as information held by, or under the control of, the public authority. His view was that the provisions of RTI Act could not be invoked for seeking copies of such information by the public.

8. The petitioners also placed reliance on various earlier orders passed by the different CICs, upholding the aforesaid stand of the ROC and, in particular, reliance was placed on the decision of Sh. A.N. Tiwari, Central Information Commissioner in F.No. CIC/80/A/2007/000112 decided on 12.04.2007. Reference was also made to various orders of Prof. M.M. Ansari, Central Information Commissioner taking the same view. The petitioner has placed all these orders before this Court as well, as Annexure A-7(Colly.)

9. The first submission of learned counsel for the petitioners is that, while passing the impugned orders, the Central Information Commissioner Sh. Shailesh Gandhi has acted with impropriety. Despite the earlier orders of two Central Information Commissioners – taking the view that the information placed by the petitioner-ROC in the public domain and accessible under Section 610 of the Companies Act are out of the purview of the RTI Act, being specifically brought to his notice, he has simply brushed them aside after noticing them by observing that he differs with these decisions. It is submitted that

even if Sh. Shailesh Gandhi, Central Information Commissioner, was of the opinion that the earlier views taken by two other learned CICs were not correct, the proper course of action for him to adopt would have been to record his reasons for not agreeing with the earlier views of the Central Information Commissioners, and to refer the said issue for determination by a larger bench of the Central Information Commission. Sitting singly, Sh. Shailesh Gandhi, Central Information Commissioner, could not have taken a contrary view by merely observing that he disagrees with the earlier views.

10. The further submission of learned counsel for the petitioners is that, even on merits, the view taken by the CIC in the impugned orders is illegal and not correct. It is argued that Clause (a) of Section 610 (1) of the Companies Act, inter alia, entitles “any person” to inspect any document kept by the Registrar, which may have been filed or registered by him in pursuance of the Companies Act, or may inspect any document, wherein the Registrar has made a record of any fact required or authorized to be recorded to be registered in pursuance of the Companies Act, on payment for each inspection of such fee, as may be prescribed.

11. Further, by virtue of Clause (b) of Section 610 (1) any person can require the Registrar to provide certified copies of the Certificate of Registration of any company, or a copy or extract of any other

document, or any part of any other document, on payment in advance of such fee, as may be prescribed. It is submitted that the Registrar of Companies has placed all its records pertaining to, and in relation to the companies registered with it in the public domain. They have either been placed on the website of the ROC, or are available for inspection at the facility of the ROC. Any person can inspect such records either on-line, or at the facility of the petitioner-ROC and if the person so desires, can also obtain copies of all or any of such documents on payment of charges, as prescribed under the Rules.

12. Learned counsel for the petitioners submits that the Companies (Central Government's) General Rules & Forms, 1956, which have been framed in exercise of the power conferred upon the Central Government by clauses (a) & (b) of sub-Section (1) of Section 642 of the Companies Act, prescribe the fees for inspection of document and for obtaining certified copies thereof in Rule 21 A, which reads as follows:

> *"21A. Fees for inspection of documents etc.—The fee payable in pursuance of the following provisions of the Act, shall be—*
>
> | | | |
> |---|---|---|
> | *(1)* | *Clause (a) of sub-section (1) of section 118* | *rupees ten.* |
> | *(2)* | *Clause (b) of sub-section (1) of section 118* | *rupee one.* |
> | *(3)* | *Sub-section (2) of section 144* | *rupees ten.* |
> | *(4)* | *Clause (b) of sub-section (2) of section 163* | *rupees ten.* |

(5)	*Clause (b) of sub-section (3) of section 163*	*rupee one.*
(6)	*Sub-section (2) of section 196*	*rupee one.*
(7)	*Clause (a) of sub-section (1) of section 610*	*rupees fifty.*
(8)	*Clause (b) of sub-section (1) of section 610—*	
	(i) For copy of certificate of incorporation	*rupees fifty.*
	(ii) For copy of extracts of other documents including hard copy of such documents on computer readable media	*rupees twenty five per page."*

13. Learned counsel submits that there are two kinds of information available with the ROC. The first is the information/ documents, which the ROC is obliged to receive, record and maintain under the provisions of the Companies Act, and the second kind of information relates to the administration and functioning of the office of the ROC. The first kind of information, i.e., the returns, forms, statements, etc. received, recorded and maintained by the ROC in relation to the companies registered with it, is all available for inspection, and the certified copies thereof can be obtained by resort to Section 610 of the Companies Act and the aforesaid Rules. He submits that since this information is already in the public domain, same cannot be said to be information held by, or in the control of the public authority, i.e., ROC. He submits that it is the second kind of information, as aforesaid, which a citizen can seek by invoking provisions of the RTI Act from the ROC, and not the first kind of information which, in any event, is already available in

the public domain, and accessible to one and all, including non-citizens.

14. He submits that the right to information vested by Section 3 of the RTI Act is available only to citizens. However, the right vested by virtue of Section 610 of the Companies Act can be exercised by any person, whether, or not, he is a citizen of India. Therefore, the right vested by Section 610 of the Companies Act is much wider in its scope than the right vested by Section 3 of the RTI Act. It is argued that the object of the RTI Act is to enable the citizens to access information so as to bring about transparency in the functioning of public authorities, which is considered vital to the functioning of democracy and is also essential to contain corruption and to hold governments and their instrumentalities accountable to those who are governed, i.e., the citizens. The information accessible under Section 610 is, in any event, freely available and all that the person desirous of accessing such information is required to do, is to make the application in terms of the said provision and the Rules, to become entitled to receive the information.

15. Learned counsel submits that the fees prescribed for provision of information under the RTI Act is nominal and much less compared to the fees prescribed under Rule 21 A. Learned counsel for the petitioners submits that the petitioners have consciously prescribed

the fees under the RTI Act as a nominal amount of Rs.10/- per application since the petitioner-ROC does not wish to make it inconvenient or difficult for the citizens to obtain information held by or under the control of the ROC under the said Act. However, the said provision cannot be exploited or misused by a citizen for the purpose of seeking information, which is available in the public domain and is accessible under Section 610 of the Companies Act by payment of prescribed fee under Rule 21 A of the aforesaid Rules.

16. On the other hand, the submission of learned counsel for the respondent-querist is that the provisions of the RTI Act have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act itself. In this respect reference is made to Section 22 of the RTI Act. It is, therefore, argued that a citizen has an option to seek information from the ROC, either by resort to Section 610 of the Companies Act or by resort to the provisions of the RTI Act. Merely because Section 610 exists on the Statute Book, it does not mean that the right available under the RTI Act to seek information can be curtailed or denied.

17. Learned counsel for the respondent further submits that under Section 610 of the Companies Act, a person can access only such

information which has been filed or registered by him (i.e., the person seeking the information), in pursuance of the Companies Act. He submits that the expression *"being documents filed or registered by him in pursuance of this Act"* used in Section 610(1)(a) of the Companies Act connect with the words *"any person"* and not with the words *"inspect any documents kept by the Registrar"*.

18. Section 610 of the Companies Act, 1956 reads as follows:

> "*610. Inspection, production and evidence of documents kept by Registrar.*
>
> *(1) [Save as otherwise provided elsewhere in this Act, any person may]-*
>
> *(a) inspect any documents kept by the Registrar [in accordance with the rules made under the Destruction of Records Act, 1917] being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection, of [such fees as may be prescribed];*
>
> *(b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, [on payment in advance of [such fees as may be prescribed:]*
>
> *Provided that the rights conferred by this sub-section shall be exercisable-*
>
> *(i) in relation to documents delivered to the Registrar with a prospectus in pursuance of sub-clause (i) of clause (b) of sub-section (1) of section 60, only during the fourteen days beginning with the date of publication of the prospectus; and at other times, only with the permission of the Central Government; and*

> *(ii) in relation to documents so delivered in pursuance of clause (b) of sub-section (1) of section 605, only during the fourteen days beginning with the date of the prospectus; and at other times, only with the permission of the Central Government.*
>
> *(2) No process for compelling the production of any document kept by the Registrar shall issue from any Court [or the [Tribunal]] except with the leave of that Court [or the [Tribunal]] and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the Court [or the [Tribunal]].*
>
> *(3) A copy of, or extract from, any document kept and registered at any of the officers for the registration of companies under this Act, certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document*".

19. The submission of learned counsel for the respondent that only the person who has filed documents with the Registrar of Companies is entitled to inspect the same is wholly fallacious and deserves to be outrightly rejected. This interpretation is clearly not borne out either from the plain language of section 610 or upon a scrutiny of the object and purpose of the said provision. Section 610 enables "any person" to inspect any documents kept by the registrar, being documents "filed or registered by him in pursuance of this Act". The obligation to file and register the documents, which may be submitted by a company registered, or seeking registration with the Registrar of Companies, is that of the Registrar of Companies. It is the Registrar, who makes a

record of any fact required or authorized to be recoded or registered in pursuance of the Companies Act, and not “any person”.

20. If the submission of learned counsel for the respondent were to be accepted, it would mean that it is the applicant under section 610, who is obliged to make a record of any fact required, or authorized to be recorded or registered in pursuance of the Companies Act, which is not the case. It is also not the obligation of “any person” either to file, or to receive and put on record, or to register, the documents lodged by him in the office of the ROC. That is the obligation of the Registrar of Companies. The whole purpose of section 610 is to bring about full and complete transparency in the matter of registration of companies and in the matter of their accounts and directorship, so that any person can obtain all the relevant information in relation to any registered company.

21. Pertinently, the language used in clause (b) does not support the submission of the respondent at all. If the submission of learned counsel for the respondent were to be accepted, it would mean that while a person can inspect only those documents which he has lodged in the office of the Registrar of Companies (by virtue of clause (a)), at the same time, under clause (b) of section 610(1), he can obtain the certificate of incorporation of any company, or a copy or extract of any other document or any part of any other document duly certified by

the Registrar.

22. Section 610(2) puts a check on issuance of a process for compelling the production of any document by the Registrar, by any Court or Tribunal. It requires that such process would not be issued except with the leave of the Court or the Tribunal. This check has been placed, since any person can obtain information either through inspection, or by obtaining certified copies of documents filed by any company, by following the procedure prescribed, and a certified true copies of any such documents or extracts is admissible in evidence in all legal proceedings, and has the same efficacy and validity as the original documents filed and registered by the Registrar of Companies (see section 610(3)).

23. There can be no doubt that the documents kept by the Registrar, which are filed or registered by him, as well as the record of any fact required or authorized to be recorded by the Registrar or registered in pursuance of the Companies Act qualifies as "information" within the meaning of that expression as used in Section 2(f) of the RTI Act. However, the question is — whether the mere fact that the said documents/record constitutes "information", is sufficient to entitle a citizen to invoke the provisions of the RTI Act to access the same?

24. The Parliament has defined the expression "right to information" under Section 2(j). The same reads as follows:

> *"2. (j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—*
>
> *(i) Inspection of work, documents, records;*
>
> *(ii) Taking notes, extracts, or certified copies of documents or records;*
>
> *(iii) Taking certified samples of material;*
>
> *(iv) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"*

25. The right to information is conferred by section 3 of the RTI Act, which reads as follows:

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

26. Pertinently, the Parliament did not use the language in Section 3: *"Subject to the provisions of this Act, citizens shall have a right to access all information",* or the like. Therefore, the right conferred by Section 3 of the RTI Act, which is the substantive provision, means the right to information "*accessible under the Act which is held by or under the control of any public authority and includes ...."*.

27. It is not without any purpose that the Parliament took the trouble of defining "right to information". Parliament does not undertake a casual or purposeless legislative exercise. The definition of "right to information" specifically qualifies the said right with the words:

(1) "*accessible under this Act*", and;

(2) *"which is held by or under the control of any public authority"*.

28. The information should, firstly, be accessible under this Act. This means that if there is information which is not accessible under this Act, there is no "right to information" in respect thereof. Consequently, there is no right to information in respect of information, which is exempted from disclosure under Section 8 or Section 9 of the RTI Act.

29. A particular information may not be held by, or may not be under the control of the public authority concerned. There would be no right in a citizen to seek such information from that particular public authority, though he may have the right to seek the same information from another public authority who holds or under whose control the desired information resides. That is why Section 6(3) provides that an application to seek information:

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

(ii) The subject matter of which is more closely connected with the functions of another public authority, shall be transferred to that other public authority.

30. But is that all to the expression "*held by or under the control of any public authority*" used in the definition of "Right to information" in

Section 2(j) of the RTI Act?

31. In the context of the object of the RTI Act, and the various provisions thereof, in my view, the said expression "*held by or under the control of any public authority*" used in section 2(j) of the RTI Act deserves a wider and a more meaningful interpretation. The expression "Hold" is defined in the Black's Law dictionary, 6th Edition, inter alia, in the same way as "*to keep*" i.e. to retain, to maintain possession of, or authority over.

32. The expression "held" is also defined in the Shorter Oxford Dictionary, inter alia, as "*prevent from getting away; keep fast, grasp, have a grip on*". It is also defined, inter alia, as "*not let go; keep, retain".*

33. The expression "control" is defined in the Advanced Law Lexicon by P.N. Ramanatha Aiyar 3rd Edition Reprint 2009 and it reads as follows:

> *"(As a verb) To restrain; to check; to regulate; to govern; to keep under check; to hold in restraint; to dominate; to rule and direct; to counteract; to exercise a directing, restraining or governing influence over; to govern with reference thereto; to subject to authority; to have under command, and authority over, to have authority over the particular matter. (Ame. Cyc)"*

34. From the above, it appears that the expression "held by" or "under the control of any public authority", in relation to "information",

means that information which is held by the public authority under its control to the exclusion of others. It cannot mean that information which the public authority has already "let go", i.e. shared generally with the citizens, and also that information, in respect of which there is a statutory mechanism evolved, (independent of the RTI Act) which obliges the public authority to share the same with the citizenry by following the prescribed procedure, and upon fulfillment of the prescribed conditions. This is so, because in respect of such information, which the public authority is statutorily obliged to disseminate, it cannot be said that the public authority "holds" or "controls" the same. There is no exclusivity in such holding or control. In fact, the control vests in the seeker of the information who has only to operate the statutorily prescribed mechanism to access the information. It is not this kind of information, which appears to fall within the meaning of the expression "right to information", as the information in relation to which the "right to information" is specifically conferred by the RTI Act is that information which *"is held by or under the control of any public authority"*.

35. The mere prescription of a higher charge in the other statutory mechanism (in this case Section 610 of the Companies Act), than that prescribed under the RTI Act does not make any difference whatsoever. The right available to any person to seek inspection/copies of documents under Section 610 of the Companies

Act is governed by the Companies (Central Government's) General Rules & Forms, 1956, which are statutory rules and prescribe the fees for inspection of documents, etc. in Rule 21A. The said rules being statutory in nature and specific in their application, do not get overridden by the rules framed under the RTI Act with regard to prescription of fee for supply of information, which is general in nature, and apply to all kinds of applications made under the RTI Act to seek information. It would also be complete waste of public funds to require the creation and maintenance of two parallel machineries by the ROC – one under Section 610 of the Companies Act, and the other under the RTI Act to provide the same information to an applicant. It would lead to unnecessary and avoidable duplication of work and consequent expenditure.

36. The right to information is required to be balanced with the need to optimize use of limited fiscal resources. In this context I may refer to the relevant extract of the Preamble to the RTI Act which, inter alia, provides:-

> *"AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including* ***efficient operations of the Governments, optimum use of limited fiscal resources*** *and the preservation of confidentially of sensitive information;*
>
> *AND WHEREAS* ***it is necessary to harmonise these conflicting interests*** *while preserving the paramountancy of the democratic ideal;"* (emphasis supplied).

37. Section 4(1)(a) also lays emphasis on availability of recourses, when it talks about computerization of the records. Therefore, in the exploitation and implementation of the RTI Act, a delicate and reasonable balance is required to be maintained. Nobody can go overboard or loose ones equilibrium and sway in one direction or assume an extreme position either in favour of upholding the right to information granted by the RTI Act, or to deny the said right.

38. The Supreme Court in ***The Institute of Chartered Accountants of India Vs. Shaunak H. Satya & Others,*** *Civil Appeal No. 7571/2011 decided on 02.09.2011,* observed that:

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

39. Therefore, if another statutory provision, created under any other law, vests the right to seek information and provides the mechanism for invoking the said right (which is also statutory, as in this case) that mechanism should be preserved and operated, and not destroyed

merely because another general law created to empower the citizens to access information has subsequently been framed.

40. Section 4 of the RTI Act obliges every public authority, inter alia, to publish on its own, information described in clause (b) of sub-Section (1) of Section 4. Sub-clause (xv) of clause (b) obliges the public authority to publish *"the particulars of facilities available to citizens for obtaining information ...."*. In the present case, the facility is made available – not just to citizens but to any person, for obtaining information from the ROC, under Section 610 of the Companies Act, and the Rules framed thereunder above referred to. Section 4(2) of the RTI Act itself postulates that in respect of information provided by the public authority *suo moto*, there should be minimum resort to use of the RTI Act to obtain information.

41. The submission of learned counsel for the respondent founded upon Section 22 of the RTI Act also has no merit. Section 22 of the RTI Act reads as follows:

> *"22. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."*

42. Firstly, I may notice that I do not find anything inconsistent between the scheme provided under Section 610 of the Companies Act

and the provisions of the RTI Act. Merely because a different charge is collected for providing information under Section 610 of the Companies Act than that prescribed as the fee for providing information under the RTI Act does not lead to an inconsistency in the provisions of these two enactments. Even otherwise, the provisions of the RTI Act would not override the provision contained in Section 610 of the Companies Act. Section 610 of the Companies Act is an earlier piece of legislation. The said provision was introduced in the Companies Act, 1956 at the time of its enactment in the year 1956 itself. On the other hand, the RTI Act is a much later enactment, enacted in the year 2005. The RTI Act is a general law/enactment which deals with the right of a citizen to access information available with a public authority, subject to the conditions and limitations prescribed in the said Act. On the other hand, Section 610 of the Companies Act is a piece of special legislation, which deals specifically with the right of any person to inspect and obtain records i.e. information from the ROC. Therefore, the later general law cannot be read or understood to have abrogated the earlier special law.

43. The Supreme Court in ***Ashoka Marketing Limited and Another Vs. Punjab National Bank and Others****, (1990) 4 SCC 406,* applied and explained the legal maxim: *leges posteriors priores conterarias abrogant*, (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: *generalia specialibus non derogant*, (a general provision does not derogate from

a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34). One of the principles of statutory interpretation is that the later law abrogates earlier contrary laws. This principle is subject to the exception embodied in the second latin maxim mentioned above. The Supreme Court in paragraphs 50-52 of this decision held as follows:

> *"50. One such principle of statutory interpretation which is applied is contained in the latin maxim: leges posteriors priores conterarias abrogant, (later laws abrogate earlier contrary. laws). This principle is subject to the exception embodied in the maxim: generalia specialibus non derogant, (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34).*
>
> *51. The rationale of this rule is thus explained by this Court in the J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. The State of Uttar Pradesh & Others, [1961] 3 SCR 185:*
>
> > *"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as*

> *regards all the rest the earlier directions should have effect.*"
>
> *52. In U.P. State Electricity Board v. Hari Shankar Jain, [1979] 1 SCR 355 this Court has observed:*
>
> "*In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament.*" ”

44. Justice G.P. Singh in his well-known work *“Principles of Statutory Interpretation 12th Edition 2010”* has dealt with the principles of interpretation applicable while examining the interplay between a prior special law and a later general law. While doing so, he quotes Lord Philimore from ***Nicolle Vs. Nicolle,*** *(1922) 1 AC 284,* where he observed:

> *“it is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases, of which the particular law is but one. This, as a matter of jurisprudence, as understood in England, has been laid down in a great number of cases, whether the prior law be an express statute, or be the underlying common or customary law of the country. Where general words in a later Act are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so.”*

45. The Supreme Court in ***R.S. Raghunath Vs. State of Karnataka & Another,*** *(1992) 3 SCC 335,* quotes from Maxwell on The Interpretation of Statutes, the following passage:

> "*A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words, where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act.*"

46. This principle has been applied in ***Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Dey & Others,*** *AIR 1996 SC 1931* as well. Therefore, Section 22 of the RTI Act, in any event, does not come in the way of application of Section 610 of the Companies Act, 1956.

47. Now, I turn to consider the submission of learned counsel for the petitioner that the Central Information Commissioner Sh. Shailesh Gandhi has acted with impropriety while passing the impugned order, by disregarding the earlier orders of the other Central Information Commissioners and by taking a decision contrary to them without even referring the matter to a larger bench.

48. In ***Sh. K. Lall Vs. Sh. M.K. Bagri, Assistant Registrar of Companies & CPIO,*** *F. No. CIC/AT/A/2007/00112,* the Central Information Commissioner Sh. A.N. Tiwari squarely considered the very same issue with regard to the interplay between Section 610 of the Companies Act and the rights of a citizen to obtain information under the RTI Act. Sh. A.N. Tiwari by a detailed and considered decision held that information which can be accessed by resort to Section 610 of the Companies Act cannot be accessed by resort to the provisions of the RTI Act. The discussion found in his aforesaid order on this legal issue reads as follows:

> *"9. It shall be interesting to examine this proposition. Section 2(j) of the RTI Act speaks of "the right to information accessible under this Act which is held by or under the control of any public authority……". The use of the words "accessible under this Act"; "held by" and "under the control of" are crucial in this regard. The inference from the text of this sub-section and, especially the three expressions quoted above, is that an information to which a citizen will have a right should be shown to be a) an information which is accessible under the RTI Act and b) that it is held or is under the control of a certain public authority. This should mean that unless an information is exclusively held and controlled by a public authority, that information cannot be said to be an information accessible under the RTI Act. Inferentially it would mean that once a certain information is placed in the public domain accessible to the citizens either freely, or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control of' the public authority and, thus would cease to be an information accessible under the RTI Act. This interpretation is further strengthened by the provisions of the RTI Act in Sections 4(2), 4(3) and 4(4), which oblige the public authority to constantly endeavour "to take steps in accordance with the requirement of clause b of subsection 1 of the Section 4 to provide as*

much information suo-motu to the public at regular intervals through various means of communication including internet, so that the public have minimum resort to the use of this Act to obtain information." (Section 4 sub-section 2). This Section further elaborates the position. It states that "All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed." The explanation to the subsection 4 section 4 goes on to further clarify that the word "disseminated" used in this Section would mean the medium of communicating the information to the public which include, among others, the internet or any other means including inspection of office of any public authority.

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

11. These provisions are in consonance with the wording of the Section 2(j) which clearly demarcates the boundary between an information held or under the control of the public authority and, an information not so held, or under the control of that public authority who suo-motu places

that information in public domain. It is only the former which shall be "accessible under this Act" — viz. the RTI Act and, not the latter. This latter category of information forms the burden of sub-section 2, 3 and 4 of Section 4 of this Act.

12. The RTI Act very clearly sets the course for the evolution of the RTI regime, which is that less and less information should be progressively held by public authorities, which would be accessed under the RTI Act and more and more of such held information should be brought into the public domain suo-motu by such public authority. Once the information is brought into the public domain it is excluded from the purview of the RTI Act and, the right to access this category of information shall be on the basis of whether the public authority discloses it free, or at such cost of the medium or the print cost price "as may be prescribed". The Act therefore vests in the public authority the power and the right to prescribe the mode of access to voluntarily disclosed information, i.e. either free or at a prescribed cost / price.

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

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

15. There is one additional point which also needs to be considered in this matter. The appellant had brought up the issue of the overarching power of the RTI Act under Section 22. This Section of the Act states that the provisions of the Act shall have effect notwithstanding

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

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

49. This view was followed by Sh. A.N. Tiwari in a subsequent order dated 29.08.2007 in ***"Shri Shriram (Dada) Tichkule Vs. Shri P.K. Galchor, Assistant Registrar of Companies & PIO".*** The same view was taken by another Central Information Commissioner namely, Prof. M.M. Ansari in his orders dated 29.03.2006 in ***Arun Verma Vs. Department of Company Affairs***, *Appeal No. 21/IC(A)/2006,* and in the case of ***Sh. Sonal Amit Shah Vs. Registrar of Companies***, *Decision No. 2146/IC(A)/2008 dated 31.03.2008,* and various others,

copies of which have been placed on record. It appears that all these decisions were cited before learned Central Information Commissioner Sh. Shailesh Gandhi. In fact, in the impugned order, he also refers to these decisions and states that *"I would respectfully beg to differ from this decision"*.

50. The Central Information Commission while functioning under the provisions of the RTI Act, no doubt, do not constitute a Court. However, there can be no doubt about the fact that Central Information Commission functions as a quasi-judicial authority, as he determines inter se rights and obligations of the parties in relation to the grant of information, which may entail civil and other consequences for the parties.

51. This Court in ***Union Public Service Commission Vs. Shiv Shambhu & Others,*** *L.P.A. No. 313/2007 decided on 03.09.2008*, while dealing with the issue whether the Central Information Commissioner should be impleaded as a party respondent in proceedings challenging its order and whether the Central Information Commission has a right of audience to defend its order before this Court in writ proceedings, observed as follows:

> *"2. At the outset this Court directs the deletion of the CIC which has been arrayed as Respondent No. 1 to this appeal, consequent upon it being arrayed as such in the writ petition. This Court has repeatedly issued practice directions stressing that a judicial or quasi-judicial body or Tribunal whose order is challenged in a writ petition (and*

> *thereafter possibly in appeal) ought not to itself be impleaded as a party respondent. The only exception would be if malafides are alleged against any individual member of such authority or Tribunal in which case again it would be such member, and not the authority/Tribunal, who may be impleaded as a respondent. Accordingly the cause title of the present appeal will read as* ***Union Public Service Commission v. Shiv Shambhu & Ors.****"*

52. This decision has subsequently been followed in ***State Bank of India Vs. Mohd. Shahjahan****, W.P.(C.) No. 9810/2009*, wherein the Court held as follows:

> *"12. This Court is unable to accept the above submission. There is no question of making the CIC, whose order is under challenge in this writ petition, a party to this petition. Like any other quasi-judicial authority, the CIC is not expected to defend its own orders. Likewise, the CIC cannot be called upon to explain why it did not follow any of its earlier orders. That the CIC should not be made a party in such proceedings is settled by the judgment of the Division Bench in this Court in* ***Union Public Service Commission v. Shiv Shambu 2008 IX (Del) 289.****"*

53. It is, therefore, a well-recognised position that the CIC discharges quasi-judicial functions while deciding complaints/appeals preferred by one or the other party before it.

54. It is a well-settled canon of judicial discipline that a bench dealing with a matter respects an earlier decision rendered by a coordinate bench (i.e., a bench of same strength), and is bound by the decision of a larger bench. If this discipline is breached, the same would lead to complete chaos and confusion in the minds of the

litigating public, as well as in the minds of others such as lawyers, other members/judges of quasi-judicial/judicial bodies, and the like. Breach of such discipline would result in discrimination and would shake the confidence of the consumers of justice. There can be no greater source of discomfiture to a litigant and his counsel, than to have to deal with diametrically opposite views of coordinate benches of the same judicial /quasi-judicial body. If the emergence of contradictory views is innocent i.e. due to ignorance of an earlier view, it is pardonable, but when such a situation is created consciously, with open eyes, and after having been put to notice, the judge/authority responsible for the later view should take the blame for creating confusion and for breaching judicial discipline.

55. The Supreme Court in ***Dr. Vijay Laxmi Sadho Vs. Jagdish***, *(2001) 2 SCC 247*, deprecated such lack of judicial discipline by observing as follows:

> *"33. As the learned Single Judge was not in agreement with the view expressed in Devilal's case, Election Petition No. 9 of 1980, it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed.* ***It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of***

law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs." (emphasis supplied)

56. In the present case, the Central Information Commissioner Mr.Shailesh Gandhi has also demonstrated complete lack of judicial discipline while rendering the impugned decisions. By no stretch of imagination, it cannot be said that the earlier decisions were not on the point. Particularly, the decision rendered by Sh. A.N. Tiwari in F. CIC/T/A/2007/0012 dated 12.04.2007 directly deals with the very same issue, and is an exhaustive, and detailed and considered decision. If the Central Information Commissioner Sh. Shailesh Gandhi had a different view in the matter – which he was entitled to hold, judicial discipline demanded that he should have recorded his disagreement with the view of Sh. A.N. Tiwari, Central Information Commissioner, and, for reasons to be recorded by him, required the constitution of a larger bench to re-examine the issue. He could not have ridden rough shot over the earlier decisions of Sh. A.N. Tiwari and Prof. M.M. Ansari, particularly when he was sitting singly to consider the same issue of law.

57. The consequence of the improper conduct of Sh. Shailesh Gandhi, Central Information Commissioner, is that there are now two sets of conflicting orders- taking diametrically opposite views, on the issue aforesaid. Therefore, unless the said legal issue is settled one

way or the other by a higher judicial forum, it would be open to any other Information Commissioner to choose to follow one or the other view. This would certainly lead to confusion and chaos. It would also lead to discrimination between the querists/public authority, who are either seeking information or are defending the action under the RTI Act. One such instance, cited by learned counsel for the petitioner is in the case of ***Smt. Dayawati Vs. Office of Registrar of Companies****, in CIC/SS/C/2011/000607 decided on 23.03.2012*. In this case, once again the same issue had been raised. The Central Information Commissioner Smt. Sushma Singh has preferred to follow the view of Sh. A.N. Tiwari in the case of ***K. Lall Vs. Ministry of Company Affairs****, Appeal No. CIC/AT/A/2007/00112 dated 14.04.2007*.

58. On this short ground alone, the impugned orders of the learned Central Information Commissioner deserve to be quashed and set aside.

59. The reasoning adopted by Shri Shailesh Gandhi, the learned Central Information Commissioner for taking a view contrary to that taken by Sh. A.N. Tiwari in his order dated 12.04.2007 (which has been extracted hereinabove), does not appeal to me. The view taken by Sh.A.N. Tiwari, Central Information Commissioner appeals to this Court in preference to the view taken by Sh. Shailesh Gandhi, Central Information Commissioner in the impugned orders. The impugned

orders do not discuss, analyse or interpret the expression "right to information" as defined in Section 2(j) of the RTI Act. They do not even address the aspect of Section 610 of the Companies Act being a special law as opposed to the RTI Act.

60. I may also observe that the approach of the Central Information Commission in seeking to invoke Section 20 of the RTI Act in the facts of the present case is wholly unjustified. By no stretch of imagination could it have been said that PIOs of the ROC had acted "*without any reasonable cause*" or "*malafidely denied the request for information or knowingly* gave incorrect, incomplete or misleading information, or destroyed information, which was the subject of the request, or obstructed in any manner the furnishing of information". The PIOs were guided by the departmental circular No. 1/2006 dated 24.01.2006 in the view that they communicate to the respondent-querist. This view was taken by none other than the Director Inspection & Investigation in the Ministry of Company Affairs, Government of India and circulated to all Regional Directors of Registrar of Companies and all Official Liquidators. There was nothing before the PIOs to suggest that the said view had been disproved by any judicial or quasi-judicial authority. Clearly, the PIOs acted bonafide and without any malice.

61. Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a show-cause notice under Section 20 of the RTI Act and the imposition of penalty. The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with

objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.

62. For all the aforesaid reasons, I allow the present petition and quash the impugned orders passed by Sh. Shailesh Gandhi, Central Information Commissioner. The parties are left to bear their respective costs.

(VIPIN SANGHI)
JUDGE

JUNE 01, 2012
'BSR'/sr

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.12.2014

+ W.P.(C) 6634/2011 & CM No.13398/2011

THE REGISTRAR, SUPREME COURT OF INDIA ..... Petitioner

versus

COMMODORE LOKESH K.BATRA AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sidharth Luthra, Sr. Advocate with
Ms Maneesha Dhir, Mr K. P. S. Kohli,
Mr Satyam Thareja and Ms Neha Singhj.

For the Respondents : Mr Pranav Sachdeva for Mr Prashant Bhushan.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns an order dated 03.08.2011 passed by the Central Information Commission (hereafter the 'CIC') directing the Central Public Information Officer of the Supreme Court (hereafter 'CPIO') to provide information to respondent no.1 regarding pending cases which had been heard and orders reserved. The CIC had further directed that if the information sought was centrally not available, the necessary arrangement be made in future for compiling such information and disclosing the same in public domain.

2. Brief facts of the case are that on 17.12.2009, respondent no.1 filed an application under the Right to Information Act, 2005 (hereafter the 'Act') with CPIO seeking the following information:-

> "(a) Total number of cases pending for judgements where 'Arguments have been heard prior to 31 December 2007 and Judgements are reserved'.
>
> (b) Total number of cases pending for judgments where 'Arguments have been heard between period 01 January 2008 and 31 December 2008 and Judgments are reserved'.
>
> (c) Total number of cases pending for judgements where 'Arguments have been heard between period 01 January 2009 and 15 December 2009 and Judgements are reserved'."

3. On 22.12.2009, respondent no.1 filed another application under the Act seeking the following information:-

> "Kindly provide me information under RTI Act 2005 ,In respect of those cases where 'Arguments have been heard prior to 22. December 2009 and Judgements are reserved' in the Supreme Court. In this context following information is requested in respect of each such case.
>
> (a) Case Number.
> (b) Case Type.
> (c) Date the Case was first admitted.
> (d) Date when Judgement was reserved."

4. By an order dated 12.01.2010, CPIO rejected the application dated 17.12.2009 and informed respondent no.1 that the data is not maintained by the registry in the manner as sought for by him. The CPIO further advised that for all the information with regard to the matters *sub judice* before the Supreme Court, the Supreme Court Rules, 1966 and the Supreme Court of India, Practice & Procedure 'A Handbook of Information'- which are also available on the website of the Supreme Court of India- may be referred. A similar order dated 22.01.2010 was passed by CPIO in response to the RTI application dated 22.12.2009.

5. Respondent no.1 filed separate appeals (Appeal No.74/2010 & Appeal No.73/2010) before the First Appellate Authority (hereafter 'FAA') challenging the orders dated 12.01.2010 and 22.01.2010 respectively. By a common order dated 15.03.2010, FAA dismissed both the appeals. Respondent no.1, thereafter, filed separate appeals before the CIC challenging the order of FAA dated 15.03.2010. The CIC allowed the appeals, by the impugned order.

6. The learned senior counsel for the petitioner contended:-

6.1 That the information that can be disclosed or can be directed to be disclosed under the Act is the information which exists and is held by the public authorities in material form and no directions can be issued by the authorities under the Act to the public authorities to create, hold and maintain the information in any other manner. The Act does not cast any obligation on any public authority to collate such non-available information for the purpose of furnishing it to an RTI Applicant. Reliance was placed on ***CBSE v. Aditya Bandopadhyay*: (2011) 8 SCC 497**.

6.2 That the powers under sub-section (8)(a)(iv) of Section 19 of the Act cannot be stretched for creation of new record and the words 'maintenance and management' under the said provision relates to the records which are available and cannot be interpreted in a manner to include creation of information.

6.3 That the impugned order impinges upon the power entrusted upon the Supreme Court under Article 145 of the Constitution of India to make suitable rules for regulating the practice and procedure of the Supreme

Court by directing the authority to maintain the records in a particular manner. He submitted that the impugned order has the effect of directing amendment of the rules framed under Article 145 of the Constitution of India.

6.4 That the CIC in the case of in case of ***Shri Mani Ram Sharma v. The Public Information Officer*****: C1C/SM/A/2011/000101-AD, decided on 18.07.2011** had held that if the required information was not maintained in the manner as asked for, the CPIO could not be asked to compile the data. It was submitted that a bench cannot overrule the decision of a co-ordinate bench.

7. The learned counsel for the respondent contended:-

7.1 That the information which exists and is held by the public authority but is not being compiled or kept in a manner in which it is accessible in a transparent manner then a direction can be given to the public authorities to maintain and provide the information in a particular manner so as to achieve the object and purpose behind the Act.

7.2 That the validity of sub-section (8)(a)(iv) of Section 19 of the Act has not been challenged and the CIC as a guardian of the Act would ensure the proper implementation of the Act and can pass a direction to achieve the object of the Act.

7.3 That the information regarding the functioning of public institutions is a fundamental right enshrined under Article 19 of the Constitution of India. Reliance was placed on ***State of U.P v. Raj Narain*****:**

AIR 1975 SC 865 *Union of India v. Association for Democratic Reforms*: AIR 2002 SC 2112 and ***PUCL v. Union of India*: (2003) 4 SCC 399**.

7.4 That the information needs to be disseminated to the public to ensure transparency and avoid misuse or abuse of authority. Reliance was placed on ***S.P. Gupta v. President of India & Ors.*: AIR 1982 SC 149.**

7.5 That the rules made under Article 145 of the Constitution of India are subject to any law being made by Parliament and Act is a law made by Parliament that is binding on all public authorities including the executive, legislatures and the judiciary.

8. The principal controversy to be addressed is whether the CIC can issue a direction for disclosure of information in a form not maintained by a public authority. And, whether the CIC could give a direction for compiling of such information and its disclosure in future.

9. The expression "information" has been defined in Section 2(f) of the Act as under:-

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

10. It is apparent from the above definition that the word 'information' - *"material in any form"*- is used in an expansive sense; it is not

circumscribed by the manner in which it is kept or the medium on which it is stored. However, the manner in which information is maintained and the medium on which such information is stored is relevant for purposes of making it available to those who seek it. Undoubtedly, information regarding cases where the order has been reserved is information that is contained in the documents, including orders passed by courts, that are available with the Registry of the Supreme Court. In fact, the orders of the Supreme Court are placed on its website and thus, all information with respect to cases where judgment is reserved is otherwise available in public domain. However, the information is not collated and analyzed in the manner as sought by the respondent no.1. Thus, the only question is whether the same is required to be compiled in the manner as sought for by respondent no.1.

11. Insofar as the question of disclosing information that is not available with the public authority is concerned, the law is now well settled that the Act does not enjoin a public authority to create, collect or collate information that is not available with it. There is no obligation on a public authority to process any information in order to create further information as is sought by an applicant. The Supreme Court in ***Aditya Bandhopadhyay*** *(supra)* held as under:-

> "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."
>
> (underlined for emphasis)

12. However, the above principle cannot be used to deny information that is available with a public authority, but not in the form as is sought. In the present case, it is the petitioner's stand that it does not maintain the data *"in the manner sought for"* and thus, has no obligation to provide the same to the respondent no.1. This stand is, clearly, unsustainable.

13. The first application filed by the petitioner (i.e. on 17.12.2009) was, essentially, to seek information as to how many cases were pending disposal after the arguments were heard and orders reserved. The information as to cases that have been heard and orders reserved is, undeniably, available with the petitioner. The fact that there may not be any document that provides an analysis or the breakup of the period for which the said cases are pending after the hearing has been completed, does not mean that the said information is not available with the petitioner. The information as to period for which the judgments are reserved would be ascertainable from the orders reserving the said judgments. In my view, the question whether such information is required to be reduced in the form as

required by respondent no. 1 has to be answered with reference to Section 7(9) of the Act.

14. Sub-section 9 of Section 7 of the Act also provides that information would ordinarily be provided in the form which is sought unless it would disproportionately divert the resources or would be detrimental to the safety or preservation of the record in question. Sub-section 9 of Section 7 of the Act is quoted below:-

> "(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question."

15. The obvious intention of the Parliament is to ensure that information is available to the public in a form that is convenient to them. In this view, the petitioner's contention that it has no obligation to provide the information, if it is not maintained in the form in which the respondent no.1 seeks it, cannot be accepted. In the event, it is not feasible for the petitioner to undertake an exercise of reducing the data available in the manner as is sought for by respondent no. 1, the petitioner could, nonetheless, provide such information as is readily available with the petitioner, which will enable respondent no.1 to ascertain such information. In this case, the petitioner could supply respondent no.1, the details of cases where the judgments were reserved and leave respondent no. 1 to search the orders reserving such judgments as the same are stated to be already in public domain.

16. The CIC had further directed that in the event such information was not centrally available, the impugned order should be brought to the notice of the competent authority to ensure that the same is compiled and placed in public domain. Indisputably, the period for which a case remains pending after the arguments, is relevant for any citizen who desires to know about the pendency of cases before the Supreme Court. Further, this is not a case where the petitioner does not have the data or the information that was sought for by the respondent no.1 but apparently, the information has been denied since that would require sifting through the data so available.

17. In the aforesaid back drop, the next question to be addressed is whether the CIC has the jurisdiction to issue/pass directions to ensure that necessary arrangements are made in future for compiling such information. Section 4(1)(a) of the Act enjoins every public authority to maintain records in a manner and the form, which would facilitate the right to information under the Act. Plainly, information as to pendency of judgments is vital information regarding functioning of the courts. The Supreme Court in the case of ***Anil Rai v. State of Bihar*****: (2001) 7 SCC 318** had also pointed out that the confidence of the litigants in the results of the litigation is shaken if there is an unreasonable delay in rendering a judgment after reserving the same and had further suggested that the first page of the judgment also bear the date on which the same was reserved. In view of the relevance of the information the CIC has directed that arrangements be made for disclosing such information.

18. The next aspect to be considered is whether the CIC could direct that such information be placed in the public domain. By virtue of Section

19(8)(a)(iv) of the Act, CIC has the power to direct a public authority for making necessary changes in its practice in relation to maintenance and management of records that is necessary to secure compliance with the provisions of Act. The Supreme Court in ***Aditya Bandhopadhyay*** *(supra)* has explained that the CIC's power to issue directions under Section 19(8)(a)(iv) to secure compliance with Section 4(1)(a) of the Act. Section 4(1)(a) of the Act reads as under:-

> **"4. Obligations of public authorities.**—(1) Every public authority shall—
>
> (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;"

19. A plain reading of the above provision indicates that it relates only to maintenance of records and is not concerned with placing information in the public domain. The information that is required to be placed in public domain is specified under Section 4(1)(b) of the Act and CIC would have no power to give directions for placing of additional information that is not specified under Section 4(1)(b). Thus, the impugned order, to the extent that it requires the information regarding the period for which the judgments are pending after being reserved, to be placed in public domain, cannot be sustained.

20. The petitioner referred to the decision in case of ***Mani Ram Sharma*** *(supra)* whereby the CIC had held that CPIO was not obliged to provide information regarding number of cases awaiting issuance of notice for removal of defects and removal of defects (separately) as the same were not maintained by the petitioner. It was contended that the CIC was bound to pass a similar order in this case or refer the question to a larger bench. It is difficult to accept this contention as in this case, the CIC – undoubtedly, having regard to the nature of information sought - came to a conclusion that the information should be made available to general public and, therefore, directed that such information should be compiled. Thus, the decision of the CIC in ***Mani Ram Sharma*** *(supra)* has no application in the given facts of this case. In that case, the CIC had not found it necessary to give directions for maintenance of records to ensure that information sought in that case be made available to public. It is not necessary that in each case, a direction be issued for maintenance records in a manner to facilitate access to all kinds of information. There may be innumerable records and vast data that may be stored in varying forms and media; it is neither necessary not feasible that the manner in which records are to be maintained be changed to accommodate ready access to all information. However, in cases where certain information is of importance and relevant to public interest, the CIC can issue orders for compliance under Section 4(1)(a) of the Act. The fact that such orders were not issued by the CIC in ***Mani Ram Sharma*** *(supra)* would not preclude the CIC from issuing the directions for maintenance of records for ready access of information.

21. The petitioner's contention that the directions of the CIC violates Article 145 of the Constitution of India is also without merit. Article 145 of the Constitution of India empowers the Supreme Court to make rules as to practice and procedure of the said court. The impugned order does not in any manner seek to alter, add or amend any practice or procedure of the court; the impugned order is limited to ensure that records are arranged and maintained in a manner so as to facilitate access to certain information.

22. I find no infirmity with the impugned order in so far as it directs that the records may be maintained in a manner so that the information regarding the period for which the judgments are pending after being reserved, is available with the petitioner in future.

23. Accordingly, the petition is partly allowed to the aforesaid extent. The pending application stands disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

DECEMBER 04, 2014
RK

Bombay High Court
Dr. Celsa Pinto, Ex-Officio Joint ... vs The Goa State Information ... on 3 April, 2008
Equivalent citations: 2008 (110) Bom L R 1238
Author: S Bobde
Bench: S Bobde
JUDGMENT S.A. Bobde, J.

Page 1239

1. Rule returnable forthwith.

2. Heard by consent.

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

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

Information sought by the Complainant Information provided by the Opponent III 186/c letter from GPSC No. COM/1 /1/15/1705/754 dated 03/11/2006 N.A.

XIV 146/c letter No. COM/11/11/15(1)05 dated 12/06/2006 regarding filling up the post of Curator clarify N.A.

XV 117/c letter from GPSC to communicate seniority list of Librarian may be sent if not then kindly clarify under what provision of Rule the department to fill up the post by promotion.

N.A.

Copy of the Seniority list of the Common Cadre of the Librarian post from the Directorate of Education, Technical Education and Higher Education.

N.A.

2. Why the post of curator was not filled N.A.

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

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

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

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

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

Section 2(f) -Information means any material in any form, including records, documents,memos e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts,reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

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

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

10. Rule is made absolute.

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

\+ W.P.(C) 3406/2012 & CM APPL. 7218/2012

UNION OF INDIA ..... Petitioner
Through Mr. Rakesh Tiku, Senior Advocate with Mr. P.R. Choudhary, Advocate

versus

R JAYACHANDRAN ..... Respondent
Through None

AND

\+ W.P.(C) 8915/2011 & CM APPLs. 20128/2011, 20162/2012

MINISTRY OF EXTERNAL AFFAIRS ..... Petitioner
Through Mr. Rakesh Tiku, Senior Advocate with Mr. P.R. Choudhary, Advocate

versus

D.K.PANDEY ..... Respondent
Through None

AND

\+ W.P.(C) 410/2012 & CM APPL. 871/2012

MINISTRY OF EXTERNAL AFFAIRS ..... Petitioner
Through Mr. Rakesh Tiku, Senior Advocate with Mr. P.R. Choudhary, Advocate

versus

K.K.DHARMAN ..... Respondent
Through None

% Date of Decision : 19th February, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present batch of writ petitions has been filed challenging the orders of the Central Information Commission (for short 'CIC') whereby the petitioner-Ministry of External Affairs has been directed to provide copies of passports of third parties along with their birth certificates, educational qualifications and identity proofs. Since the reasoning of the CIC in all the impugned orders is identical, the relevant portion of the impugned order in W.P.(C) 3406/2012 is reproduced hereinbelow:-

> *"We can also look at this from another aspect. The State has no right to invade the privacy of individual. There are some extraordinary situations where the State may be allowed to invade the privacy of a Citizen. In those circumstances special provisions of the law apply;- usually with certain safeguards. Therefore where the State routinely obtains information from Citizens, this information is in relationship to a public activity and will not be an intrusion on privacy.*
>
> *Certain human rights such as liberty, freedom of expression or right to life are universal and therefore would apply uniformly to all human beings worldwide. However, the concept of 'privacy' is a cultural notion, related to social norms, and different societies would look at these differently. Therefore referring to the UK Data protection act or the laws of other countries to define 'privacy' cannot be considered a valid exercise to constrain the Citizen's fundamental Right to Information in India. Parliament has not codified the right to privacy so far, hence in balancing the Right to Information of Citizens and the*

individual's Right to Privacy the Citizen's Right to Information would be given greater weightage. The Supreme Court of India has ruled that Citizens have a right to know about charges against candidates for elections as well as details of their assets, since they desire to offer themselves for public service. It is obvious then that those who are public servants cannot claim exemption from disclosure of charges against them or details of their assets. Given our dismal record of misgovernance and rampant corruption which colludes to deny Citizens their essential rights and dignity, it is in the fitness of things that the Citizen's Right to Information is given greater primacy with regard to privacy."

2. Despite filing affidavit of service, none has appeared for the respondents today. Even yesterday, none had appeared for the respondents. Consequently, this Court has no other option but to proceed with the matter ex parte.

3. Mr. Rakesh Tiku, learned senior counsel for petitioners submits that CIC failed to appreciate that the passport application contains personal information and if disclosed, would cause unwarranted invasion of privacy of third party. He further submits that even if the CIC came to the conclusion that the information sought for was not exempt from disclosure under Section 8(1)(j) of the Right to Information Act, 2005 (for short 'RTI Act'), it would still have to follow the third party information procedure under Section 11 of the RTI Act.

4. Mr. Tiku fairly points out that in connected matters, i.e., W.P.(C) Nos. 2232/2012, 8932/2011, 3421/2012, 1263/2012, 1677/2012, 1794/2012, 2231/2012, a co-ordinate bench of this Court has directed the Ministry of External Affairs to give details of passport to third parties like passport number, date of its first issue, subsequent renewals, the name of police

station from which verification had been done, nature of documents submitted with the passport application without disclosing the contents of those documents along with the information as to whether Visa was issued to the third party.

5. Mr. Tiku, however, submits that the reasoning in W.P.(C) 2232/2012 for release of third party information that the said information was generated by Ministry of External Affairs, is untenable in law. According to him, if this reasoning were to be accepted, then a third party's Permanent Account Number (PAN) and password would also be liable to be disclosed as the same are generated by the Income Tax Department. He states that if an applicant were to get a third party's PAN and password details, he would be able to find out his financial details like income, tax paid etc.

6. This Court finds that the concept of third party information has been comprehensively dealt with in the RTI Act. Some of the relevant sections pertaining to third party as well as personal information are reproduced hereinbelow:-

> *"**2. Definitions.**—In this Act, unless the context otherwise requires,—*
>
> *xxxx xxxx xxxx xxxx*
>
> *(n) "third party"' means a person other than the citizen making a request for information and includes a public authority.*
>
> *xxxx xxxx xxxx xxxx*
>
> ***8. Exemption from disclosure of information. —(1)** Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*
>
> *xxxx xxxx xxxx xxxx*
>
> *(j) information which relates to personal information the disclosure of which has no relationship to any public activity or*

interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:
Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

xxxx xxxx xxxx xxxx

11. Third party information.—(1) *Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:*

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

xxxx xxxx xxxx xxxx

19. Appeal.-

xxxx xxxx xxxx xxxx

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against

which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party."

7. Keeping in view the aforesaid provisions, this Court is of the view that the proper approach to be adopted in cases where personal information with regard to third parties is asked is first to determine whether information sought falls under Section 8(1)(j) of the RTI Act and if the Court/Tribunal reaches the conclusion that aforesaid exemption is not attracted, then the third party procedure referred to in Section 11(1) of the RTI Act must be followed before releasing the information.

8. This Court finds that except making general observations in the impugned matters, CIC has not considered the aforesaid binding statutory provisions. In fact, the impugned order is based on surmises and conjectures. CIC has not pointed out as to how any of its general observations with regard to mis-governance, rampant corruption by public servants and politicians have any relevance to the present batch of cases. CIC has nowhere stated in the impugned orders that third parties are either public servants or politicians or persons in power.

9. CIC has neither examined the issue whether larger public interest justifies the disclosure of the information sought by the applicants in these cases nor has followed the third party procedure prescribed under Sections 11 and 19(4) of RTI Act.

10. This Court also finds that the observations given by learned Single Judge in the batch of writ petitions being W.P.(C) 2232/2012 are without taking into account the binding provisions of Sections 11(1) and 19(4) of the

RTI Act. In particular the learned Single Judge erred in observing in W.P.(C) 1677/2012 that passport number is not a personal information. This Court is in agreement with Mr. Tiku's submission that as to who generates a third party information, is totally irrelevant. After all passport number is not only personal information but also an identification proof, specifically when one travels abroad.

11. This Court is also of the view that if passport number of a third party is furnished to an applicant, it can be misused. For instance, if the applicant were to lodge a report with the police that a passport bearing a particular number is lost, the Passport Authority would automatically revoke the same without knowledge and to the prejudice of the third party.

12. Further, the observations of learned Single Judge in the aforesaid batch of writ petitions are contrary to the judgment of another learned Single Judge in ***Suhas Chakma Vs. Central Information Commission, W.P.(C) 9118/2009*** decided on ***2nd January, 2010*** as well as a Division Bench's judgment in ***Harish Kumar Vs. Provost Marshal-Cum-Appellate Authority & Ors., LPA 253/2012*** decided on ***30th March, 2012***. In ***Suhas Chakma*** (supra) another learned Single Judge has held as under:-

> *"5. The Court is of the considered view that information which involves the rights of privacy of a third party in terms of Section 8(1)(j) RTI Act cannot be ordered to be disclosed without notice to such third party. The authority cannot simply come to conclusion, that too, on a concession or on the agreement of parties before it, that public interest overrides the privacy rights of such third party without notice to and hearing such third party.*"

13. The relevant portion of the Division Bench in ***Harish Kumar*** (supra) is reproduced hereinbelow:-

"9. What we find in the present case is that the PIO had not refused the information. All that the PIO required the appellant to do was, to follow third party procedure. No error can be found in the said reasoning of the PIO. Under Section 11 of the Act, the PIO if called upon to disclose any information relating to or supplied by a third party and which is to be treated as confidential, is required to give a notice to such third party and is to give an opportunity to such third party to object to such disclosure and to take a decision only thereafter.

10. There can be no dispute that the information sought by the appellant was relating to a third party and supplied by a third party. We may highlight that the appellant also wanted to know the caste as disclosed by his father-in-law in his service record. The PIO was thus absolutely right in, response to the application for information of the appellant, calling upon the appellant to follow the third party procedure under Section 11. Reliance by the PIO on Section 8 (1) (j) which exempts from disclosure of personal information and the disclosure of which has no relationship to any public activity or interest and which would cause unwanted invasion of the privacy of the individual was also apposite. Our constitutional aim is for a casteless society and it can safely be assumed that the disclosure made by a person of his or her caste is intended by such person to be kept confidential. The appellant however as aforesaid, wanted to steal a march over his father-in-law by accessing information, though relating to and supplied by the father-in-law, without allowing his father-in-law to oppose to such request."

14. The Supreme Court in ***Municipal Corporation of Delhi Vs. Gurman Kaur, (1989) 1 SCC 101*** has held that a decision of a Court is *per incuriam* when it is given in ignorance of the terms of a statute. In the present case, as the direction of learned Single Judge in the aforesaid batch of writ petitions bearing W.P.(c) 2232/2012 is specifically contrary to Section 11(1) of the RTI Act, this Court is of the view that it is *per incuriam*.

15. Consequently, present writ petitions are allowed and the impugned orders dated 11th April, 2012 passed in W.P.(C) 3406/2012; 21st October, 2011 in W.P.(C) 8915/2011; and 19th December, 2011 in W.P.(C) 410/2012 by CIC are set aside. The applications stand disposed of.

MANMOHAN, J

FEBRUARY 19, 2014
rn

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

% **Date of decision: 11th January, 2013**

\+ **LPA No.785/2012**

HANSI RAWAT & ANR. ..... Appellants
Through: Mr. Divya Jyoti Jaipuriar, Adv.

Versus

PUNJAB NATIONAL BANK & ORS. ..... Respondents
Through: None.

CORAM :-
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the order dated 15.10.2012 of the learned Single Judge of dismissal of W.P.(C) No.6556/2012 preferred by the appellants. The said writ petition was preferred challenging the order dated 30.08.2012 of the Central Information Commission (CIC) dismissing the Second Appeal preferred by the appellants against the order dated 21.05.2011 of the First Appellate Authority. The First Appellate Authority had dismissed the appeal preferred by the appellants against the information dated 18.03.2011 provided by the Public Information Officer (PIO) of the

respondent Bank in response to the application dated 19.02.2011 of the appellants under the provisions of the Right to Information Act (RTI), 2005.

2. The First Appellate Authority in its order dated 21.05.2011 held that though information sought by the appellants had been provided to the appellants, the grievance of the appellants was that the information supplied was misleading and wrong. The First Appellate Authority held that information in possession of the respondent Bank had already been provided and no opinion as sought in the application could be provided. The First Appellate Authority also did not find any discrepancy in the information provided.

3. The CIC in its order noted, that the appellant No.2 had been removed from service of the respondent Bank; that the appellants had sought information on 39 points; that the grievance of the appellants was that misleading and vague information had been provided on the points raised in the RTI application; that the appellants had filed 50 to 60 RTI applications in their names, separately, together as well as in the names of their friends and also through some advocates, on the same subject and on the same questions; that the appellants are misusing the RTI Act needlessly. The CIC further, on examination of the record did not find any reason to interfere

with the decision of the PIO and the First Appellate Authority of the respondent Bank.

4. Before the learned Single Judge also, the contention of the appellants was that the information given is not correct. The learned Single Judge went through the RTI application of the appellants and the response thereto and found that the information sought had already been furnished. The learned Single Judge has further observed that the only obligation of the respondent Bank, from which information had been sought, under the RTI Act, was to give information available and no further and the said obligation had been fulfilled.

5. The counsel for the appellants does not controvert the factum of a number of RTI applications having been filed by the appellants themselves or through other persons to the PIO of the respondent Bank. He has however drawn attention to the information sought at serial Nos.11 to 14 and 26 of the RTI application and the response thereto and on the basis thereof has contended that information has not been provided and / or the information provided is incorrect.

6. The proceedings under the RTI Act do not entail detailed adjudication of the said aspects. The dispute relating to dismissal of the appellant No.2

from the employment of the respondent Bank is admittedly pending consideration before the appropriate fora. The purport of the RTI Act is to enable the appellants to effectively pursue the said dispute. The question, as to what inference if any is to be drawn from the response of the PIO of the respondent Bank to the RTI application of the appellants, is to be drawn in the said proceedings and as aforesaid the proceedings under the RTI Act cannot be converted into proceedings for adjudication of disputes as to the correctness of the information furnished. Moreover, there is a categorical finding of the CIC, of the appellants misusing the RTI Act, as is also evident from the plethora of RTI applications filed by the appellants. In view of the said factual findings of the CIC and which is not interfered by the learned Single Judge, we are not inclined to interfere with the order of the learned Single Judge.

7. We do not find any merit in the appeal which is dismissed.

No order as to costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

JANUARY 11th , 2013
'gsr'

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

Date of decision: 19th April, 2023

\+ **W.P.(C) 1408/2023 & CM APPL. 5246/2023**

SMITA MAAN AND ANR. ..... Petitioner

Through: Ms. Smita Maan, present in person.

versus

REGIONAL PASSPORT OFFICER ..... Respondent

Through: Mr Rakesh Kumar, CGSC with Mr. Sunil,Mr. Giriraj Shrama and Mr. Prince Roshan, Advocates.
Ms Mehak Nakra, ASC (GNCTD) with Mr. Abhishek Khari, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by Petitioner No. 1/Ms. Smita Maan and her minor son - Vedant Singh Maan/Petitioner No. 2 seeking the deletion of the name of the father of the minor child/Petitioner No. 2 from his existing passport or in the alternative, the Petitioner seeks re-issuance of a fresh passport to the minor child/Petitioner No. 2 without mentioning the name of the father therein.

3. The Petitioner No.1 was married on 9th December, 2012 and conceived a child/Petitioner no. 2 from the said wedlock. However, the case of the Petitioner No. 1 is that the husband had deserted her during the pregnancy itself i.e., with effect from 19th August, 2013. The Petitioner No.2/minor son was thereafter born on 19th March, 2014 and since then has

been raised by Petitioner No. 1 as a single parent. In terms of the extant Passport Manual and Regulations, in 2015, Petitioner No. 1 had applied for a passport for Petitioner no. 2/minor son which was issued to him on 23rd September 2015 bearing no. N3138881. In the said passport, the names of both the biological father and mother of the minor child were mentioned. The said passport expired on 22nd September, 2020.

4. In the meantime, the Petitioner No.1 and her then husband had entered into a settlement dated 6th February, 2019, in which the following terms and conditions were agreed upon-

> *"4. It is agreed between the parties that the petitioner (Husband) shall pay lump sum consideration of Rs. Nil (Nil) to the respondent(wife) as full and final settlement (against the child maintenance towards past present and future, and petitioner's past present and future maintenance, permanent alimony, stridhan etc.) under the following manner in (NIL) installment*
>
> *a. That petitioner/respondent (husband/wife) will pay a sum of Rs. Nil (nil). In form of demand draft to the petitioner/respondent (husband/wife) at the time of recording of statement of both the parties before the Hon'ble family courts under the first motion proceedings.*
>
> *b. That the petitioner/respondent(Husband/wife) shall pay Rs. Nil (Nil) to the petitioner/respondent(Husband/wife) at the time of recording of statements of both the parties before the Hon'ble family court on under the second motion proceedings as full and final settlement amount in the form of Demand Draft. Second Motion Petition shall be filed by both the Parties within 15 days of expiry of mandatory cooling period of Six months after completion of First Motion or both. The Parties shall file an Application for waiving of mandatory cooling*

period after First Motion.

c. It is further agreed between the parties that the petitioner/respondent(Husband/wife) shall pay Rs. Nil (Nil) to the petitioner/respondent(Husband/wife) at the time of quashing of FIR No. 462/18 U/S 498A, 406, 34 IPC, P.S. Vasant Kunj North in Hon'ble Delhi High Court within 30 days after second motion and petitioner/respondent (Husband/Wife) shall cooperate and sign all the necessary affidavits and do the needful in quashing of said FIR.

5. It is agreed between the parties that the petitioner/respondent (Husband/wife) will not have any right, title, interest, claim etc. whatsoever over in the properties of petitioner/respondent (Husband/wife) after the completion of the present compromise agreement.

xxx xxx xxx

10. It is agreed between the parties that the minor child namely Vedant Singh age 5 years will be under the absolute and exclusive legal custody of the Respondent (Wife) and the Petitioner (Husband) shall have no visitation rights or any access to the child or any rights to the child or any kind of claim or right in any form/ manner over the child in all the times to come present or future. It is further agreed between the Parties that the child namely Vedant Singh will carry the identity and surname of his Mother /maternal grandparents. It is understood between the Parties that the Respondent (Wife) has given up all her claims, including Stridhan in the larger interest of the child.

11. It is also agreed by the petitioner / husband that he and his parents shall have no right / title / claim or Interest in any manner in movable /immovable Assets / Properties which are held or may be held by the respondent / wife and /or child in present or in future. It is further agreed that the respondent /wife

> *alone shall have all rights to sign all documents, Government or private in relation to the child as a single parent.*
> *12. The Respondent (Wife) agrees that if at the time of attaining the age of majority or at any stage thereafter, the minor son Master Vedant Singh, makes any claim over the immovable/movable assets and properties of the Petitioner (Husband), then the Respondent (Wife) undertakes unequivocally that she shall be fully liable and responsible for satisfying the entire claim of Vedant Singh and shall fully indemnify the Petitioner (Husband).".*

5. As per the above settlement, neither the Petitioner No.1 nor the minor son were given any payment including alimony, maintenance, etc. The exclusive custody of the child was to be with the mother. The father of the child had agreed to have no visitation rights or access to the child or any claim over the child, in the present or in the near future. The minor child was also to carry the identity and surname of his mother and maternal grandparents. The mother also indemnified the father in respect of any future claims which the minor child may raise against his biological father. Thus, in effect the father severed all ties with the child.

6. This settlement agreement was also approved by the Guardianship Court in ***GP No. 75/18*** titled '***Arjun Singh Tokas v. Smita Maan'*** passed by the Principal Judge, Family Court, Patiala House Court on 6th February, 2019. The guardianship petition itself was disposed of as compromised. Further, it is submitted that there is no challenge to the said order. Thereafter, the decree of divorce by mutual consent has also been granted by the Principal Judge, Family Court, Patiala House Court in ***HMA Petition No. 470/19*** with effect from 31st May, 2019 between the Petitioner No.1

and her then husband.

7. Post the grant of the divorce decree and the execution of the settlement agreement, various identity cards such as Aadhaar card and other documents have been issued to the minor child/Petitioner No. 2 with only the name of the mother.

8. Since the passport of Petitioner No. 2 had expired on 22nd September, 2020, the Petitioners had applied for the re-issuance of the passport. The name of the father of Petitioner No.2 was reflected again in the re-issued passport bearing no. W8576410 and it is this action of the Passport Authorities which is under challenge in the present petition.

9. The matter has been heard from time to time. The stand of the Petitioner No.1 who appears in person is that since she is a single parent and the father has completely abandoned the child, this is a case where the name of the father ought not to be insisted upon by the Passport Authorities, for being mentioned in the child's passport. Ms. Maan relies upon the mutual settlement and the fact that the desertion took place even prior to the birth of the child.

10. In terms of the Passport Manual which was applicable in 2015, the name of the father was mentioned in the previously issued passport. However, she currently relies upon Chapter 8, Clause 4.5.1 and Chapter 9, Clause 4.1 and 4.3 of the Passport Manual, 2020 to argue that all these clauses make it clear that in the case of a single parent who is divorced or who has been deserted by the husband, the name of the father need not be mentioned. The same is also recognized by the Passport Manual itself.

11. Reliance is also placed upon the following judgments:

- ***Shalu Nigam & Anr. v. The Regional Passport Officer & Anr, [2016 SCC OnLine Del 3023]***
- ***Prerna Katia v. Regional Passport Office Chandigarh and Anr., [2016 SCC OnLine P&H 14187]***
- ***Nancy Nithya v. Government of India [Writ Petition No. 22378/2022, decided on 15th December, 2022]***

12. On behalf of the Respondent, initially, there was some confusion as to the clauses of the Passport Manual which would be applicable. Thus, vide order dated 28th March, 2023, the scanned copies of the Manuals were directed to be filed/placed on record by the Passport Authorities.

13. Today, Mr. Rakesh Kumar, ld. Counsel has placed the relevant extracts of the Manual on record. According to Mr. Kumar, the clauses that would be applicable would be clauses 4.1 and 4.3 of Chapter 9. Ld. Counsel submits that it is only in the case of ***single unwed parents*** that the name of the father need not be mentioned. In the case of ***married parents***, clause 4.3 would be applicable and thus the name of the father would have to be mentioned in the passport. He also relies upon the OM dated 28th February, 2023 which according to him clarifies that it is only in the case of an ***unwed parent*** that the name of the father need not be mentioned.

14. The Court has perused the relevant clauses of the Passport Manual, 2020 which are set out hereinbelow:

> *"8.CHANGE OF PERSONAL PARTICULARS ON REISSUE OF PASSPORTS*
>
> *xxx xxx xxx*
>
> ***4. CHANGE IN THE NAME OF PARENT(S)***
>
> *xxx xxx xxx*

4.5. ***Name of parent can be deleted from the passport of the children consequent to divorce***

4.5.1. The online passport application form now requires the applicant to provide the name of father or mother or legal guardian, i.e., only one parent and not both. This would enable single parents to apply for passports for their children and to also issue passports where the name of either the father or the mother is not required to be printed at the request of the applicant.
xxx xxx xxx

9. ISSUE OF PASSPORTS TO MINORS

xxx xxx xxx
4. SPECIAL CASES OF MINORS REQUIRING PASSPORTS
Exclusion of father/mother name from passport of minor in single parent custody

4.1. The online passport application form now permits that an applicant may provide the name of father or mother or legal guardian, i.e., only one parent and not both. This would enable single parents to apply for passports for their children and get passport(s) issued where the name of either the father or the mother is not required to be printed at the request of the applicant.

4.2. In case of minor children of unwed single parent, the name of father or mother is not to be mentioned in the passport application and in the passport. In case of unwed parents submitting Appendix-12, name of both the parents is to be mentioned in the application form and in the passport.

4.3. In case of minor children of married parents, the name of father/ mother shall be furnished by the other single parent having the custody of the child, irrespective of the status of their marriage, such as, divorced, divorce pending, separated or deserted, with or without visitation rights to the estranged parent.

Children of divorced parents

4.4. Application from divorced parents for issue of passports to their minor children has to be processed with care and diligence. Whereas the divorce of parents does not result in severance of the relation between the child and the parent, unless the parent has legally disowned the child, the child's right to have a passport and travel abroad cannot be denied on such grounds. Children also have a fundamental right to travel and the other parent cannot wilfully prevent them from travelling abroad. These realities have been taken into account while processing applications for passports from children in the custody of single parents.

4.5. A court decree granting divorce would normally award custody of the minor child/ children to either parent. The PIA must ensure that the application for the minor's passport is entertained only from such parent who has been granted custody by the court. While doing so, the PIA must also satisfy himself that the period of limitation for appeal against such decree has expired before issuing the passport. PIA must also ensure that if the other parent has visitation or other rights on the child as per court order, the consent of the other parent is also furnished. However, in rare cases where one of the parents wilfully refuses to give consent or inordinately delays consent or objects in writing to the PIA against issue of passports to his/her children residing with other parent without any cogent reason, and thus denying the fundamental right of the children to travel, passports may be issued to the

> *child/children, after receipt of an affidavit in the form of Annexure 'C' obtained from the parent having the custody of the children, stating that the other parent is wilfully denying or not granting permission for issue of passports to the children. The other parent should be informed in writing in advance by the PIA of the proposed issue of passport to children at the request of the parent who is having the custody of the children. It will then be the responsibility of the other parent to approach the courts for suitable redressal."*

15. A perusal of the above clauses would show that Chapter 8, clause 4.5.1 relates to the situation which would squarely be applicable in the present case i.e. where the name of the parent can be deleted consequent to divorce.

16. According to Mr. Rakesh Kumar, ld. Counsel, this clause ought not to have been retained in the manual when the new manual was published and only clause 4 of Chapter 9 ought to have been applicable. Either way, even whether the clauses in Chapter 8 or Chapter 9 are applied, the same would reveal that the Passport Manual 2020 clearly recognizes several situations/ conditions where the exclusion of the name of the father from the minor's passport is permissible. Clause 4.1 itself clearly enables a ***single parent*** to apply for a passport without mentioning the name of the other parent. Clause 4.2 carves out a specific category relating to ***unwed single parents.*** The language used in Clause 4.1 is merely ***single parent***. Clause 4.3, clearly mentions that in the case of ***married parents*** the name of the father shall be furnished by the other single parent having the custody of the child, irrespective of the status of the marriage i.e divorce, divorce pending, separated etc., However, the mere furnishing of the name does not result in the conclusion that the name of the father has to be compulsorily mentioned.

It would depend on the circumstances of each case.

17. The OM dated 28th February 2022 relied upon by the Respondent reads:

> ***"No. VI/401/01/17/2015(pt)***
> ***Government of India***
> ***Ministry of External Affairs***
> ***(PSP Division)***
>
> ***Patiala House Annexe, Tilak Marg,***
> ***New Delhi, 28th February, 2023***
>
> ***To,***
> ***The Regional Passport Officer***
> ***Regional Passport Office, Delhi***
>
> ***Sub: Clarification regarding issuance of passport with exclusion of father/mother name from passport of minor in single parent custody.***
>
> *Sir.*
>
> *Please refer to your letter dated 17.1.2023 seeking clarification regarding issuance of passport with exclusion of father/mother name from passport of minor in single parent custody, due to ambiguity in provision of para 4.1 & 4.3 of chapter 9 of the Passport Manual 2020.*
>
> *2. The matter has been examined in the Ministry in consultation with Department of Legal Affairs, Ministry of Law & Justice and the Department has opined that "No exhaustive definition of the term single parent may be given". It is further informed that an Inter-ministerial Committee was formed in 2016 to look into the passport related issues. The committee had also examined the captioned subject and had concluded that in the following cases, it may be said that the child has a single parent (mother).*

(i) When the mother who is an Indian citizen, claims that the biological father had no contact with the mother or the child after the child's birth
(ii)Where the child's father is either unknown, for example a child born after a rape, etc:
(iii)Where the biological father has terminated the relationship with the mother after conception/ birth of the child.
3. In view of the above, the following may please be noted for compliance:
(a) Para 4.1 which enables single parents to apply for passports for their children where the name of either the father or the mother is not required to be printed, may be applied in the cases given below:
(i) When the mother who is an Indian citizen, claims that the biological father had no contact with the mother or the child after the child's birth.
(ii)Where the child's father is either unknown, for example a child born after a rape, etc;
(iii)Where the biological father has terminated the relationship with the mother after conception/ birth of the child.
(iv)Cases where a biological married/unmarried father who is an Indian citizen claims that the biological mother has abandoned the child, the procedure as applicable for single mother would apply mutatis mutandis.
(b) Provision of para 4.1 is an enabling provision only and it has to be read in conjunction with provision of para 4.3 which mandates furnishing of name of both the parents if the minor is born out of wedlock/marriage even in the cases where divorce has taken place with or without visitation rights to the estranged parent. Requests of issuance of passport with exclusion of father/mother name from passport of minor in single parent custody may be dealt with in accordance with para 4.1, 4.2 & 4.3 of chapter 9 of the Passport Manual 2020, as the case may be

> *4. This issues with the approval of Joint Secretary (PSP) & CPO.*
>
> *Yours Faithfully,*
> *Sd.-*
> *(Vishwa Nath Goel)*
> *Deputy Secretary (PSP-I)"*

18. Even a perusal of the OM would show that in peculiar cases, where there is no contact of the father with the mother or the child that the name of the father need not be included in the passport. Mr. Kumar's submission that this OM would only apply to ***single unwed parents*** may not be correct inasmuch as the language used in the OM and in the Passport Manual are clear. Wherever the term ***'single unwed parent'*** is to be mentioned, the same has specifically been mentioned by the Passport Authorities. In other clauses the term ***`single parent'*** is used.

19. The fact that the name of the single parent can be mentioned without the name of the other parent is also recognized in the judgments cited above. The relevant portions of the same are set out below.

20. In ***Shalu Nigam & Anr. v. The Regional Passport Officer & Anr (supra)*** the Petitioner was divorced and had raised her daughter as a single parent since birth. She had contended that the biological father had abdicated all his responsibilities towards the daughter since her birth. Further, the entire record of the daughter including her educational certificates and aadhaar card etc. did not bear the name of the father. The Petitioner sought the reissuance of her daughter's passport without the name of the biological father. In this background the Court held -

> *"3. Petitioner No.1 stated that the respondents insistence upon petitioner No.2 mentioning her father's name in the application violated the rights of petitioner*

No.2 to determine her name and identity. She pointed out that the entire record of petitioner No.2-daugther which included her educational certificates and Aadhar Card etc. did not bear the name of her father. She submitted that if the directions sought for in the present petition are not issued, the petitioner No.2-daughter would be compelled to alter her identity that she had been using since her birth as daughter of petitioner No.1 rather than of her biological father. According to her, through the malafide, arbitrary and discriminatory decision of respondents, petitioner No.2 was being compelled to mention the name of her biological father who had refused to accept her because she is a female child. She emphasised that respondents had originally in the year 2005 and subsequently in 2011 issued a Passport without insisting upon petitioner No.2's father.

4. Mr. Rajeev Kumar, learned counsel for respondent No.1 stated that the computerised Passport application form has a column with regard to father's name under the heading 'Family Details'. He stated that the said form must be filled by the petitioner No. 2. In support of his contention, he relied upon Chapter 8, Clause IV (4.5) of the Passport Manual which reads as under:-

> *"IV.* ***Parent name not to be deleted from passport consequent to Divorce***
>
> *4.5 Request for deletion of parent name from passport due to parents' divorce should not be accepted. By virtue of the divorce decree, only the relation as wife and husband severs. The divorce decree does not result in severance of the relation between the child and the parent, unless the parent has legally disowned the child."*

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7. Mr. Amit Bansal, learned Amicus Curiae, pointed out that in Kavneet Kaur vs. Regional Passport Office, W.P.(c) 3582/2014 decided on 31st July, 2014 a

Coordinate Bench of this Court had set aside the order of Ministry of External Affairs, by which the petitioner's request for including the name of her step father as her father in the Passport had been denied. He stated that the Court allowed the said writ petition principally on the ground that the said request was not in violation of any provision of the Passport Manual and further on account of the fact that all relevant documents mentioned the name of her step father and any variance in the Passport would create confusion.

8. Mr. Amit Bansal submitted that in Ms. Teesta Chattoraj vs. Union of India, LPA 357/2012 decided on 11th May, 2012, a Division Bench of this Court had held that no rights of a biological father can be recognized by any Court of law who had failed to discharge any responsibility towards his child.

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11. This Court is of the opinion that the respondents can insist upon the name of the biological father in the Passport only if it is a requirement in law, like standing instructions, manuals etc. In the absence of any provision making it mandatory to mention the name of one's biological father in the Passport, the respondents cannot insist upon the same.

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13. In fact, a Coordinate Bench of this Court in Ishmaan Vs. Regional Passport Office, W.P.(C) 5100/2010 decided on 21st February, 2011 directed issuance of a passport to an applicant without mentioning her father's name on the ground that the instructions issued by the respondent itself permitted mentioning of only mother's name in the passport. The relevant portion of the said order is reproduced hereinbelow:-

"4. The Respondents have themselves enclosed another set of instructions in a reference letter (Annexure R-2) issued on 21st April 1999. Clause 3.2(a) thereof reads as under:-

> *"3.2 Child born out of wedlock or child having single parent (Reference letter No. V.I/402/2/1/97 dated 21.4.1999).*
> *a) Cases where: (i) the mother who is an Indian citizen, claims that the biological father had no contact with the mother or the child after the child's birth; or where (ii) the child's father is either unknown (for example a child born after a rape etc.) or (iii) has terminated the relationship with the mother after conception. In these cases, the PIA should obtain an affidavit from the mother to that effect sworn before a magistrate (Appendix 23). In these cases, the name of the father should be left blank and should not be entered in the passport without his written consent. As admission by a woman of the birth of a child out of wedlock invites social stigma, it may be presumed that rarely would she utter a lie in this regard. However, to safeguard against cases of abduction/kidnapping, the PIA should insist on the affidavit of the mother being supported by a birth certificate from a hospital or the Registrar of Births and Deaths or a municipality."*

5. It is plain that as far as the present case is concerned, with the decree of mutual divorce having been passed by the competent civil court in 2007 itself, the case of the Petitioner would be covered under Clause 3.2(a) of the above instructions dated 21st April 1999.

6. The Petitioner's mother should now produce before the Regional Passport Officer ('RPO') an affidavit sworn by her before the Magistrate in terms of Clause 3.2(a) within a period of two weeks. The said affidavit will also incorporate the necessary assertion that the Petitioner's mother will inform the RPO in the event she proposes to remarry. If such an affidavit is

furnished, then the RPO will ensure that the name of the father in the passport of the Petitioner is left blank. The necessary correction in the passport be made within a further period of two weeks after the said affidavit is furnished."

14. The present respondents on 20th February, 2015 in W.P.(C) 845/2015, Priyanshi Chandra Vs. Regional Passport Office had, on instructions, stated before a Coordinate Bench of this Court that the request of the applicant, to issue her a fresh passport, without mentioning her father's name would be granted if she produces an affidavit in terms of Clause 3.2(a) of the Instructions contained in letter dated 21st April, 1999.

15. In the opinion of this Court, the judgment of Madras High Court in Mrs. B.S. Deepa (supra) offers no assistance to the respondents. Firstly, the issue involved in the aforesaid Madras High Court judgment was the validity of the adoption deed on the basis of which the petitioner had sought a direction to respondents to mention the name of her adoptive father as father's name in the passport. In the present case, the petitioner no. 2 does not want to mention her father's name at all in her passport. Secondly, the Madras High Court keeping in view the evolving societal norms relating to divorce, remarriage, single parents etc. directed the respondents to mention the name of the step father of the applicant on her passport instead of her biological father's name. Thirdly, Madras High Court after detailed discussion on the requirement and insistence upon by the respondents on mentioning father's name in a person's passport had directed the Ministry of External Affairs to incorporate suitable provision in the passport manual making it optional for the parties to indicate the names of one or more biological parent in the said form. Consequently, the respondents were in essence directed by the Madras High Court to reconsider their requirement of making it mandatory for the applicants to mention the

name of their biological father in their application form for issuance of passports."

21. Similarly in ***Prerna Katia v. Regional Passport Office Chandigarh and Anr. (supra)*** the P&H High Court held:

"3. After notice, the respondents have filed reply in which it is averred that request of the petitioner was referred to the Ministry of External Affairs, New Delhi and were advised vide its letter dated 30.09.2015 to process her case in terms of the provisions of Paragraph 4.5 of Chapter 8 of the Passport Manual, 2010 (hereinafter referred to as the "Paragraph 4.5"), which is reproduced as under:-

*"**IV. Parent name not to be deleted from passport consequent to Divorce**:*

***Paragraph 4.5**- Request for deletion of parent name from passport due to parents' divorce should not be accepted. By virtue of the divorce decree, only the relation as wife and husband severs. The divorce decree does not result in severance of the relation between the child and the parent, unless the parent has legally disowned the child."*

4. Counsel for the petitioner has submitted that after the divorce on the basis of a settlement between the parties, in which they have also agreed that the daughter of the petitioner shall retain sur-name of her mother instead of the sur-name of her father, the provisions of Paragraph 4.5 is not at all applicable and in this regard, reliance has been placed upon a decision of the Supreme Court in the case of ABC vs. The State (NCT of Delhi), 2015(3) R.C.R. (Civil) 766 and a judgment of the Delhi High Court in the case of Shalu Nigam and another vs. The Regional Passport Officer and another, W.P.(C) No.155 of 2016, decided on 17.05.2016.

7. In this case, husband of the petitioner has virtually

disowned his daughter as in the settlement, he did not ask for her custody or even visiting rights and agreed that the petitioner would continue to have custody of her minor daughter without any kind of his interference or his family members in future. He also paid full and final amount towards maintenance of his daughter in one go while paying the maintenance/alimony to his wife/petitioner and agreed that after the settlement, his daughter shall not be known as Addvita Garg but as Addvita Katia.

8. From these facts and circumstances, it is very much clear that husband of the petitioner has disowned his daughter legally by way of a settlement before the Court of law which has become part of the order passed in the appeal filed by the petitioner. Besides this, the decision of the Delhi High Court in Shalu Nigam's case (supra) deals with the provisions of Paragraph 4.5, in which it has been held that the respondents can insist upon the name of the biological father in the passport only if it is a requirement in law but in the absence of any provisions making it mandatory to mention the name of one's biological father in the passport, the respondents cannot insist upon the same. It is further held that the mother's name is sufficient in the passport in case of single woman who can be a natural guardian and also a parent. In this regard, the Court had taken judicial notice of the fact that families of single parents are on the increase due to various reasons like unwed mothers, sex workers, surrogate mothers, rape survivors, children abandoned by father and also children born through IVF technology.

9. Thus, keeping in view the aforesaid facts and circumstances especially the fact that the provision of Paragraph 4.5, referred to above, rather helps the petitioner because it provides that name of the parent can be deleted if the parent has legally disowned the child, which has been proved on record on the basis of

> *the terms and conditions of the settlement and the observations made in Shalu Nigam's case (supra).*
> *10. Consequently, the present petition is hereby allowed and the respondents are directed to make necessary correction in sur-name of the daughter of the petitioner from Addvita Garg to Addvita Katia and also to delete the name of her biological father i.e. Dhruv Garg from her passport as Addvita Katia is now the daughter of a single parent i.e. her mother Prerna Katia. The necessary correction shall be carried out within a period of one month from the date of presentation of certified copy of this order. "*

22. In ***Nancy Nithya v. Government of India (supra)*** are extracted herein below:

> *"12. The Rules are framed by the Central Government in terms of Section 24 of the Act. Therefore, they are part of the statute and are statutory. The Passport Manual are guidelines to issue a passport are a solution to answer circumstances that would emerge, but, cannot run counter to the statute, as they are not statutes. Therefore, the 2nd respondent will have to consider the application of the petitioner in terms of the Rules and seek any document or clarification from the parent in terms of the Rules and not in terms of the Passport Manual.*
> *13. Therefore, it is necessary for the Central Government to bring in such amendment to the Rules, if it wants the situation emerged in the Manual to be tackled with, failing which, rejecting passports relying on the Manual particularly, in the case of passport of minors, would be rendered unsustainable as they would suffer from want of tenability. Since the Rules themselves envisage situation of the kind that has emerged in the case at hand, the reliance being placed on the Manual which runs counter to the Rules sans countenance."*

23. In all the three decisions quoted above, the biological father had in effect disowned the child and had severed all ties with the child. Irrespective of the fact that the applicable clauses in the Manual may be different, the spirit behind the said decisions is clear, i.e., that under certain circumstances the name of the biological father can be deleted and the surname can also be changed. Both the Passport Manual and the OM relied upon by the Respondents recognise that passports can be issued under varying circumstances without the name of the father. Such a relief ought to be considered, depending upon the factual position emerging in each case. No hard and fast rule can be applied. There are myriad situations in the case of matrimonial discord between parents, where the child's passport application may have to be considered by the authorities. Such situations include –

- divorce with sole custody and mere visitation;
- divorce with joint custody and visitation;
- divorce with sole custody and no visitation;
- divorce with complete disowning of the child;
- divorce with some rights being given to the child;
- divorce between the couple but rights vesting in either side's grandparents;
- Separation with divorce pending and visitation issues pending in Court;
- Desertion by either parent;
- Divorce or Separation with conditions relating to subsequent marriages which may alter the relationship with the child;
- Legal disowning of the child by either parent;

- Situations where the couple are in different countries and an attempt is made to remove the child from a jurisdiction;

The situations set out above are not exhaustive but are illustrative to show how the passport applications of minors may have to be considered and examined under varying circumstances. The Manual merely contemplates some of the situations and provides for certain mechanisms. However, the need for flexibility exists depending upon the fact situation. A thorough examination and understanding of court orders may also be required.

24. In this backdrop, the Court notes that the facts of the present case are quite peculiar. As per the settlement which has been entered into by the biological father and the mother/Petitioner No. 1, the father has given up all rights, if any, towards the child. There is no visitation. The child has also not been brought up by the father. Moreover, the fact that the minor son is also using the surname of the mother and the maternal grandparents, itself shows that the father does not wish to have any concern or relationship with the child. No maintenance or alimony has also been paid to the Petitioners in this case. In fact, this would be a case where the father has completely deserted the child. Under such circumstances, this Court is of the opinion that Clause 4.5.1 of Chapter 8 and Clause 4.1 of Chapter 9 would clearly be applicable.

25. In the unique and peculiar circumstances of this case, it is accordingly directed that the name of the father of Petitioner No.2 be deleted from the passport and the passport be re-issued in favour of the minor child without the name of the father. Needless to add that this order shall not be treated as a precedent.

26. The Petitioner No. 1 along with her son may appear before the

Regional Passport Office, Delhi and surrender the passport which has already been issued along with the certified copy of this order. Let the new passport be issued without the name of the father within one week thereafter.

27. The petition is accordingly disposed of in these terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 19, 2023
Rahul/RP
(corrected & released on 25th April, 2023)

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

\+ W.P.(C) 845/2014

SHAIL SAHNI ..... Petitioner
Through: Petitioner in person.

versus

SANJEEV KUMAR AND ORS. ..... Respondents
Through: Mr. Hashmat Nabi, Advocate for respondent No.2/UOI.

% Date of Decision : 05th February, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed seeking expeditious disposal of petitioner's appeal under Right to Information Act, 2005 (for short 'RTI Act') as well as a direction to respondents to pay amount of Rs. 3,01,000/- as compensation. Petitioner has also prayed for a direction to take disciplinary action against respondent No. 1.

2. In support of the aforesaid prayers, the petitioner who appears in person only relies upon the time frame prescribed under Section 19(6) of the RTI Act, which reads as under:-

> *"**19. Appeal.—***
>
> *xxxx xxxx xxxx xxxx*
>
> *(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing."*

3. The information sought by the petitioner under the RTI Act is reproduced hereinbelow:-

> *"1. In which daily weekly newspapers of English/Hindi/Punjabi and other languages tender notice issued by this office for the works as mentioned in "List of works"(At page 10 and 11 of this application) had been published date and day of the publication of the above asked tender notice be also informed.*
>
> *2. Estimated cost of works as mentioned in "List of Works"(At page 10 and 11 of this application) be kindly informed.*
>
> *3. Eligibility as fixed and laid down by this office for works as mentioned in "List of Works"(At page 10 and 11 of this application) be informed.*
>
> *4. Documents which had to be on mandatory terms furnish/submit before this office in respect of proof of eligibility by the bidders/participants/tenderers in/of bid of works as mentioned in "List of Works" at page 10 and 11 of this application) be kindly informed. In "List of Works" (at page 10 and 11 of this application) be kindly informed.*
>
> *5. Whether tender process is completed by this office in respect of works as mentioned in "List of works" at page 10 and 11 of this application) be kindly informed. If yes, Then date and day be informed in/on which this office had completed the*

aforesaid/abovesaid tender process of the works as mentioned in "List of Works."

6. Name of Firm/Contractor/Company/Person be informed whom this office had issued work order for the works as mentioned in "List of Works" at page 10 11 of this application).

7. Name of employee of this office and his/her designation be informed which is/was authorized by this office to sale the tender documents of the works as mentioned in "List of Works" at page 10 and 11 of this application).

8. Whether blacklisted contractors in Govt. offices and Department (Excluding this office) are/were permitted by this office to purchase tender for works as mentioned in "List of Works" at page 10 and 11 of this application).

9. Whether blacklisted contractors/company which were blacklisted by this office permitted by this office to purchase tender documents and file tender for the works as mentioned in "List of Works" at page 10 and 11 of this application).

10. What was/is the date of commencement of works as fixed by this office in respect of works as mentioned in "List of Works" at page 10 and 11 of this application.

11. What was/is the period of completion fixed by this office in respect of works as mentioned in "List of Works" at page 11 and 10 of this application.

12. What action and penalty had been fixed by this office against contractor/firm/company who fails to complete works (as mentioned in "List of Works" at page 10 and 11 of this application) within stipulated period as fixed by this office for completion of work.

13. Whether foreign based contractors / firms / organizations/companies or/ and non-Indian

contractors/firms/organizations who are holding their office outside India and are not having office in India are permitted by this office to purchase tender documents for the works as mentioned in this application in "List of Works" at page 10 and 11.

14. Contractors/firms/companies minimum experience laid down/fixed by this office for issuance of work order for works as mentioned in this application in "List of Works" at page 10 and 11.

15. Contractors/firms/companies minimum turn over for last three years required by this office on mandatory terms in respect of issuance of works orders for works as mentioned in "List of Works" at page 10 and 11 in this application be informed.

16. Whether furnishing of certified copies of audit report by the companies/firms before this office who participated in bid on invitation of proposals by this office for works as mentioned in "List of Works" at page 10 and 11 in this application was required.

17. Equipments and quantity of each and every equipment be informed which was in mandatory terms required to be in possession of participants of bid/tenderers in respect of works as mentioned in "List of Works" at page 10 and 11 in this application.

18. Equipments and quantity of each and every equipment be informed which was in mandatory terms should have been under ownership of company/firm/contractor for obtaining work order for the works as mentioned in "List of Works" at page 10 and 11 in this application.

19. Whether tenderers/bidders in respect of works (As mentioned in "List of Works" at page 10, 11 of this application) was on mandatory terms required to furnish before this office details of their office and key persons employed by them? If

yes, what exactly informations/details of office and key persons had to submit by the tenderers/bidders?

20. Whether tenderers/bidders in respect of works (as mentioned in "List of Works" at page 10, 11 of this application had to submit experience certificates from client in support of having completed projects and works in similar field.

21. Name of Members of this office be informed who proposed works (As mentioned in "List of Works" at page 10 and 11 in this application) before this office.

22. Date of meeting be informed in which works (As mentioned in "List of Works" at page 10 and 11 in this application) were approved to be done.

23. Name of tender committee as for the works mentioned at "List of Works" at page 10 and 11 in this application be informed.

List of Works

A) Repairing of Panka Road at Delhi Cantt.

B) Installation of Tiles in Streets of Sadar Bazar, Delhi Cantt.

C) Making of waiting hall at Old Nangal Cremation Ground.

D) Work of Auto Tipper in Sadar Bazar and C.V.D. Lines.

E) Installation of Fancy Lights from Sitaram Dwar to Mangalam Bharat Ghar at Old Nangal Delhi Cantt.

F) Installation of R.M.C. at Slaghter House in Ward No.7, Delhi Cantt.

G) Govt. Quarters construction at M.H. Lines Delhi Cantt.

H) Erection of buildings at Railway Colony Brar Square of

Govt. Quarters at Delhi Cantt.

I) *Erection of 100 Beds Cantonment Board General Hospital.*

J) *Construction of Old Age Centre at Delhi Cantt.*

K) *Construction of Coffee Home at Delhi Cantt.*

L) *Repairing of Footpaths in Ward No.1,2,5 Delhi Cantt.*

M) *Construction of Footpaths in Ward No.1,2,5 Delhi Cantt.*

N) *Demolition of trees in Delhi Cantt.*

O) *Supply and installation of new machines in Cantonment General Hospitals Delhi Cantt.*

P) *Installation of Air Conditioner and Air Conditioner Plants in Sarvodya Kanya Vidyalaya and Sarvodya Bal Vidyalaya at Delhi Cantt.*

Q) *Repairing of Ground, Classrooms and installations of Air Conditioners and Air Conditioner Plant in Saint Martin's Dioceasan School, Church Road, Delhi Cantt.*

R) *Placing of tiles in Ward No.7 and 8 Delhi Cantt.*

S) *Construction of Bridges, Latrines and Urinals in Delhi Cantt and beautification in all Wards of Delhi Cantt.*

T) *Construction of Bridge above Delhi Cantt Railway Station.*

U) *Construction of Bridge from Cremation Ground (Shamshan Ghat) Old Nangal Rai to D-Block, Janak Puri.*

V) *Construction of Bridge from Cremation Ground Old Nangal Rai to Kirby Place.*

W) Construction of Roads in Shastri Bazar and Ward No.3, Delhi Cantt.

X) Repairing of Roads in Shastri Bazar and Ward No.3 Delhi Cantt.

Y) Repairing and Construction of Roads in Ward No.1,2,4,5,6,7,8 Delhi Cantt."

4. The petitioner states that he is a financier who gives advances to various contractors working with Director General, Defence Estates.

5. Keeping in view the width and amplitude of the information sought by the petitioner, it is apparent that the prayers in the writ petition are nothing short of an abuse of process of law and motivated if not an attempt to intimidate the respondent. In fact, even two days ago, this Court had dealt with a writ petition filed by the present petitioner being W.P.(C) 784/2014 wherein equally wide information had been asked for under the RTI Act.

6. 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. AdityaBandopadhyay, (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 enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act, that is, Section 8 of the Freedom to Information Act, 2002. The courts and Information Commissions enforcing the provisions of the RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting Section 8 and the other provisions of the Act.

63. 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.

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65. 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 computerised, 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 Section 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.

66. The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of the RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of Section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. But in regard to other information [that is, information other than those enumerated in Sections 4(1)(b) and (c) of the Act], equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and

fiduciary relationships, efficient operation of Governments, etc.).

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

(emphasis supplied)

8. 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:-

"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."*
>
> (emphasis supplied)

10. 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.

MANMOHAN, J

FEBRUARY 05, 2014
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) No. 7911/2015 & CM No.15991/2015 (for stay).

RAJNI MAINDIRATTA ..... Petitioner

Through: Mr. Arun Kumar, Mr. Sunil Kumar Jha and Mr. Sagar, Advs.

versus

PIO, DIRECTOR OF EDUCATION (NORTH WEST-B) & ANR ..... Respondents

Through: Mr. Santosh Kumar Tripathy, ASC for R-1.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% 08.10.2015

1. The petition impugns the order dated 26th June, 2015 of the Central Information Commission (CIC) constituted under the Right to Information (RTI) Act, 2005 in a second appeal preferred by the petitioner against the orders of the Central Public Information Officer (CPIO) and First Appellate Authority under the said Act of the Public Authority of Directorate of Education, Government of National Capital Territory of Delhi (GNCTD).

2. The CIC, vide the said order, has directed the said Public Authority to prepare a note on the number of RTI applications made by the petitioner to the said Public Authority and to put them up on its official website along with a copy of the said order dated 26th June, 2015. Else, the second appeal of the petitioner has been dismissed.

3. The CIC, for holding so, has reasoned that, (i) as per the record, the

petitioner had filed number of RTI applications ever since she was removed from the Vidya Bharti School, Rohini, Delhi, a private unaided school on proven anti-school activities; (ii) CIC itself had adjudicated about 20 appeals filed by the petitioner; (iii) that the petitioner has already filed an appeal before the Delhi School Tribunal against the termination order and should await the final verdict of the Tribunal instead of adopting the RTI route; and, (iv) that the petitioner has been indulging in serious misuse of RTI Act and cannot be encouraged and CIC had in another order admonished the petitioner for using the RTI for personal vengeance and total lack of public interest behind her requests for information.

4. The other order referred to by the CIC in the impugned order is order dated 6th May, 2015 of the CIC and where, in addition, it is recorded that, (i) the petitioner, in the RTI application subject matter of that second appeal had sought very voluminous information about the Society, from school whereof the petitioner had been removed, pertaining to two decades, such as elections conducted to the Society during the service of the petitioner in the school etc.; (ii) that the petitioner had been using the route of RTI to build up pressure on the management of the school and to harass the school authorities; (iii) that the information sought by the petitioner was without any purpose and merely to torture the school authorities and out of vengeance; (iv) that the conduct of the petitioner was unethical and immoral; (v) that the petitioner had abused RTI and had almost arrested functioning of the school with her frivolous applications and making the officers and teachers of the school appear before First and Second Appellate Authorities;

(vi) RTI is not for such anti-discipline and irresponsible elements; and, (vii) any encouragement to persons such as the petitioner will leave the schools and the Education Officers demoralised.

5. Interestingly, the petitioner has not challenged the order dated 6th May, 2015. However upon the same being put to the counsel for the petitioner, he states that the petitioner has challenged the said order dated 6th May, 2015 also but is unable to show any challenge thereto in the prayer paragraphs of the petition. He states that the said order dated 6th May, 2015 remained to be mentioned in the prayer paragraphs.

6. I may in this regard notice that this petition had come up before this Court first on 21st August, 2015 when the counsel for the petitioner sought time to file amended petition owing to certain typographical errors in the petition then filed and thereafter vide order dated 2nd September, 2015 amended petition was taken on record. The petitioner, inspite thereof, has not challenged the order dated 6th May, 2015.

7. The observations / findings of the CIC in the impugned order dated 26th June, 2015 qua which grievance is made in this petition are but a reproduction of the observations / findings in order dated 6th May, 2015 which has not been challenged by the petitioner. Once the same observations / findings have been allowed to attain finality, no challenge thereto can be made in this petition. The petition is liable to be dismissed on this ground alone.

8. Even otherwise, this is a rare instance where the Authority constituted under the RTI Act to oversee the working and implementation of the said

Act, namely the CIC, has itself found a person to be abusing the process of the RTI and the machinery created thereunder. The petitioner has not controverted, the factual aspect of making a number of RTI queries and preferring as many as 20 appeals to the CIC. Similarly, the petitioner has not been able to explain the reason, for which the information spanning over several decades, was sought. Though undoubtedly, the reason for seeking the information is not required to be disclosed but when it is found that the process of the law is being abused, the same become relevant. Neither the authorities created under the RTI Act nor the Courts are helpless if witness the provisions of law being abused and owe a duty to immediately put a stop thereto.

9. Moreover, the petitioner who is wanting transparency by seeking information going back to two decades, ought not to have any grievance with her conduct being put up on the official website of the Department of Education and which disclosure is of nothing but of the number of RTI applications filed by the petitioner and the order of the CIC thereon. The petitioner cannot be heard to complain of what she herself has caused to others.

There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 08, 2015
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\+ **W.P.(C) 12428/2009 & CM APPL 12874/2009**

DEPUTY COMMISSIONER OF POLICE ..... Petitioner
Through Mr. Pawan Sharma, Standing counsel with Mr. Sanjay Lao, APP and Mr. Laxmi Chauhan, Advocate along with SI Anil Kumar, Anti Corruption Branch

versus

D.K.SHARMA ..... Respondent
In person.

CORAM: JUSTICE S. MURALIDHAR

O R D E R

% 15.12.2010

1. The Deputy Commissioner of Police, Anti Corruption Branch ('DCP') is aggrieved by an order dated 25th September 2009 passed by the Central Information Commission ('CIC') directing the Petitioner DCP to provide to the Respondent copies of the documents sought by him. These documents include certified copies of D.D. entry of arrest of the Respondent and various other documents relating to the investigation of the case, under FIR No. 52 of 2003. The CIC found the denial of the information by the Petitioner by taking recourse of Section 8 (1) of the Right to Information Act, 2005 ('RTI Act') to be untenable. It was held that none of the clauses under Section 8 (1) covered subjudice matters and therefore, the information could not be denied.

2. This Court has heard the submissions of Mr. Pawan Sharma, learned counsel appearing for the Petitioner, and the Respondent who appears in

person.

3. Mr. Pawan Sharma referred to Section 172 (2) of the Code of Criminal Procedure, 1973 ('CrPC') and submitted that copies of the case diary can be used by a criminal court conducting the trial and could not be used as evidence in the case. He submitted that even the accused was not entitled, as a matter of right, to a case diary in terms of Section 172 (2) CrPC and that the provisions of the RTI Act have to be read subject to Section 172 (2) CrPC. Secondly, it is submitted that the trial has concluded and the Respondent has been convicted. All documents relied upon by the prosecution in the trial were provided to the Respondent under Section 208 CrPC. The Respondent could have asked for the documents sought by him while the trial was in progress before the criminal court. He could not be permitted to invoke the RTI Act after the conclusion of the trial.

4. The Respondent who appears in person does not dispute the fact that the trial court has convicted him. He states that an appeal has been filed which is pending. He submits that his right to ask for documents concerning his own case in terms of the RTI Act was not subject to any of the provisions of the CrPC. Finally, it is submitted that no prejudice would be caused to the Petitioner at this stage, when the trial itself has concluded if the documents pertaining to the investigation are furnished to the Respondent.

5. The above submissions have been considered.

6. This Court is inclined to concur with the view expressed by the CIC that in

order to deny the information under the RTI Act the authority would have to show a justification with reference to one of the specific clauses under Section 8 (1) of the RTI Act. In the instant case, the Petitioner has been unable to discharge that burden. The mere fact that a criminal case is pending may not by itself be sufficient unless there is a specific power to deny disclosure of the information concerning such case. In the present case, the criminal trial has concluded. Also, the investigation being affected on account of the disclosure information sought by the Respondent pertains to his own case. No prejudice can be caused to the Petitioner if the D.D. entry concerning his arrest, the information gathered during the course of the investigation, and the copies of the case diary are furnished to the Respondent. The right of an applicant to seek such information pertaining to his own criminal case, after the conclusion of the trial, by taking recourse of the RTI Act, cannot be said to be barred by any provision of the CrPC. It is required to be noticed that Section 22 of the RTI Act states that the RTI Act would prevail notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force.

7. Consequently, this Court is not inclined to interfere with the impugned order dated 25th September 2009 passed by the CIC.

8. The petition and the pending application are dismissed.

S.MURALIDHAR, J

DECEMBER 15, 2010
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Delhi High Court
B S Mathur vs Public Information Officer Of ... on 3 June, 2011
Author: S. Muralidhar

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 295/2011

Reserved on: 23rd May 2011
Decision on: 3rd June 2011

B S MATHUR ..... Petitioner
Through: Mr. Amit S. Chadha, Senior Advocate with
Mr. Kunal Sinha, Advocate.

versus

PUBLIC INFORMATION OFFICER
OF DELHI HIGH COURT ..... Responden

Through: Mr. Rajiv Bansal, Advocate.

AND
W. P. (C) 608/2011

B S MATHUR ..... Petitioner
Through: Mr. Amit S. Chadha, Senior Advocate with
Mr. Kunal Sinha, Advocate.

versus

PUBLIC INFORMATION OFFICER
OF DELHI HIGH COURT ..... Respondent
Through: Mr. Rajiv Bansal, Advocate.

CORAM: JUSTICE S. MURALIDHAR

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

JUDGMENT

03.06.2011

1. In Writ Petition (Civil) 295 of 2011, the Petitioner challenges an order dated 6th September 2010, passed by the Central Information Commission („CIC) dismissing his appeal against an order

dated 28th April 2010 of the Appellate Authority of the High Court of Delhi under the Right to Information Act, 2005 („RTI Act) declining to furnish the complete information sought by him in RTI Application No. 184 of 2008.

2. In Writ Petition (Civil) 608 of 2011 the Petitioner challenges the same order insofar as it relates to the dismissal of his Appeal Nos. 314 and 315 dated 13th August 2010 in relation to RTI Application Nos. 35 and 36 of 2010.

Factual matrix

3. The Petitioner was a Member of the Delhi Higher Judicial Service. Pursuant to a Resolution dated 26th August 2008 of the Full Court, a Committee of five Judges of the High Court heard the Petitioner on 29th May 2008 and decided that it was desirable to place him under suspension pending disciplinary action. While disposing of his writ petition challenging the order of suspension, the Supreme Court by an order dated 13th August 2008 directed that the inquiry against the Petitioner may be completed within a period of five months. On 3rd November 2008, a memorandum was issued to the Petitioner furnishing him the articles of charges, statement of imputation of misconduct, list of witnesses and documents along with the documents. The Petitioner s statement of defence was considered by the Full Court at a meeting held on 27th November 2008. A learned Judge of the High Court was appointed as the Inquiry Officer.

4. On 19th August 2008, the Petitioner filed an application No. 143 of 2008 under the RTI Act seeking the following information:

> (i) Copy of directions of Committee of Hon ble Inspecting Judges allowing Registrar (Vig.) to scrutinise personal file of applicant containing intimations supplied under the Conduct Rules.
>
> (ii) Copy of the report of the Registrar (Vig.) dated 06.02.2008 in compliance of (i) above.
>
> (iii) Copy of the minutes of the meeting of the committee of the Hon ble Inspecting Judges dated 14.2.2008.
>
> (iv) Copy of the minutes of the meeting of the committee of the Hon ble Inspecting Judges held on 03.04.2008.
>
> (v) Copy of the minutes of the meeting of the committee of the Hon ble Inspecting Judges dated 14.05.2008.
>
> (vi) Copy of the minutes of the meeting of the Administrative Committee held on 19.5.2008.

(vii) Copies of the comments and/or material supplied/placed before the committee of the Hon ble Inspecting Judges.

(viii) Copies of the comments and/or material supplied/placed before the Hon ble Full Court prior to its meeting dated 26.5.2008.

(ix) Copies of the Agenda and the minutes of the Hon ble Full Court held on 26.5.2008.

(x) Copy of the minutes/decision of the Committee headed by the Hon ble Chief Justice in connection with the reply of letters dated 20.2.2008, held on 29.5.2008.

(xi) Subject and date wise list of all the intimations submitted by the applicant to the Hon ble High Court from time to time since the date of his joining service till date.

(xii) Copy of the minutes/decision of the Committee of the Hon ble Inspecting Judges held post intimation dated 1.6.2007 by the applicant.

5. On 16th September 2008, the Public Information Officer („PIO) of the High Court of Delhi informed the Petitioner that the information sought by him could not be supplied as "the same is exempt under Section 8 (1) (h) of the RTI Act read with Rule 5 (b) of the Delhi High Court (Right to Information) Rules, 2006" (hereinafter „the Rules).

6. Aggrieved by the above decision, the Petitioner filed Appeal No. 21 of 2008 which was dismissed by the Appellate Authority on 31st October 2008. It was held by the Appellate Authority that the documents referred at serial No. (xi) could be supplied to the Petitioner. However, as far as the remaining information was concerned it was observed that the disciplinary authority was still examining the material for holding inquiry and, therefore, disclosure of any such material at that stage might impede the inquiry.

7. Aggrieved by the above decision, the Petitioner filed Appeal No. 203 of 2009 before the CIC on 16th December 2008.

8. After completion of the inquiry the Inquiry Officer submitted a report on 18th November 2009. With the inquiry being over, on 23rd January 2010 the Petitioner filed another RTI Application No. 35 of 2010 seeking the following information:

i. Copy of directions of Committee of Hon ble Inspecting Judges allowing Registrar (Vig.) to scrutinize personal file of applicant containing intimations supplied under the Conduct Rules.

ii. Copy of report of the Registrar (Vig.) dated 6.2.2008 in compliance of (i) above.

iii. Copy of the minutes of the meeting of the Committee of the Hon ble the Inspecting Judges dated 14.2.2008.

iv. Copy of the minutes of the meeting of the Committee of the Hon ble Inspecting Judges dated 3.4.2008.

v. Copy of the minutes of the meeting of the Committee of the Hon ble Inspecting Judges dated 14.5.2008.

vi. Copy of the minutes of the Administrative Committee held on 19.5.2008.

vii. Copies of comments and/or material supplied/placed before the Committee of the Hon ble Inspecting Judges to its meeting dated 26.5.2008.

viii. Copies of comments and/or material supplied/placed before the Committee of the Hon ble Inspecting Judges to its meeting dated 26.5.2008.

ix. Copy of the agenda and minutes of the Full Court meeting held on 26.05.08.

x. Copy of the minutes/decision of the Committee headed by the Hon ble Chief Justice in connection with the reply of letters dated 20.2.2008, held on 29.5.2008.

xi. Copy of the minutes/decision of the Committee of the Hon ble Inspecting Judges held post intimation dated 1.6.2007 by the applicant.

xii. Copy of the decision of the Committee of the Hon ble Judges headed by Hon ble Chief Justice on representation/review petition filed by the applicant on 28.6.2008.

xiii. Copy of the minutes/decision of the meeting of the Committee above (xii) which was communicated to the applicant vide communication No. 1222/DHC/Gaz/VI.E.2(a)/2008 dated 3.7.2008.

xiv. Copy of the agenda for Full Court meeting dated 29.9.2008.

xv. Copy of the minutes of the meeting regarding the decision taken by the Full Court on 29.9.2008 qua applicant.

xvi. Copies of agenda and the minutes of the Full Court meeting dated 1.9.2008.

xvii. Copy of the minutes of the Administrative Committee held on 4.9.2008.

xviii. Copies of the agenda and minutes of the Full Court meeting held on 5.9.2008.

9. The Petitioner also filed Application No. 36 of 2010 in which he sought the following information:

i. Copy of agenda for the Full Court meeting dated 27.09.2008 with respect to the applicant.

ii. Copy of the minutes of the Full Court meeting dated 27.09.2008.

iii. Details of the number and names of the Judges (who) actually participated in the discussion for and against the agenda.

iv. Details of the number and names of the Judges who participated in the discussion and approved the finalization of Article of Charges subsequently issued against the applicant.

v. Copy of the minutes of the Full Court meeting dated 27.11.2008.

vi. Copy of the agenda laid before the Full Court meeting held on 27.11.2008.

vii. Detail as to how many inquiries have been initiated against the applicant. If more than one, then furnish the detail about the pending inquiry preliminary or otherwise, if any.

viii. Copy of the agenda and minutes of the Full Court meeting held on 18.08.2009.

ix. Copy of the agenda and minutes of the Full Court meeting held on 18.11.2009.

x. Copy of the agenda and minutes of the Full Court meeting held on 15.12.2009.

xi. Copy of the agenda and minutes of the Full Court meeting held on 15.01.2010.

xii. Copy of the criteria/policy of the Hon ble High Court adopted for appointment of District & Sessions Judge and District Judges in the year 2007.

xiii. Copy of the criteria/policy of the Hon ble High Court adopted for appointment of District & Sessions Judge and District Judges in the year 2008.

xiv. Copy of the criteria/policy of the Hon ble High Court adopted for appointment of District & Sessions Judges and District Judges and District Judges in the year 2009.

10. By an order dated 16th February 2010 the PIO of the High Court declined the information at serial Nos. (i) to (xiii) of the Application No. 35 of 2010 under Section 8 (1) (h) of the RTI Act read with Rule 5 (b) of the Rules. Part of the information sought at serial Nos. (xiv) to (xviii) was disclosed. By a separate order dated 16th February 2010 passed in Application No. 36 of 2010, the information at serial Nos. (i) to (iii) was declined stating that no Full Court Meeting was held on 27th September 2008. Information at serial No. (vii) was also declined claiming exemption under

Section 8 (1)

(h) RTI Act. Aggrieved by the PIO s orders dated 16th February 2010 the Petitioner filed Appeal Nos. 16 and 17 of 2010 before the Appellate Authority of the High Court.

11. On 28th April 2010, the Appellate Authority partly allowed Appeal No.16 of 2010 by directing the Full Court Agenda to be supplied to the Petitioner. However, the decision of the PIO declining information at serial No. (vii) of Application No. 36/2010 was upheld. By a separate order on the same date the Appellate Authority dismissed Appeal No. 17 of 2010 by noting that the information sought at serial Nos. (i) to (xiii) in the application 35/2010 was a verbatim reproduction of the information sought at serial Nos. (i) to (xi) of the earlier Application No. 184 of 2008 in respect of which an appeal was pending before the CIC and notice has been issued to the High Court in the said appeal. The representation made by the Petitioner against the Inquiry report was under consideration by the High Court. The Appellate Authority held that the matter was sub judice before the CIC and any decision taken in the appeal might conflict with the decision to be taken by the CIC.

12. Aggrieved by the orders dated 28th April 2010, the Petitioner filed Appeal Nos. 314- 15 of 2010 before the CIC. The CIC heard the Petitioner s Appeal Nos. 203 of 2009 and 314-15 of 2010 together.

13. Meanwhile, on 14th July 2010 the Full Court of the High Court accepted the inquiry report dated 18th November 2009 and imposed a penalty of withholding two increments without cumulative effect on the Petitioner. On 11th August 2010, the Full Court decided not to extend the superannuation of the Petitioner beyond 58 years by invoking Rule 26 B of the Delhi Higher Judicial Service Rules, 1971 („DHJS Rules).

14. On 6th September 2010, the CIC dismissed the Petitioner s three appeals by a common order. The CIC noted that at the hearing on 30th August 2010, the Joint Registrar („JR) of the High Court submitted that there were two investigations. The second investigation was initiated "even before the closure of the first with wider ramification, which is still under process and regarding which information could not be disclosed under Section 8 (1) (h)". It was stated that "this investigation file is with the Vigilance Division of the Delhi High Court to which even the Registry does not have access." The operative portion of the impugned order dated 6th September 2010 of the CIC reads as under:

> "On the question of whether there is an attempt to mislead the Supreme Court this Commission has no authority to opine. Nevertheless, it has now been clarified to appellant Shri Mathur that there were, in fact, two enquiries, one of which stands completed and the other that is still in progress. It is the contention of respondents that disclosing even the nature of the second enquiry will seriously compromise the enquiry itself. Insofar as the appellant s plea that he should have been informed of why he is being penalized, this information had already been provided to him with regard to the enquiry that has been completed on the basis of which report he has, in fact, been penalised. When and if a formal enquiry is initiated in consequence of the

second investigation appellant Shri Mathur will be duly informed of the consequences of the investigation. However, before that investigation is complete disclosure of any information would seriously undermine the process. PIO has separately disclosed a paper in confidence to this Commission providing the subject of the ongoing investigation.

The Commission has already, in our interim decision, ruled on the question of application of exemption under Sec. 8 (1) (h) to departmental investigation. In the hearing, the question of appellant on the number of investigations initiated by the High Court of Delhi stands answered in the hearing. On the remaining issue of whether the case merits application of Sec. 8(1) (h) to the simple question enquiring on the subject of the investigation, to which this Commission is privy, remains to be decided. In the view of the Commission, disclosure of the subject of investigation will "impede" the process of investigation. Delhi High Court in W.P. (C) 7930/2009 held "The word impede therefore does not mean total obstruction and compared to the word obstruction or prevention, the word impede requires hindrance of a lesser degree. It is less injurious than prevention or an absolute obstacle."

Contextually in Section 8 (1) (h) it will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or prosecution of offenders. However, the impediment, if alleged, must be actual and not make belief and a camouflage to deny information. To claim exemption under the said sub-section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis. In this context the Commission is satisfied that disclosure of the subject will indeed "impede" the process of investigation in view of the peculiar facts and circumstances of this case. The appeals are disposed of accordingly."

15. While hearing W.P. (C) 608 of 2011 on 1st February 2011 the following order was passed by this Court:

"1. Mr. Chadha states that the information at Serial No. (i) to (xv) & (xvii) in the first application (details of which are at Pages 53 and 54 of the paper book) as well as the information sought in Serial No. (i) to (iii) &

(vii) of the second application (details of which are at Page 56 of the paper book) have not been furnished to the Petitioner on the ground that there is a second inquiry pending against the Petitioner.

2. Mr. Bansal, appearing for the Respondent on advance notice, states that a chart showing how much of the above information has already been provided to the Petitioner and how much of it is connected with the second inquiry will be placed on record by the Respondent by way of an affidavit within a period of three weeks. The affidavit will also indicate when the second inquiry commenced.

> 3. List on 7th March 2011."

16. An affidavit was filed on behalf of the High Court on 25th March 2011 enclosing a copy of the information sought and to what extent information sought was connected with the second inquiry. Further, in para 5 it was stated as under:

> "That it is pertinent to mention here that when the case of the second enquiry was placed before Hon ble the Chief Justice for directions, His Lordship has been pleased to direct on 03.03.2011 that the enquiry against Shri B.S. Mathur (petitioner) be kept in abeyance."

17. Mr. Amit S. Chadha, learned Senior Counsel appearing for the Petitioner submitted that once the second inquiry has been kept in abeyance, there was no question of the disclosure of information as sought by the Petitioner "impeding such inquiry". At the hearing on 21st April 2011 the Court was shown the original file. The Court then observed in its order passed on that date as under:

> "3. In light of the above development, it requires to be examined whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8 (1) (h) of the Right to Information Act, 2005. On this specific aspect Mr. Bansal, learned counsel for the Respondent states that the matter will be considered once again and a decision taken within three weeks."

18. At the hearing on 23rd May 2011 Mr. Rajiv Bansal learned counsel appearing for the Respondent stated that he had been sent a letter dated 21st May 2011 enclosing therewith a note containing the "stand" of the Delhi High Court pursuant to the order dated 21st April 2011. The note states that "the documents in question, the copy of which is sought by Shri B.S. Mathur related to the first enquiry which is already over" and the second inquiry "are so much interconnected that it is difficult to segregate the two to avoid any kind of bearing on the investigation ordered to be kept in abeyance for present." The next reason is that the CIC had in its impugned order already held that "disclosure of the subject will indeed „impede the process of investigation in view of the peculiar facts and circumstances." The third reason is that "it would be desirable to stick to the stand taken in the affidavit" dated 25th March 2011 filed by the Respondent in these proceedings. Fourthly the note states that the Petitioner could be supplied information against serial No. (vii) that the second inquiry "which was at the fact finding stage has been kept in abeyance at present." As far as the information at serial No. (vii) is concerned, the Petitioner already knew of it during the hearing of his appeals before the CIC.

19. The question that arises for consideration has already been formulated in the Court s order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8 (1) (h) RTI Act? The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI

Act. As regards Section 8 (1) (h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation." The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8 (1) (h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would „impede the investigation. Even if one went by the interpretation placed by this Court in W.P. (C) No.7930 of 2009 [Additional Commissioner of Police (Crime) v. CIC, decision dated 30th November 2009] that the word "impede" would "mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed "hamper" or "interfere" with the investigation, which in this case is the second enquiry.

20. The stand of the Respondent that the documents sought by the Petitioner "are so much interconnected" and would have a "bearing" on the second enquiry does not satisfy the requirement of showing that the information if disclosed would "hamper" or "interfere with" the process of the second inquiry or "hold back" the progress of the second inquiry. Again, the stand in the chart appended to the affidavit dated 25th March 2011 on behalf of the Respondent is only that the information sought is either "intricately connected" or "connected" with the second inquiry or has a "bearing" on the second inquiry. This does not, for the reasons explained, satisfy the requirement of Section 8 (1)

(h) RTI Act.

21. Mr. Bansal submitted that this Court could examine the records and determine for itself which of the information would if disclosed impede the second enquiry. This submission is untenable for the simple reason that it is not for this Court to undertake such an exercise. This is for the PIO of the High Court to decide. However, the PIO nowhere states that the disclosure of the information would "hamper" or "interfere with" the process of the second enquiry. There is consequently no need for this Court to form an opinion in that regard.

22. The reliance placed by the Respondent on the conclusion of the CIC in the impugned order that the disclosure of the information would impede the process of investigation "in the peculiar facts and circumstances" begs the question for more than one reason. First, there is a marked change in the circumstances since the impugned order of the CIC. The second enquiry has, by a decision of the Chief Justice of 3rd March 2011, been kept in abeyance which was not the position when the appeals were heard by the CIC. Secondly, it is difficult to appreciate how disclosure of information sought by the Petitioner could hamper the second inquiry when such second inquiry is itself kept in abeyance. The mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would "impede" or even on a lesser threshold "hamper" or "interfere with" the investigation. This burden the Respondent has failed to discharge.

23. It was submitted by Mr. Bansal that this Court could direct that if within a certain timeframe the second enquiry is not revived, then the information sought should be disclosed. This submission overlooks the limited scope of the present writ petition arising as it does out of the orders of the CIC under the RTI Act. It is not within the scope of the powers of this Court in the context of the present petition to fix any time limit within which the Respondent should take a decision to recommence the second enquiry which was kept in abeyance by the order dated 3rd March 2011 of the Chief Justice.

24. No grounds have been made out by the Respondent under Section 8 (1) (h) of the RTI Act to justify exemption from disclosure of the information sought by the Petitioner.

25. The writ petitions are accordingly allowed and the impugned order dated 6th September 2010 of the CIC is hereby set aside. Information to the extent not already provided in relation to the three RTI applications should be provided to the Petitioner by the Respondent within a period of four weeks from today. While providing the information it will be open to the Respondent to apply Section 10 RTI Act where required.

S. MURALIDHAR, J JUNE 3, 2011 akg

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 24.11.2014

\+ **W.P.(C) 85/2010 & CM Nos.156/2010 & 5560/2011**

NARESH TREHAN ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 251/2010 & CM No.526/2010**

AAA PORTFOLIO PVT LTD AND ANR. ..... Petitioners

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 206/2010 & CM No.392/2010**

ESCORTS LTD ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 214/2010 & CM No.445/2010**

CPIO CUM ASSISTANT COMMISSIONER OF INCOME TAX ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 202/2010 & 389/2010**

ESCORTS HEART INSTITUTE AND RESEARCH CENTRE ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 207/2010 & CM No.394/2010**

RAJAN NANDA ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Rajiv Nayar, Sr. Advocate with Ms Shyel Trehan and Ms Manjira Dasgupta in W.P.(C) 85/2010.
Mr Sandeep Sethi, Sr. Advocate with Mr Simran Mehta and Mr Prabhat Kalia in W.P.(C) Nos. 251/2010, 206/2010 & 207/2010.
Mr Rohit Puri in W.P.(C) 202/2010.

For the Respondent : In person.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These petitions are filed *inter alia* impugning a common order dated 14.12.2009 passed by the Central Information Commission (hereafter 'CIC') directing the Public Information Officers, Commissioner of Income-tax (hereafter 'PIO') to provide inspection of the records and also other information sought for by the respondent relating to the income tax returns filed by the petitioners (other than the petitioner in W.P.(C) No.214 of 2010).

2. Brief facts which are relevant for examining the controversy in the present petitions are that on 13.01.2009, Rakesh Kumar Gupta – respondent, who is stated to be an informer to the income tax department, filed an application under the Right to Information Act, 2005 (hereafter the 'Act') with the PIO *inter alia* seeking information and all the records available with the Income tax department in respect of nine assessees (out of the said assesses one assessee was deleted due to repetition) for various assessment years. The respondent had also sought:-

> "1. Inspection of all records in above respect.
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> 2. Kindly provide the copies of the documents mentioned at the time of inspection.
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> 3. Kindly provide the officers (from assessing officers to CCIT), who are the officers to take action on "Tax Evasion Petition" given by me from 1/8/2003 till date.
>
> Request
>
> 4 If you want to treat the above information as third party information and want to send the notice to so called third parties inviting their objection, then kindly send the complete request to them including all the annexure e.g. citing public interest by me due to which information should be given to me."

3. The details sought by the respondent of the eight assessees (hereinafter collectively referred to as 'assessees') including the details of the assessment years are as under:-

i) Dr. Naresh Trehan - petitioner in W.P.(C) No.85/2010 pertaining to Assessment Year 1998-99 to 2005-06

ii) Mr. Rajan Nanda - petitioner in W.P.(C) No.207/2010 pertaining to Assessment Year 1998-99 to 2005-06

iii) AAA Portfolio Pvt. Ltd. – petitioner in W.P.(C) No.251/2010 pertaining to Assessment Year 1998-99 to 2005-2006

iv) Big Apple Clothing Pvt. Ltd. – petitioner in W.P.(C) No.251/2010 pertaining to Assessment Year 1998-99 to 2005-06

v) Escorts Ltd. - petitioner in W.P.(C) No.206/2010 pertaining to Assessment Year 1998-99 to 2005-06.

vi) Escorts Heart Institute & Research Centre Ltd. (Delhi) - petitioner in W.P.(C) No.202/2010 pertaining to Assessment Year 1998-99 to 2001-02.

vii) Escorts Heart Institute & Research Centre Chandigarh (Society) pertaining to Assessment Year (2001-2002)

viii) Escorts Heart Institute & Research Centre Limited, Chandigarh pertaining to Assessment Year 2000-01 to 2005-06.

4. Since the information sought by the respondent is third party information, the Deputy Commissioner of Income-tax issued separate notices dated 04.02.2009 under Section 11(2) of the Act to the assessees. The assessees submitted their separate objections and objected to the inspection and furnishing of the information. PIO considered the objections of the assessees and rejected the RTI application of the respondent, by its common order dated 16.02.2009, on the ground that the respondent has failed to substantiate the public interest involved in disclosing the

information relating to third parties. PIO, however, held that the Tax Evasion Petition is under compilation and would be provided in due course.

5. The respondent preferred separate appeals before the First Appellate Authority - Addl. Commissioner of Income-tax (hereafter the 'FAA') against the order of PIO. By a common order dated 08.05.2009, FAA rejected the appeal of the respondent. Aggrieved by the order dated 08.05.2009 of FAA, the respondent preferred an appeal before the CIC. By the impugned order dated 14.12.2009, the CIC allowed the appeal and directed PIO to provide inspection of the records and also other information sought for by the respondent.

6. The learned counsel for the petitioner contended:-

6.1 that the information sought for by the respondent such as income tax returns are personal information and are exempt from disclosure under Section 8(1)(j) of the Act. Reliance was placed on decision of Supreme Court in ***Girish Ramchandra Deshpande v. Central Information Commr.*: (2013) 1 SCC 212,** decision of Full Bench of this Court in ***Secretary General, Supreme Court of India v. Subhash Chandra Agarwal & Anr.*: 166 (2010) DLT 305** and decision of Full Bench of the CIC in ***G R Rawal v. Director General of Income Tax (Investigation)*: Appeal No. CIC/AT/A/2007/00490, decided on 05.03.2008.**

6.2 that the disclosure of the income tax returns is prohibited under Section 138 of the Income Tax Act, 1961 and can be made only if the Commissioner is satisfied that the disclosure is in public interest, which in the present case was rejected by the Commissioner. Reference was made to

***Hanuman Pershadganeriwala v. The Director of Inspection, Income Tax, New Delhi*: (1974) 10 DLT 96.**

6.3 that the disclosure of information is also exempted under Section 8(1)(e) of the Act as the income tax department is holding the information of the assessees in fiduciary capacity.

6.4 that the respondent has failed to disclose the public interest which is a mandatory requirement under Section 11 of the Act for disclosure of confidential and personal third party information.

6.5 that the disclosure of the information sought for would be violative of the right to privacy, which has been read into Article 21 of the Constitution of India. Reference was made to paragraph 110 to 112 of the decision of this court in ***Secretary General, Supreme Court of India v. Subhash Chandra Agarwal & Anr.*: 166 (2010) DLT 305.**

6.6 that the disclosure of income tax returns is expressly forbidden to be published by a tribunal, in the present case and the CIC therefore, exempted under Section 8(1)(b) of the Act.

7. The respondent contended:-

7.1 that he is an informer with the income tax department and sought the information in public interest in order to recover the tax evaded by the petitioners, to recover the properties mis-appropriated by the petitioners and to curb corruption and therefore, the exemptions provided under Section 8(1)(e) and (j) of the Act are not applicable.

7.2 that the bank details and tax details should be given to public, where *prima facie* wrong doing is detected by the government. Reliance was placed on ***Ram Jethmalani & Ors. v. Union of India*: (2011) 8 SCC 1.**

7.3 that the activities performed by the income tax department are public in nature and the income tax records are public documents. Reliance was placed on ***Bhagat Singh v. Chief Information Commissioner and Ors.*: 146 (2008) DLT 385**.

7.4 that the disclosure of information under Section 3 of the Act is the rule and exemption under Section 8 of the Act is the exception.

8. The controversy that needs to be addressed is whether income tax returns and the information provided to the income tax authorities during the course of assessment and proceedings thereafter, are exempt under the provision Section 8(1) of the Act and further whether in the given circumstances of this case, the CIC was correct in holding that such information was required to be disclosed in public interest.

9. By virtue of Section 3 of the Act all citizens have a right to information subject to provisions of the Act. The expression "information" is defined under Section 2(f) of the Act as under:-

> "2(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;"

(emphasis provided)

10. It is also relevant to note that by virtue of Section 22 of the Act, the provisions of the Act have an overriding effect over any other inconsistent law or instrument.

11. The petitioners have contended that the income tax returns and other information provided by the assessees during the course of assessment would be exempt from disclosure by virtue of section 8(1)(d), Section 8(1)(e) and 8(1)(j) of the Act. It is thus necessary to examine the applicability of each of the above provisions with respect to the information sought by the respondent.

12. Section 8(1)(d) of the Act expressly provides an exemption in respect of such information. At this stage, it is necessary to refer to Section 8(1)(d) of the Act which reads as under:-

> "**8. Exemption from disclosure of information.—** (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—
>
> xxxx xxxx xxxx xxxx xxxx
>
> (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

13. Certain petitioners had specifically pleaded that information provided in the income tax returns could not be disclosed as the information was provided in confidence. The CIC rejected the same by holding that the parties had failed to explain as to how that ground could apply or how

disclosure of information relating to commercial confidence would harm their competitive interest.

14. The income tax returns filed by an assessee and further information that is provided during the assessment proceedings may also include confidential information relating to the business or the affairs of an assessee. An assessee is expected to truly and fairly disclose particulars relevant for the purposes of assessment of income tax. The nature of the disclosure required is not limited only to information that has been placed by an assessee in public domain but would also include information which an assessee may consider confidential. As a matter of illustration, one may consider a case of a manufacturer who manufactures and deals in multiple products for supplies to different agencies. In the normal course, an Assessing Officer would require an assessee to disclose profit margins on sales of such products. Such information would clearly disclose the pricing policy of the assessee and public disclosure of this information may clearly jeopardise the bargaining power available to the assessee since the data as to costs would be available to all agencies dealing with the assessee. It is, thus, essential that information relating to business affairs, which is considered to be confidential by an assessee must remain so, unless it is necessary in larger public interest to disclose the same. If the nature of information is such that disclosure of which may have the propensity of harming one's competitive interests, it would not be necessary to specifically show as to how disclosure of such information would, in fact, harm the competitive interest of a third party. In order to test the applicability of Section 8(1)(d) of the Act it is necessary to first and

foremost determine the nature of information and if the nature of information is confidential information relating to the affairs of a private entity that is not obliged to be placed in public domain, then it is necessary to consider whether its disclosure can possibly have an adverse effect on third parties.

15. Insofar as the applicability of Section 8(1)(e) of the Act is concerned, I am unable to accept the contention that a fiduciary relationship within the meaning of Section 8(1)(e) of the Act can be attributed to a relationship between an assessee and the income tax authority. The Supreme Court in the case of ***CBSE v. Aditya Bandopadhyay*: (2011) 8 SCC 497** had explained that the words "information available to a person in its fiduciary relationship" could not be construed in a wide sense but has to be considered in the normal and recognized sense. The relevant extract of the said decision is quoted below:-

> "41. In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words "information available to a person in his fiduciary relationship" are used in Section 8(1)(e) of the RTI Act in its normal and well-recognised sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary—a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with

> reference to a principal, a partner with reference to another partner, a Director of a company with reference to a shareholder, an executor with reference to a legatee, a Receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body."

16. The information provided by an assessee in its income tax return is in compliance of the provisions of the Income Tax Act, 1961 and thus, could not be stated to be information provided in course of a fiduciary relationship.

17. Four of the petitioners (Dr Naresh Trehan, Escorts Heart Institute and Research Center, Delhi, Escorts Heard Institute and Research Center, Chandigarh and Escorts Heart Institute and Research Center Ltd.) had further contended that information sought by the respondent was exempt under Section 8(1)(j) of the Act. Section 8(1)(j) of the Act exempts information which relates to personal information. The said clause is quoted below for ready reference:-

> "**8. Exemption from disclosure of information.—** (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—
>
> xxxx xxxx xxxx xxxx xxxx
>
> (j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central

> Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:"

18. The question whether the information provided by an individual in his income tax returns is exempt from disclosure under Section 8(1)(j) of the Act is no longer *res integra* in view of the decision of the Supreme Court in ***Girish Ramchandra Deshpande v. Central Information Commr.*: (2013) 1 SCC 212.** The relevant extract of the said judgment is quoted below:

> "11. The petitioner herein sought for copies of all memos, show-cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from banks and other financial institutions. Further, he has also sought for the details of gifts stated to have been accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is: whether the abovementioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act.
>
> 12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show-cause notices and orders of censure/punishment, etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or

> public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.
>
> 13. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.
>
> 14. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act."

19. The CIC rejected the aforesaid contention by holding that the expression "personal information" would necessarily only apply to an individual and could not be applicable in case of corporate entities.

20. It has been contended by the petitioners that the expression "personal information" must also extend to information relating to corporate entities. Inasmuch as they may also fall within the definition of expression "person" under the General Clauses Act, 1897 as well as under the Income Tax Act, 1961. However, I am unable to accept this contention for the reason that the expression "personal information" as used in clause (j) of Section 8(1) of the Act has to be read in the context of information relating to an individual. A plain reading of the aforesaid clause would indicate that the

expression "personal information" is linked with "invasion of privacy of the individual". The use of the word "the" before the word "individual" immediately links the same with the expression "personal information"

21. Black's law dictionary, sixth edition, *inter alia*, defines the word "personal" as under:-

> "The word "personal" means appertaining to the person; belonging to an individual; limited to the person; having the nature or partaking of the qualities of human beings, or of movable property."

22. A perusal of the above definition also indicates that the ordinary usage of the word "personal" is in the context of an individual human being and not a corporate entity. The U.S. Supreme Court has also interpreted the expression "personal" to be used in the context of an individual human being and not a corporate entity. In the case of ***Federal Communications Commission v. AT&T Inc*: 2011 US LEXIS 1899** the US Supreme Court considered the meaning of the expression "personal privacy" in the context of the Freedom of Information Act, which required Federal Agencies to make certain records and documents publically available on request. Such disclosure was exempt if the records *"could reasonably be expected to constitute an unwarranted invasion of personal privacy"*. The U.S. Supreme Court held that the expression "Personal" used in the aforesaid context could not be extended to corporations because the word "personal" ordinarily refers to individuals. The Court held that the expression "personal" must be given its ordinary meaning. The relevant extract of the said judgment is as under:

""Person" is a defined term in the statute; "personal" is not. When a statute does not define a term, we typically "give the phrase its ordinary meaning." Johnson v. United States, 559 U.S. ___, ___, 559 U.S. 133, 130 S. Ct. 1265, 176 L. Ed. 2d 1, 8 (2010). "Personal" ordinarily refers to individuals. We do not usually speak of personal characteristics, personal effects, personal correspondence, personal influence, or personal tragedy as referring to corporations or other artificial entities. This is not to say that corporations do not have correspondence, influence, or tragedies of their own, only that we do not use the word "personal" to describe them.

Certainly, if the chief executive officer of a corporation approached the chief financial officer and said, "I have something personal to tell you," we would not assume the CEO was about to discuss company business. Responding to a request for information, an individual might say, "that's personal." A company spokesman, when asked for information about the company, would not. In fact, we often use the word "personal" to mean precisely the opposite of business-related: We speak of personal expenses and business expenses, personal life and work life, personal opinion and a company's view.

Dictionaries also suggest that "personal" does not ordinarily relate to artificial "persons" such as corporations. See, e.g., 7 OED 726 (1933) ("[1] [o]f, pertaining to . . . the individual person or self," "individual; private; one's own," "[3] [o]f or pertaining to one's person, body, or figure," "[5] [o]f, pertaining to, or characteristic of a person or self-conscious being, as opposed to a thing or abstraction"); 11 OED at 599-600 (2d ed. 1989) (same); Webster's Third New International Dictionary 1686 (1976) ("[3] relating to the person or body"; "[4] relating to an individual, his character, conduct, motives, or private affairs"; "[5] relating to or characteristic of human beings as distinct from things"); ibid. (2002) (same)."

23. In my view, the aforesaid reasoning would also be applicable to the expression "personal" used in Section 8(1)(j) of the Act. The expression 'individual' must be construed in an expansive sense and would include a body of individuals. The said exemption would be available even to unincorporated entities as also private, closely held undertaking which are in substance alter egos of their shareholders. However, the expression individual cannot be used as a synonym for the expression 'person'. Under the General Clauses Act, 1897 a person is defined to "*include any company or association or body of individuals, whether incorporated or not*". Thus, whereas a person would include an individual as well as incorporated entities and artificial persons, the expression 'individual' cannot be interpreted to include such entities. The context in which, the expression "personal information" is used would also exclude it application to large widely held corporations. While, confidential information of a corporation is exempt from disclosure under Section 8(1)(d) of the Act, there is no scope to exclude other information relating to such corporations under Section 8(1)(j) of the Act as the concept of a personal information cannot in ordinary language be understood to mean information pertaining to a public corporation.

24. It would also be relevant to refer to the decision of a Division Bench of this Court in the case of ***Ashok Kumar Goel v. Public Information Officer Vat Ward No. 64 & Anr.*****: (2012) 188 DLT 597** whereby it was held that information of the returns made to the Sales Tax Commissioner in relation to a firm was exempt under Section 8(1) of the Act. The relevant portion of the said judgment is quoted as under:-

> "7. It is not in dispute that the information in the form of returns filed by the respondent No. 2's firm is in the nature of commercial confidence which is clearly inferable from Section 98 of the Act. Such information can be given only if larger public interest warrants the disclosure of this information. All the authorities below including the learned Single Judge has held and rightly so that no public interest is at all involved in seeking of this information by the appellant from the Sales Tax Commissioner. What to talk of public interest, the finding is that the information is sought with oblique motive to settle personal scores."

25. Indisputably, Section 8(1)(j) of the Act would be applicable to the information pertaining to Dr Naresh Trehan (petitioner in W.P.(C) 88/2010) and the information contained in the income tax returns would be personal information under Section 8(1)(j) of the Act. However, the CIC directed disclosure of information of Dr Trehan also by concluding that income tax returns and information provided for assessment was in relation to a "public activity." In my view, this is wholly erroneous and unmerited. The act of filing returns with the department cannot be construed as public activity. The expression "public activity" would mean activities of a public nature and not necessarily act done in compliance of a statute. The expression "public activity" would denote activity done for the public and/or in some manner available for participation by public or some section of public. There is no public activity involved in filing a return or an individual pursuing his assessment with the income tax authorities. In this view, the information relating to individual assesse could not be disclosed. Unless, the CIC held that the same was justified "in the larger public interest"

26. At this stage, it may be appropriate to consider the nature of information that is provided by an assesse to its Assessing Officer. In case of Income from business and profession, the income tax returns mainly disclose the final accounts (i.e. profit and loss account and balance sheets) This information is otherwise also liable to be disclosed by companies and is available in public domain since it is necessary for a company to file its annual accounts with the Registrar of Companies. Other incorporated entities are similarly required to also publically disclose their final accounts. However, an Assessing Officer may call for further information while determining the assessable income, which may include all books and papers maintained by an entity. Such information may also have information relating to other parties, the disclosure of which may be exempt under Section 8(1) of the Act. As a matter of illustration, the books of accounts would record transactions of commercial nature which may enjoin the parties to the transactions to keep the information confidential. Further, the books of accounts would also record salaries and other payments to other individuals. Disclosure of such information would affect not just the assessee but also other parties. In the circumstances, it would be necessary to examine the details of information that are sought from the public authority. In the present case, the respondent seems to have sought for an omnibus disclosure of all records and returns. In my view, the same could not be allowed without examining the nature of information contained therein.

27. The Supreme Court in the case of ***Thalappalam Ser. Coop. Bank Ltd. and others v. State of Kerala and others*****: Civil Appeal No. 9017 of 2013,**

decided on 07.10.2013. considered the question whether a society registered would fall within the definition of a public authority under Section 2(h) of the Act. The Court also clearly stated that the information supplied by a society to the Registrar of Societies could be disclosed except for the information that was exempt under Section 8(1) of the Act and that included accounts maintained by members of society. The relevant passage from the said judgment is quoted below:-

> **"52.** Registrar of Cooperative Societies functioning under the Cooperative Societies Act is a public authority within the meaning of Section 2(h) of the Act. As a public authority, Registrar of Co-operative Societies has been conferred with lot of statutory powers under the respective Act under which he is functioning. He is also duty bound to comply with the obligations under the RTI Act and furnish information to a citizen under the RTI Act. Information which he is expected to provide is the information enumerated in Section 2(f) of the RTI Act subject to the limitations provided under Section 8 of the Act. Registrar can also, to the extent law permits, gather information from a Society, on which he has supervisory or administrative control under the Cooperative Societies Act. Consequently, apart from the information as is available to him, under Section 2(f), he can also gather those information from the Society, to the extent permitted by law. Registrar is also not obliged to disclose those information if those information fall under Section 8(1)(j) of the Act. No provision has been brought to our knowledge indicating that, under the Cooperative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a cooperative bank . Only those information which a Registrar of Cooperative Societies can have access under the Cooperative Societies Act from a Society could be said to be the information which is "held" or "under the control of public authority". Even those information, Registrar, as already indicated, is not legally obliged to provide if those information falls under the exempted

> category mentioned in Section 8(j) of the Act. Apart from the Registrar of Co-operative Societies, there may be other public authorities who can access information from a Co-operative Bank of a private account maintained by a member of Society under law, in the event of which, in a given situation, the society will have to part with that information. But the demand should have statutory backing.
>
> **53.** Consequently, an information which has been sought for relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual, the Registrar of Cooperative Societies, even if he has got that information, is not bound to furnish the same to an applicant, unless he is satisfied that the larger public interest justifies the disclosure of such information, that too, for reasons to be recorded in writing."

28. It is apparent that information submitted by an assessee in the course of assessment, may also include information relating to other persons. The exclusions available under Section 8(1) of the Act, would also be available in respect of that information.

29. Section 137 of the Income Tax Act, 1961 provided that the information furnished by an assessee was confidential and was not liable to be disclosed. Section 137 of the Income Tax Act, 1961 was deleted by the Finance Act, 1964 and simultaneously, Section 138 the Income Tax Act, 1961 was substituted. Section 138 of the Income Tax Act, 1961 is quoted below:-

> **"138. Disclosure of information respecting assessees.**- (1)(a) The Board or any other income-tax authority specified by it by a general or special order in this behalf may furnish or cause to be furnished to-

(i) any officer, authority or body performing any functions under any law relating to the imposition of any tax, duty or cess, or to dealings in foreign exchange as defined in clause (n) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999); or

(ii) such officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf,

any such information received or obtained by any income-tax authority in the performance of his functions under this Act, as may, in the opinion of the Board or other income-tax authority, be necessary for the purpose of enabling the officer, authority or body to perform his or its functions under that law.

(b) Where a person makes an application to the Chief Commissioner or Commissioner in the prescribed form for any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Act, the Chief Commissioner or Commissioner may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for and his decision in this behalf shall be final and shall not be called in question in any court of law.

(2) Notwithstanding anything contained in sub-section (1) or any other law for the time being in force, the Central Government may, having regard to the practices and usages customary or any other relevant factors, by order notified in the Official Gazette, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessees or except to such authorities as may be specified in the order."

30. In the case of ***Hanuman Pershad*** *(supra),* this Court considered the question whether there was any bar on the Income Tax Department from disclosing records produced during the assessment proceedings. The said controversy was answered by the following words:-

> "It is undoubtedly open to the authorities to disclose information received by them from assessments or other proceedings under the Act. However, there are restrictions contained in Section 138 as now existing concerning the manner in which that information is to be disclosed. Leaving aside sub-clause (a) of sub-section (1) it seems that under sub-clause (b), the Commissioner can disclose information if he is satisfied that it is within the public interest to do so. Hence, if some other authority applies to the Commissioner to obtain information, the same may be disclosed in the discretion of the Commissioner. Under Sub-clause (a) there is also a power to furnish information to other authorities. As this matter has not been fully argued or discussed in the present case, it is sufficient to note that there is no power to disclose information to other authorities and officers outside the provisions of the Section. As far as the information already given is concerned, we have no power to give any direction concerning the same."

31. Although by virtue of Section 22 of the Act, the provisions of the Act have an overriding effect over any other inconsistent law, the said provisions of the Act insofar as they are not inconsistent with other statutes must be read harmoniously. Undoubtedly, the income tax returns and information provided to Income Tax Authorities by assessees is confidential and not required to be placed in public domain. Given the nature of the income tax returns and the information necessary to support the same, it would be exempt under Section 8(1)(j) of the Act in respect of individual and unincorporated assessees. The information as disclosed in

the income tax returns would qualify as personal information with regard to several private companies which are, essentially, alter egos of their promoters. However, in cases of widely held companies most information relating to their income and expenditure would be in public domain and the confidential information would be exempt from disclosure under Section 8(1)(d) of the Act. Further, even in cases of corporate entities, the income tax returns and other disclosure made to authorities would also include transactions with other parties and those parties can also claim the exception under Section 8(1) of the Act. One has to also bear in mind that an authority may not have any obligation to provide any information other than in the form in which it is available and the information provided by an assessee may not have been edited to remove references to other persons. Keeping all the aforesaid considerations in view, the parliament has enacted Section 138 of the Income Tax Act, 1961 to provide for disclosure only where it is necessary in public interest. Similar provisions are enacted under the Act and clauses (d), (e) and (j) of Section 8(1) of the Act that specify that information exempt from disclosure under those clauses, could be disclosed in larger public interest. Section 8(2) of the Act also provides for a non obstante clause which permits disclosure of information in larger public interest.

32. It would also be necessary to refer to Section 11 of the Act, which provides for a notice to a third party before any third party information is disclosed. The proviso to Section 11 of the Act also specifies that disclosure of trade or commercial secrets, which are protected by law

would not be allowed unless their disclosure is necessary in public interest. Section 11(1) of the Act reads as under:-

> **"11. Third party information.—**(1) Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:
>
> Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party."

33. In the above context where the nature of income tax returns and other information provided for assessment of income is confidential and its disclosure is protected under the Income Tax Act, 1961 it is not necessary to read any inconsistency between the Act and Income Tax Act, 1961. And, information furnished by an assesse can be disclosed only where it is necessary to do in public interest and where such interest outweighs in importance, any possible harm or injury to the assesse or any other third party. However, information furnished by corporate assessees that neither

relates to another party nor is exempt under Section 8(1)(d) of the Act, can be disclosed.

34. In view of the aforesaid, the principal question that is to be addressed is whether the CIC has misdirected itself in concluding that disclosure of income tax returns and other information relating to assessment of income of the petitioners was in public interest.

35. In order to address this controversy, it is important to understand the purpose of the respondent in seeking such information. The proceedings under the Income Tax Act, 1961 with respect to assessment of income are at different stages. It is stated that in some cases, assessment is complete and appeal proceedings are pending in other fora. In one case, it is contended that the Appellate Authorities have remanded the matter of assessment to the Assessing Officer. It is apparent that the assessment proceedings have thrown up contentious issues which are being agitated between the income tax authorities and the assessees. The respondent, essentially, wants to intervene in those proceedings by adding and providing his contentions or interpretation as to the information provided by the asseesees or otherwise available with the Income Tax Authorities.

36. In my view, the CIC has misdirected itself in concluding that this was in larger public interest. The CIC arrived at this conclusion by noting that disclosure of information was in larger public interest in increasing public revenue and reducing corruption. The assessment proceedings are not public proceedings where all and sundry are allowed to participate and add their opinion to the proceedings. Merely because a spirited citizen

wishes to assist in assessment proceedings, the same cannot be stated to be in larger public interest. On the contrary, larger public interest would require that assessment proceedings are completed expeditiously and by the authorities who are statutorily empowered to do so.

37. In the present case, there was no material to indicate that there was any corruption on the part of the income tax authorities which led to a justifiable apprehension that the said authorities were not performing their function diligently. In any event, the CIC has not found that the proceedings relating to assessment were not being conducted in accordance with law and/or required the intervention of the respondent. Assessment proceedings are quasi-judicial proceedings where assessee has to produce material to substantiate their return of income. Income tax has to be assessed by the income tax authorities strictly in accordance with the Income Tax Act, 1961 and based on the information sought by them. In the present case, the respondent wants to process the information to assist and support the role of an Assessing Officer. This has a propensity of interfering in the assessment proceedings and thus, cannot be considered to be in larger public interest. The CIC had proceeded on the basis that the income tax authorities should disclose information to informers of income tax departments to enable them to bring instances of tax evasion to the notice of income tax authorities. In my view, this reasoning is flawed as it would tend to subvert the assessment process rather than aid it. If this idea is carried to its logical end, it would enable several busy bodies to interfere in assessment proceedings and throw up their interpretation of law and facts as to how an assessment ought to be carried out. The propensity of this to

multiply litigation cannot be underestimated. Further, the proposition that unrelated parties could intervene in assessment proceedings is wholly alien to the Income Tax Act, 1961. The income tax returns and information are provided in aid of the proceedings that are conducted under that Act and there is no scope for enhancing or providing for an additional dimension to the assessment proceedings.

38. The Supreme Court in ***Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*****: (2012) 13 SCC 61** held that the statutory exemption provided under Section 8 of the Act is the rule and only in exceptional circumstances of larger public interest the information would be disclosed. It was also held that 'public purpose' needs to be interpreted in the strict sense and public interest has to be construed keeping in mind the balance between right to privacy and right to information. The relevant extract from the said judgment is quoted below:

> **"21.** ..... Another very significant provision of the Act is Section 8(1)(*j*). In terms of this provision, information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest. It will not be in consonance with the spirit of these provisions, if in a mechanical manner, directions are passed by the appropriate authority to disclose information which may be protected in terms of the above provisions. All information which has come

to the notice of or on record of a person holding fiduciary relationship with another and but for such capacity, such information would not have been provided to that authority, would normally need to be protected and would not be open to disclosure keeping the higher standards of integrity and confidentiality of such relationship. Such exemption would be available to such authority or department.

22. The expression "public interest" has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression "public interest" must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression "public interest", like "public purpose", is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs (*State of Bihar* v. *Kameshwar Singh* [AIR 1952 SC 252]). It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake [*Black's Law Dictionary* (8th Edn.)].

23. The satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to the circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity. Similarly, there may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given their

> due implementation as they spring from statutory exemptions. It is not a decision simpliciter between private interest and public interest. It is a matter where a constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional values under the Constitution of India."

39. Applying the aforesaid judgment to the facts of this case, it is apparent that disclosure of information as directed has no discernable element of larger public interest.

40. Accordingly, the petitions are allowed and the impugned order is set aside. The parties are left to bear their own costs.

VIBHU BAKHRU, J

NOVEMBER 24, 2014
RK

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

Date of decision: 11th January, 2023

\+ **W.P.(C) 5052/2022**

JAGJIT PAL SINGH VIRK ..... Petitioner
Through: Mr. Rajneesh Bhaskar, Advocate (M-8920067875)

versus

UNION OF INDIA & ANR. ..... Respondents
Through: Mr. Rishabh Sahu, Central Govt Sr. Counsel and Mr. Sameet Sharma, Advocate (M: 9910055066).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

2. The Petitioner - Jagjit Pal Singh Virk has filed the present petition challenging the order dated 24th May, 2021 passed by the Central Information Commission (*hereinafter referred as 'CIC'*) rejecting the Petitioner's RTI application dated 18th October, 2018.

3. The Petitioner is a commander in the Indian Navy, who is currently posted at Headquarters Southern Naval Command, Kochi. He was called for an interview for promotion to the post of Captain in 2014, 2015 and 2016 but was not promoted.

4. It is the case of the Petitioner that in order to know the progress report of the service, he filed an application dated 18th October, 2018 under the Right to Information Act, 2005 (*hereinafter 'RTI Act'*) seeking following information.

> *"Q1. Please provide the following details with respect to each promotion Board for which I was considered:*
>
> *(a) ACR Marks*
>
> *(b) Value judgement marks awarded.*
>
> *Q2. Please provide the details of my profile (PP/PQ) from 09 years of service onwards (since commencement of PARB) till date.*
>
> *Q3. Please provide the details of my profile for PARB in the year 2013, 2014, 2015, 2016 and 2017 for both, prior and post expunging of ACR for the period 24 Aug 13 to 31 Jan 14.*
>
> *Q4. Please provide details of my position in merit on following occasions. Please provide certified copy of merit list for each.*
>
> *(a) Sea command board 2/11*
>
> *(b) Selection for Sea Command PCT- Mar 2013*
>
> *(c) PB 2B/14*
>
> *(d) PB 2/15*
>
> *(e) PB 2/16*
>
> *(f) Review PB 2/17 (Merit with changed profile w.r.t PB 2B/14, PB 2/15 and PB 2/16)*"

5. The Central Public Information Officer (CPIO), Indian Navy sent a reply on 4th December, 2018 refusing to provide the desired information. The stand of the CPIO in the reply is that the copy of the Annual Confidential Reports (ACRs) of the persons in Armed Forces are confidential in nature and the same cannot be disclosed even after retirement. However, grading given by IO, RO and SRO can be only communicated after a period of 3 years from the date of retirement. The said stand is set out below:

> *"2.* ***For Query 1 to 4*** *Your application dated 18 Oct 18, has been examined and it is intimated that*

> *the Hon'ble CIC vide its order dated 09 Mar 10 (Encl 1) has ruled that even a retired officer need not be supplied copies of ACRs. Hence, the copies of ACRs cannot be provided as the ACRs are confidential in nature.* ***However, as per said CIC Order, grading given by IO, RO and SRO can be communicated to the applicant after a gap of 03 years from the date of retirement and hence you cannot be provided with the grading of IO/RO/SRO due to non-completion of mandatory gap of three years from the date of retirement.*** *Moreover, disclosure of the same justifies no larger public interest. DoPT&T OM No. 10/20/2016-IR is also relevant in this regard; copy of the same is placed at* ***Encl 2****.* "

6. The first appeal was preferred before the First Appellate Authority of the Ministry of Defence. The said appeal vide order dated 21st May, 2019 upheld the decision of the CPIO, Indian Navy. The Petitioner then preferred a second appeal to the CIC. The said appeal was also rejected vide order dated 24th May, 2019 with the following observations.

> "*From a perusal of the relevant case records and the written submissions of the CPIO dated 21.05.2021, it is noted that the CPIO was right in denying the information to the appellant. In his written submissions he had explained in detail as to why the information cannot be divulged and has stated that the sensitive nature of duties performed by the Armed Forces and in the overall security interest of the nation and the ramifications on the command and control structure of the armed forces and the specific peculiarities of the defence services, the Armed Forces have always been dealt with differently by the various courts of law including the Apex court even when dealing with issues of similar nature like merit lists, outcome of promotion and selection boards.*

> ***Therefore, if the merit lists are divulged after every Promotion Board (PB) or Selection Board (SB), the officer who is amongst the last to make it in the said PB shall be demotivated as he/ she will come to know that it is unlikely for them to get promoted to the next higher rank. Therefore, it is in the interest of the Armed Forces and in turn the Nation that the merit list is not known to an individual officer*** *and they continue to give his/ her best effort until the next PB or SB. He relied on various High Court and Supreme Court judgments to substantiate the fact that the desired information cannot be disclosed to any officer. He has also informed that the records which the appellant is seeking now were perused by both the legal forums and his case was dismissed. In both the cases, the courts did not divulge details as being sought by the officer in their respective orders and maintained the confidentiality of the PBs of the officer. The Commission accepts the submissions of the CPIO and does not find any flaw in the reply, hence, no relief can be given to the appellant.*
>
> ***Decision:***
>
> *In view of the above, the Commission upholds the submissions of the CPIO and*
>
> *does not find any scope for further intervention in the matter.*"

7. Mr. Rajneesh Bhaskar, ld. Counsel for the Petitioner submits that the Petitioner is entitled to know his own marks, which were awarded to him as he was not promoted. The same cannot be deprived to the Petitioner.

8. On the other hand, ld. Counsel for the Respondent submits that the Petitioner had already challenged by way of the petition before the Armed Forces Tribunal (*hereinafter referred as 'AFT'*) the decision of non-grant of promotion to him. The same was upheld by the AFT, Principal Bench vide order dated 11th May, 2017 in ***OA 635/2017*** titled ***Commander JPS Virk***

(04642-Z) v. UOI & Ors. as also by the Hon'ble Supreme Court in ***Commander JPS Virk (04642-z) v. Union of India & Ors.*** on 7th December, 2018. Ld. counsel for the Respondent also relies upon the order of this Court in ***W.P.(C) 5952/2014*** titled ***Union of India v. A.K. Sinha***, where in similar circumstances, the writ petition was dismissed.

9. A perusal of the information sought by the Petitioner shows that it relates to various aspects of the Promotion Board, details of the profiles and the Petitioner's position on the merit list. Thus, the data, which is sought is relating to the promotion, appraisals to the Petitioner could include the ACRs and other sensitive information relating to the other candidates, who were considered for promotion. These records, as per the CIC, have been held to be sensitive information and could have various ramifications in the security interest of the country. Moreover, a perusal of the AFT order dated 11th May, 2017 in ***OA 635/2017*** titled ***Commander JPS Virk (04642-Z) v. UOI & Ors.*** shows that the records relating to the promotion of the Petitioner were shown to the AFT, which observed as under:

> *"7. We have considered the submissions made by the learned counsel for the parties and have gone through the relevant records of Review Promotion Board furnished by the respondents in which the case of the applicant was dealt with afresh expunging the ACR for the aforesaid period. We are of the considered view that so far as the contention of the applicant that his 9 ACRs after the ACR which was expunged, deserve to be deleted or not considered or to be re-written, is concerned, this is an argument of desperation. The reason for saying so is that, it was never the case of the applicant in earlier round of litigation in OA 99/2016 that his 9 ACRs got effected because of ACR for the period 24.08.2013 to*

31.01.2014. If at all this was an argument to be taken, it should have been done by the applicant in the earlier round of litigation and not in the present case. The reason for this is that such a plea which is sought to be raised by the learned counsel for the applicant, is barred by order 2 Rule 2 and Exp. IV of Section 11 of CPC. The contention of learned counsel for the applicant with regard to 9 ACRs are biased, is not correct and is without any merit.

8 The only thing which the Tribunal has to see, is the Board Proceedings where the case of the applicant for empanelment to the rank of Captain has been dealt with.

9. We have seen the records meticulously and are fully satisfied that the case of the applicant for promotion to the rank of Captain from the rank of Commander has been duly considered dispassionately and he has not been found to be fit for empanelment. The reason for this is that the merit of the last officer who has been empaneled is at SL No.26 while the applicant stands at Sl. No.52, which is far behind the name of the officer who has been empaneled. We, therefore, feel that there is no merit in the contention of learned counsel for the applicant and all other prayers of the applicant regarding grant of compensation or making other enquiries etc. have been rejected by the Tribunal.

10. For the aforesaid reasons, we are satisfied that the present OA is without any merit and the same is, accordingly, dismissed in limine."

10. The challenge to the said order of the AFT was also considered by the Hon'ble Supreme Court in ***Commander JPS Virk (04642-z) v. Union of India & Ors.***, which passed the following order dated 7th December, 2018.

"*Pursuant to our direction given on the last date of*

> *hearing the respondents had produced personal records/dossiers of the appellant as well as records of the Promotion Board whereby the case of the appellant for initial promotion and thereafter for review promotion was considered. After perusing the same, we are of the opinion that the Tribunal has come to a right conclusion in the impugned judgment which does not call for any interference. The appeal is, accordingly, dismissed.*"

11. A perusal of both of the orders of AFT and the Supreme Court shows that relevant records of the Review Promotion Board have been produced before both AFT as also the Supreme Court. Further, the CPIO has clearly taken the stand that the copies of the ACR cannot be provided and only grading given by IO, RO and SRO can be provided only 3 after the retirement in regard of DoP&T OM No. 10/202016-IR as also in the larger public interest.

12. The Supreme Court in case of ***Dev Dutt v. Union of India [Civil Appeal No.7631/2002, decided on 12th May, 2008]*** has held that the entries of ACR need not be communicated to military officers as their position is different from civil, judicial, police or any other State service. The relevant portion of the said judgment reads as under:

> ***"39.*** *In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal*

position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

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

41. We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in Union of India v. Major Bahadur Singh MANU/SC/1961/2005: (2006) 1 SCC 368. *But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to Government servants).”*

13. This decision of the Supreme Court has been followed by this Court in ***Union of India v. A.K. Sinha [W.P.(C) 5952/2014 date of order 30th March, 2016]*** wherein the Court has held as under:

"The present writ petition has been filed challenging the two orders dated 04th July, 2014 passed by the Central Information Commission (for short 'CIC').

Learned counsel for the petitioner submits that reliance placed by the CIC in the impugned orders on the judgment of the Apex Court in Bihar Public Service Commission vs. Saiyed Hussain Abbas Rizwi and Another, (2012) 13 SCC 61 as well as on its own order dated 14th May, 2010 in file no. CIC/WB/A/2009/000420, 582 and 602, is mis-conceived. He states that both the aforesaid cases do not pertain to Defence personnel. He refers and relies upon a judgment of the Apex Court in Dev Dutt v. Union of India, (2008) 8 SCC 725, wherein it has been held as under……:

"36……"

A perusal of the file reveals that on 08th September, 2014, this Court had stayed the operation of the impugned orders. On 24th September, 2015, this Court had clarified that if the Armed Forces Tribunal (for short 'AFT') which was hearing the petition being OA 407/2014 filed by the respondent is of the opinion that the information sought in the present writ petition is relevant, it would be entitled to ask for its production. Subsequently, AFT dismissed the petition filed by the respondent.

Though the respondent filed a statutory appeal before the Supreme Court challenging the order of AFT, yet the same has been dismissed.

Keeping in view the aforesaid mandate of law as well as the subsequent events that have transpired including the fact that the respondent has now retired, this Court is of the opinion that the impugned orders need to be set aside. Accordingly, the present writ petition is allowed. Pending application also stand disposed of.

14. This Court, having perused the stand of the CPIO, observations of the CIC and the case laws highlighted above as also the fact that the records were produced before the AFT and the Supreme Court, does not find any legal ground to interfere with the orders passed by the CIC

15. In the opinion of this Court, the information sought in the present petition would not be liable to be disclosed, owing to the nature of the information i.e., relating to senior personnel in the Navy. The CIC's order does not warrant any interference.

16. The writ petition, along with all pending applications, is dismissed.

PRATHIBA M. SINGH
JUDGE

JANUARY 11, 2023/*dk/hh*

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

Date of Decision: 3rd February, 2023

\+ **W.P.(C) 9971/2019 & CM APPL. 41318/2019**

EHTESHAM QUTUBUDDIN SIDDIQUE ..... Petitioner

Through: Mr. Arpit Bhargava, Ms. Hina Bhargava and Mr. Pankaj, Advocates (M: 9871316969).

versus

CPIO, PUBLICATIONS DIVISION MINISTRY OF INFORMATION AND BROADCASTING ..... Respondent

Through: Mr. Satya Ranjan Swain, Sr. panel Counsel with Mr. Kautilya Birat, Advocate.

(12) AND

\+ **W.P.(C) 10258/2020**

EHTESHAM QUTUBUDDIN SIDDIQUE ..... Petitioner

Through: Mr Arpit Bhargava, Ms Hina Bhargava and Mr. Pankaj, Advocates (M: 9871316969).

versus

CPIO, MINISTRY OF HOME AFFAIRS ..... Respondent

Through: Mr. Rahul Sharma, Central Govt. Counsel with Mr. C.K. and Mr. Ayush Bhatt, Advs. (M: 981155594).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

W.P.(C) 9971/2019 & CM APPL. 41318/2019

2. The Petitioner is a death row convict who is currently in the Nagpur Central Prison, Nagpur, Maharashtra. He has filed the present writ petition challenging the order of the Central Information Commission (*hereinafter 'CIC'*) dated 13th June, 2019. The CIC in its decision had directed the Jail

Superintendent, Nagpur Central Prison, to facilitate the downloading of copies of the documents sought by the Petitioner.

3. The Petitioner filed an RTI application dated 4th February, 2019 addressed to the Central Public Information Officers (*hereinafter 'CPIO'*) Publication Division, Ministry of Information and Broadcasting (*hereinafter 'MIB'*) seeking hard copies of the following publications:

> *i. Courts of India (Compilation)*
> *ii. Belief in ballot*
> *iii. Why people protest (Del.)*
> *iv. Right to Information*
> *v. Citizen and Constitution*
> *vi. Dist. Administration (theory and practice)*
> *vii. My book of human rights*
> *viii. National unity and integrity*
> *ix. Local governance (A global perspective)*
> *x. A history of socialism (Del.)"*

4. The claim of the Petitioner is that he is below the poverty line being a death row convict and cannot afford the price of these books. He thus prays for the same to be given free of cost to him.

5. The publication division responded and stated that the same cannot be provided free of cost to the general public. However, if the Petitioner is interested, he could contact the sales emporium in Navi Mumbai to purchase the books online. This order was challenged by the Petitioner before the Petitioner before the First Appellate Authority under Section 19(1) of the RTI Act, 2005 which also held that there was no document to prove that the applicant is below the poverty line. Accordingly, the appeal was rejected. Thereafter, the CIC also disposed of the appeal with the following directions:

> *"9. In view of the above, the Commission finds that an appropriate reply has been furnished to the appellant by the respondent. However, in view of the appellant's submission that he is in jail where he has no access to the internet, the Commission directs the Jail Superintendent, Nagpur Central Prison, Nagpur to facilitate downloading of copies of Acts/Rules as sought vide the appellant's RTI application within a period of four weeks from the date of receipt of a copy of this order under intimation to the Commission."*

6. Notice was issued in this writ petition on 16th September, 2019. A counter affidavit has been filed by the MIB to the following effect:

> *"i. THAT in its order, Hon'ble Chief Information Commissioner (CIC), Mr Sudhir Bhargava on 13.06.2019 finds that an appropriate reply has been furnished to the Petitioner by the Respondent. However, in view of the Petitioner's submission that he is in jail where he has no access to the internet, the Commission directed the Jail Superintendent, Nagpur Central Prison, Nagpur to facilitate downloading of copies of Acts/Rules as sought vide the Petitioner's RTI application within a period of four week from the date of receipt of a copy of this order under intimation to the Commission. With the above observations, the appeal was disposed-off.*
>
> *j. THAT it may be seen therefore that the Chief Information Commissioner (CIC) has duly upheld the stand taken by the First Appellate Authority, Shri Rajiirder Chaudhary, Director (B).*
>
> *k. THAT the Appellate Authority suggested the Nagpur Central Jail, keeping in view the circumstances of the prisoner, to take a broader view. Accordingly, the Respondent had requested the Superintendent, Nagpur Central Prison to purchase the books of Publications Division and issue the same to the Prisoner for facilitating his appeal. This stand was again duly appreciated and upheld by the Chief Information*

> *Commissioner (CIC) and vide the Para No.9. Chief Information Commissioner (CIC) has directed the Jail Superintendent to provide the copies of the Act as sought by the Petitioner."*

7. A perusal of the above affidavit filed by the MIB shows that in fact the Appellate Authority has already requested the Jail Superintendent, Nagpur Central Prison to purchase the books of the publication division and issue the same to the Petitioner.

8. Thus, the stand of the MIB is that if the Petitioner is not entitled to internet access, then the Jail Superintendent of the Prison can purchase the books and issue the same to the Petitioner.

9. Ld. counsel for the Petitioner submits that the RTI Rules which were notified with effect from 31st July, 2017 provide clearly that subsequent to the CIC's order, the exemption for persons below the poverty line has in fact been incorporated in the Rules itself in Rules 4 and 5 which read as under:

> *"4. Fees for providing information.-Fee for providing information under sub-section (4) of Section 4 and sub-sections (1) and (5) of Section 7 of the Act shall be charged at the following rates, namely:-*
>
> *(a) rupees two for each page in A-3 or smaller size paper;*
> *(b) actual cost or price of a photocopy in large size paper;*
> *(c) actual cost or price for samples or models,*
> *(d) rupees fifty per diskette or floppy;*
> *(e) price fixed for a publication or rupees two per page of photocopy for extracts from the publication;*
> *(f)no fee for inspection of records for the first hour of inspection and a fee of rupees 5 for each subsequent hour or fraction thereof; and*

> *(g) so much of postal charge involved in supply of information that exceeds fifty rupees.*
>
> *5. Exemption from Payment of Fee.* ***No fee under rule 3 and rule 4 shall be charged from any person who is below poverty line provided a copy of the certificate issued by the appropriate Government in this regard is submitted along with the application****"*

10. Considering the stand of the MIB, it is directed that the Jail Superintendent, Nagpur Central Prison may make the said books available to the Petitioner either through online means or by purchasing the same. The same shall be done within a period of four weeks. If the access to the books is not given, the Petitioner is free to avail his remedies in accordance with the law.

11. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

W.P.(C) 10258/2020

12. The present case has been filed by the Petitioner- Ehtesham Qutubuddin Siddique seeking quashing of the impugned order dated 31st July 2019 passed by the Central Information Commission (CIC).

13. The Petitioner is in judicial custody and has been convicted in the 11st July, 2006 Mumbai Train Blast case (7/11 bomb blast). He was convicted and sentenced to death on 30th September, 2015 by the Special Judge, under Maharashtra Control of Organised Crime Act (MACOCA), 1999 and National Investigation Agency Act, 2008, Special Court No.1, Mumbai.

14. The confirmation proceedings regarding the same are stated to be pending before the Hon'ble Bombay High Court. The Petitioner filed RTI application dated 21st May, 2017 seeking the following documents:

> *"a) True copy of the report/ dossier etc submitted by Maharashtra Government regarding investigation of 7/ 11 bomb blast case in the year 2006,*
>
> *b) True copy of the report/dossier etc submitted by the then Andhra Pradesh Government in the year 2009 regarding investigation of Indian Mujahideen group related to 7/ 11 bomb blast case."*

15. The said RTI application was rejected by the CPIO, Ministry of Home Affairs (Internal Security Division-I) vide order dated 22nd June, 2017. The document at serial no.(a) was reject by the CPIO by invoking Section 8(1)(a) of the Right to Information Act, 2005 (*hereinafter "the RTI Act")*. Insofar as the document at serial no.(b) is concerned, the same was rejected on the ground of unavailability.

16. The Petitioner filed first appeal bearing *No. 17011/10/2016/IS-VI(Part III)* before the Joint Secretary (IS-I), First Appellate Authority, under Section 19(1) of the RTI Act. The same was rejected vide order dated 9th August, 2017.

17. Finally, second appeal, being *Second Appeal No. CIC/MHOME/A/2017/166137* titled *Ehtesham Qutubuddin Siddique v. CPIO, O/o Internal Security, Division-I(IS VI Desk), Ministry of Home Affairs, New Delhi*, was filed before the CIC under Section 19(3) of the RTI Act. The same was dismissed by the CIC vide impugned order dated 31st July, 2019.

18. As per the impugned order passed by the CIC it was held that the requested documents cannot be provided in view of Sections 8(1)(h) and 8(1)(a) of the RTI Act as also the fact that there are various other accused, including foreign nationals, who are still absconding in this matter.

19. Notice was issued in this petition on 13th January, 2021 and a counter affidavit was called for by the Respondents. The said counter affidavit has now been filed. Ld. Counsels for the parties have also been heard.

20. Mr. Arpit Bhargava ld. Counsel for the Petitioner submits as under:

i) that the CPIO had initially relied upon only Section 8(1)(a) of the RTI Act to reject the disclosure of the information, however, at the second appellate stage, the CIC also relied upon Section 8(l)(h) and Section 24 of the RTI Act. The same is not permissible as the RTI applicant is taken by surprise at the second appellate stage;

ii) that if the information in respect of document at serial no.(b) was not available with the Ministry of Home Affairs, the matter ought to have been transferred to the concerned authority under Section 6 of the RTI Act;

iii) that insofar as the document at serial no.(a) is concerned, the principle of severability as applicable under Section 10 of the RTI Act has not been applied as to which part of the said document is classified or secret;

iv) that in view of the Section 8(2) of the RTI Act, the argument of the Respondents that the incident involved a terrorist attack where hundreds of people were affected and deaths were caused, would lead to a conclusion that it would be in the overall public interest to disclose the documents requested under the RTI application;

v) that the reliance placed on Section 8(1)(h) of the RTI Act by the CIC is completely misplaced inasmuch as the investigation has

already concluded and the Petitioner has already been convicted.;

vi) that the impugned orders deserve to be set aside and the information which is the basis of the report/dossier mentioned in the Indian Express news article dated 25th February, 2017 would be liable to be disclosed.

21. Mr. Rahul Sharma, ld. Counsel for the Respondents submits as under:

i) that the Petitioner was involved in one of the worst terrorist attacks in India;

ii) that the entire RTI application is based on a newspaper article;

iii) that the report/dossier which is sought by the Petitioner, cannot be severed in the manner as the same may contain various other facts on which investigation is still underway;

iv) that since the investigation is incomplete and all the accused including certain foreign nationals have not been apprehended the same cannot be disclosed under Section 8(1)(h) of the RTI Act;

v) that the Anti Terrorist Squad (ATS) of Maharashtra Police being a notified body under Section 24, the reports/dossier would not be liable to be disclosed.

22. The Court has heard the ld. Counsels for the parties.

23. The information sought in the RTI application is in the nature of a report/dossier which is claimed to have been submitted by the Maharashtra Government in respect of the investigation of 7/11 bomb blast. The second information which is sought is a report/dossier claimed to have been

submitted by the Andhra Pradesh Government in the year 2009 regarding the same very bomb blast.

24. Both these reports are sought by the Petitioner are on the basis of a newspaper article dated 25th February, 2017 published in the Indian Express. Ld. Counsel for the Petitioner has read through the newspaper publication which seeks to quote a Minister who was holding office at the relevant point of time.

25. The primary premise on which the CPIO has rejected the Petitioner's RTI application is Section 8(1)(a) of the RTI Act, 2005. The said exemption under the Act reads as under:

> ***8. Exemption from disclosure of information***.—
> *(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen-*
> *(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;*

26. At the second appellate stage, the CIC has also relied upon Section 8(1)(h) and Section 24. The relevant portion of the said provisions are as under:

> ***"8. Exemption from disclosure of information***.—
> *(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*
> *(h) information which would impede the process of investigation or apprehension or prosecution of offenders;*
>
> ***24. Act not to apply in certain organisations***.—*(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations*

> *established by the Central Government or any information furnished by such organisations to that Government"*

27. There can be no doubt that terrorist activities affect the integrity of India as also the safety and security of its citizens. The fact that one particular investigation *qua* a particular individual may have been concluded would not in any manner mean that all the investigations have concluded finally. The Mumbai blasts which are the subject matter of the reports, were one of the worst terror attacks on India, leading to hundreds of deaths and hundreds of injured persons. Thus, reports/dossiers on such investigations can have a major bearing on India's security, sovereignty and integrity.

28. On the one hand, the Petitioner seeks access these reports on the basis of right to information being a convict in the 7/11 bomb blast case. On the other hand, the Respondents are interested in safeguarding the safety of the citizens and the security of the country. The exemption under Section 8(1)(a) of the RTI Act is enacted keeping in mind cases of this nature.

29. Reports and dossiers by intelligence authorities relating to terrorist activities, which are subject matter of investigation are barred and thus, cannot be disclosed under RTI especially, if they compromise the sovereignty and integrity of the country. The larger public interest is in protecting the safety and security and not in disclosing such reports.

30. Insofar as the decision in ***W.P.(C) 9773/2018*** is concerned, the ld. Single Judge in the said order dated 16th January 2019, concludes that the exemptions under Section 8 would be applicable even qua information relating to corruption and human rights violations. In the said case, the Court had remanded the matter to CIC for reconsideration.

31. Insofar as reliance on Section 8(1)(h) and Section 24 is concerned, this is a legal plea which can be relied upon by the CIC even at the second appellate stage inasmuch as investigations into terrorist activities are an ongoing process. In the opinion of this Court, there can be no doubt that the ATS of a State Police would be an organization covered under Section 24 of the RTI Act. Ld. Counsel seeks to rely upon the human rights of the Petitioner and thus argues that the exception would apply in the present case. The facts of this case would show that the rights of innocent people could be jeopardised by the disclosure of the information and thus the disclosure of the information cannot be made on the plank of human rights.

32. Thus, the CPIO's order dated 22nd June, 2017 rejecting the Petitioner's RTI Application under the exemption incorporated under Section 8(1)(a), cannot be faulted with and the same has been rightly upheld by the CIC vide the impugned order dated 31st July 2019.

33. In these facts and circumstances, the present writ petition, along with all pending applications is disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 3, 2023

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

Date of decision: 05th OCTOBER, 2023

IN THE MATTER OF:

\+ **W.P.(C) 606/2017**

BRIJ MOHAN ..... Petitioner

Through: Mr. Vidya Sagar and Mr. Amolak, Advs.

versus

CENTRAL INFORMATION COMMISSION & ORS ... Respondents

Through: Mr. Rahul Sharma, CGSC with Mr. Ayush Bhatt, Advs.
Mr. Anil Soni, CGSC with Mr. Devvrat Yadav, Advs for UoI.
Mr. S. W. Haider and Mrs. Pooja Dua, Advs for R-2, 4 & 5.
Mr. Avishkar Singhvi, Mr. Naved Ahmed, Mr. Vivek Kr. Singh, Advs for Delhi Police along with Insp. Vikash Rana and SI Manoj Kumar, Crime Branch.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Aggrieved by the Order dated 11.11.2016 passed by the Central Information Commission (CIC) rejecting an appeal filed by the Petitioner which ultimately upheld the order passed by the Central Public Information Officer (CPIO), Ministry of Finance, Department of Economic Affairs, the Petitioner has approached this Court under Article 226 of the Constitution of India.

2. The facts of the present case reveal that the Petitioner is a retired officer of the Indian Audit & Accounts Service.

3. Material on record indicates that the Central Bureau of Investigation (CBI) was investigating a case relating to irregularities in the National Spot Exchange Limited (NSEL) where the Petitioner was working as Deputy Secretary/Director on deputation with the Department of Consumer Affairs.

4. It is stated that the Petitioner was examined by the CBI and his statement was recorded under Section 161 of the Code of Criminal Procedure, 1973 (CrPC). Material on record also reveals that the CBI recommended action against few officers in its report in July, 2015.

5. A Show Cause Notice (SCN) dated 04.04.2016 was issued against the Petitioner stating that the Petitioner acted in a perfunctory manner by facilitating the appointment of Forward Markets Commission (FMC) as a designated agency to oversee the functioning of the commodity spot exchanges.

6. The SCN also indicates that the action of the Petitioner amounted to showing undue favour to the NSEL by concealing the fact from the RBI that the NSEL had falsely claimed before the RBI that it was under regulatory control and the Petitioner was submitting monthly reports to ensure that the NSEL remained out of the purview of Payment and Settlement Systems Act, 2007.

7. The SCN further indicates that the Petitioner had shown undue favour to the NSEL by participating in the act of relaxing and diluting of the draft forwarded by FMC for appointment as designated agency for regulating spot exchanges and the action of the Petitioner had resulted in the FMC being appointed despite not being sufficiently empowered to take effective action against spot exchange. There are also other allegations with regard to the functioning of the NSEL.

8. The Petitioner, thereafter, filed an application under the Right to

Information Act, 2005 (RTI Act) seeking the following information:-

> *"(i) Copy of the CBI's above cited report along with the copies of the Notings recorded at various levels in DEA in connection with the processing of the CBI's report;*
>
> *(ii) Copy of the Action Taken Report (ATR) thereon, if any;*
>
> *(iii) Copy of the comments of CVC on ATR of DEA, if any;*
>
> *(iv) Copy of the comments of CBI thereon, if any;*
>
> *(v) Copies of the Notes and correspondence relating to items (ii) to (iv) above; and*
>
> *(vi) Copy of the final orders passed by the Hon'ble Minister/MOS of Finance on the action proposed by CBI against the officers of erstwhile Forward Markets Commission (FMC), Mumbai."*

9. The information sought by the Petitioner was denied on 03.06.2016 by the CPIO on the ground that the same is exempted under Section 8(1)(h) of the RTI Act. Aggrieved by the said denial of information, the Petitioner filed an appeal before the First Appellate Authority which was rejected by an Order dated 01.07.2016 wherein the First Appellate Authority also reiterated that the information sought for by the Petitioner is exempted under Section 8(1)(h) of the RTI Act.

10. The Petitioner thereafter approached the CIC by filing an appeal against the Order dated 01.07.2016 which was rejected by the CIC *vide* Order dated 11.11.2016 holding that the information sought by the Petitioner herein could not be provided under Section 8(1)(h) of the RTI Act. It was further held that as the CBI was an organisation exempted from the

operation of the RTI Act under Section 24, therefore, information sought for by the Petitioner could not be provided. It is this Order which is under challenge in the instant writ petition.

11. It is contention of learned Counsel for the Petitioner that Section 24 of the RTI Act does bestow complete impunity upon the CBI and that the CBI is bound to divulge information pertaining to allegations of corruption and human rights violations. It is further stated that only such of those information which will impede the process of investigation or apprehension or prosecution of offender alone cannot be divulged under Section 8(1)(h) of the RTI Act. It is stated that the Petitioner is seeking information so that he can furnish an effective reply to the SCN, and, therefore, there cannot be any impediment in revealing the information sought for by the Petitioner under the RTI Act.

12. Notice was issued on 23.01.2017. Respondents No.2 and 3 have filed their Counter Affidavits contending that the information sought for by the Petitioner cannot be revealed under Section 8(1)(h) of the RTI Act as the same is exempted.

13. Learned Counsel for the Petitioner places reliance on the judgment passed by a Coordinate Bench of this Court in Union of India v. Manjit Singh Bali, **W.P.(C) 6341/2015,** wherein this Court has held that merely stating that the information given to the applicant under the RTI Act would impede the investigation is not sufficient and there has to be specific disclosures as to how the information sought for would impede the investigation.

14. Learned Counsel for the Petitioner further places reliance on an Order dated 27.08.2018 passed by this Court in Delhi Subordinate Services Selection Board Govt. of NCT of Delhi v. Naveen Yadav, **W.P.(C)**

8960/2018. He further relies on the judgment of this Court in Adesh Kumar v. Union of India, **2014 SCC OnLine Del 7203** and Union of India v. O P Nahar, **2015 SCC OnLine Del 9197** to substantiate his contentions.

15. The admitted facts are that at the relevant point of time, the Petitioner, who is a member of the Indian Audit & Accounts Service, was working with NSEL as a member of the Department. An SCN was issued to the Petitioner on 04.04.2016. Material on record indicates that there have been complaints and the CBI is conducting investigation regarding the activities of NSEL which has resulted in loss of about Rs.5,600 crores in the year 2013, with around 13,000 investors being investigated by different investigating agencies. Investigation is yet to be completed.

16. In light of the foregoing, the question that arises is whether the information sought for by the Petitioner could have been given to the Petitioner or not. The Petitioner has sought for a copy of the report of the CBI given in July, 2015, along with the copies of notings at various levels in the Department of Economic Affairs in connection with the processing of the CBI report, the Action Taken Report (ATR) thereon. He has further sought the comments of the CVC on the ATR of Department of Economic Affairs. the copies of notes and correspondence as well as the final orders passed by the Hon'ble Minister/MOS of Finance on the action proposed by CBI against the officers of Forward Markets Commission (FMC).

17. This Court is of the opinion that the information that is being sought by the Petitioner would impede the investigation conducted by the CBI involving a large scale fraud, including many accused. Section 8(1)(h) of the RTI Act specifically exempts such information which will impede the process of investigation revealing a copy of the entire report of the CBI. Further, if such information falls in the hands of other offenders, it will

certainly impede an ongoing investigation process.

18. Most of the judgments on which the Petitioner has placed reliance are where the investigation is complete and chargesheet has been filed. In such cases, this Court has held that information which is contained in the chargesheet and which has been submitted in the Court can be disclosed to the third parties who are not an accused in the matter. Since the investigation in those cases is already over, the said judgments cannot be applied to the present case where the investigation is ongoing.

19. This Court has also examined as to whether the information sought for by the Petitioner would be relevant for answering the SCN issued to the Petitioner. The SCN dated 04.04.2016 reads as under:-

> *" In continuation of this Department's Memorandum of even number dated 01.04,2016 the undersigned is directed to state that the inquiry on allegations of irregularities in the operation of the National Spot Exchange Limited (NSEL) disclosed the following Specific acts of commission/omission on your part, while you were working as Director, Department of Consumer Affair, Government of India:-*
>
> > *(i) That a DO letter was issued by Shri R.Gopalan, the then Secretary, . Department of Economic Affairs, in which serious regulatory concerns raised in the FSDC meeting dated 4.5.2011 were conveyed. The letter also conveyed the claim of NSEL before RBI that it was under regulation by FMC and that it was submitting monthly reports, which was false. You have failed to address these issues and instead, in a perfunctory manner facilitated appointment of FMC as a designated agency to oversee the functioning of the commodity spot exchanges without sufficiently empowering it. The said decision was not a natural decision emerging out of introspection in the Department of Consumer Affairs*

and representation from FMC but rather the same was a deliberate ploy to ward off the queries from DEA, FSDC and RBI with a view to let the NSEL continue to function in an unregulated environment.

(ii) Your above skid action also amounted to showing of undue favour to NSEL by concealing the fact from RBI that NSEL had falsely claimed before it that it was under regulatory control and was submitting monthly reports. thereby getting them out of the review of Payment and Settlement Systems Act, 2007.

(iii) That you had shown undue favour to NSEL by way of participating in the act of relaxing and diluting of draft forwarded by FMC for appointment as designated agency for monitoring/regulating spot exchanges. Your action resulted in FMC not sufficiently empowered to take effective action against the exchange for violation of terms and conditions of the exemption granted.

(iv) That when the FMC made serious allegations in April 2012, with regard to irregularities on the exchange platform including short sale contracts exceeding 11 days, you failed to initiate remedial action also accepted the excuses offered by the NSEL and gave cover of prospective legislative changes which were not relevant at that point of time to condone' the regularities committed by the NSEL. You had thereby shown undue favour to NSEL which had eventually, resulted in continuation of fraudulent activities by the exchange, resulting in a loss of 5500 crores to the public and public sector entities such as MMTC and PEC.

2. As the above allegations prima facie indicate your failure to maintain absolute integrity and devotion to duty and indulgence in a conduct unbecoming of a Government Servant, during your posting in the

> *Department of Consumer Affairs as Director. You are requested to submit your preliminary explanation to reach the- undersigned before 10th April, 2016, as to why further steps not be taken for initiating regular departmental proceedings against you for imposing major penalty, under the relevant Rules. "*

20. A perusal of the SCN reveals that answers to the action of the Petitioner is called for conducting a departmental inquiry. The CBI looking into the report would not be very relevant in answering the issues raised in the SCN issued against the Petitioner.

21. Despite this exercise not being necessary to answer the question raised in this writ petition, this Court has delved into the question only to satisfy its conscience that the Petitioner's rights, along with the principles of natural justice, are not being prejudiced by not providing him the information sought and whether lack of this information would have negatively impacted the Petitioner in making an effective reply to the allegations made in the SCN. Resultantly, the writ petition fails.

22. The writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 05, 2023
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2023:DHC:7608-DB

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

\+ **Date of Decision: 11.10.2023**

% LPA 696/2023 and CM APPL. 52742/2023

ADARSH KANOJIA ..... Appellant

Through: Mr. Sudhir Sharma, Advocate.

versus

UNION OF INDIA ..... Respondent

Through: Mr. Rahul Sharma, CGSC with Mr. Ayush Bhatt, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. This is an appeal filed against a judgement dated 17.08.2023 passed by the Learned Single Judge in W.P.(C) 12264 of 2019 titled '***Adarsh Kanojia v. CPIO, Ministry of Home Affairs***' (the "**Writ Petition**") wherein the Learned Single Judge has dismissed the Writ Petition observing *inter alia* that the rigours of the Right to Information Act, 2005 (the "**RTI Act**") ordinarily do not apply to the Intelligence Bureau (the "**IB**") i.e., an organisation specified under the Second Schedule of the RTI Act; and (ii) mere allegations of corruption cannot be made grounds to direct the IB to supply the information sought by the Appellant under the exception

contained under the *proviso* to Section 24 of the RTI Act(the "**Impugned Judgement**").

2. The Appellant before this Court appeared in the Assistant Central Intelligence OfficerGrade -II Examination, 2017 conducted by the IB on 15.10.2017 (the "**Examination**") *vide* roll number 23059397; and registration ID: MHA111984471 for the recruitment of persons to the post of Assistant Central Intelligence Officer, Grade -II ("**ACIO-II**"). On 19.01.2018, the results of the Examination were declared however, the name of the Appellant did not feature in the list of successful candidates.

3. It is stated that certain irregularities in relation to the Examination were reported by newspapers on (i) 21.10.2017; and (ii) 24.10.2017. Furthermore, it had been pointed out that pursuant to the allegations of irregularities, the IB came to cancel 4 (four) questions of the Examination. Aggrieved, the Appellant filed an application dated 20.02.2018 under the RTI Act seeking certain information in relation to the Examination; and the Appellant's marksheet (the "**RTI Application**"). For ease of reference the key particulars of the RTI Application are reproduced below:

> *"a. Please inform the marks obtained by me,*
> *b. Please inform me the cut off marks,*
> *c. Please provide me a certified copy of my OMR sheet,*
> *d. Please provide a model answer key."*

4. The RTI Application came to be transferred on 21.02.2018 from the Department of Personnel and Training (the "**DoPT**") to the IB and, accordingly, came to be registered as: INBRU/R/2018/80007. As no

response was received qua the RTI Application, the Appellant preferred an appeal dated 03.04.2018 under the RTI Act, which came to be registered as INBRU/A/2018/60015 (the "**First Appeal**"). As no response was received in relation to the First Appeal, the Appellant made representation(s) *via* email(s) dated 26.04.2018; and 1.05.2018 to the Respondent Authority. Aggrieved by the non-responsive nature of the Respondent Authority, the Appellant preferred a second appeal dated 07.05.2018 before the Central Information Commission (the "**CIC**") (the "**Second Appeal**").

5. *Vide* a letter dated 21.05.2018, the Appellant was informed that the RTI Application was never received by the relevant vertical of the IB and, accordingly, the Second Appeal was transferred to an identified branch of Ministry of Home Affairs (the "**MHA**"). However, *vide* a letter dated 05.06.2018, the RTI Application came to be answered wherein it was stated that the information sought under the RTI Application was exempt from disclosure under Section 24(1) of the RTI Act (the "**IB Response**"). Unsatisfied with the IB Response, the Appellant filed a complaint dated 10.07.2018 with the CIC reiterating his request for information (the "**Complaint**"). Subsequently, a letter dated 22.10.2018 came to be issued by the Appellant to the CIC seeking *inter alia* the early hearing and disposal of the Second Appeal.

6. Aggrieved by the delays, the Appellant herein filed a writ petition bearing number W.P. (C) 7419 of 2019 titled '***Adarsh Kanojia v. Union of India &Anr.***' wherein, this Court *vide* an order dated 23.07.2019, observed that the CIC would consider the Complaint. Thereafter, the CIC passed an order on 4.10.2021 wherein the CIC observed *inter alia* that (i) the IB is an

organisation that is exempt from the rigors of the RTI Act on account of being an organisation specified under the Second Schedule of the RTI Act; and (ii) the nature of information sought does not pertain to (a) human rights violations; or (b) allegations of corruption i.e., information which must be disclosed by even exempted institutions under the *proviso* to Section 24 of the RTI Act (the "**CIC Order**").

7. The CIC Order came to be challenged by way of the Writ Petition. Pertinently, the Writ Petition came to be dismissed by way of the Impugned Judgement. Aggrieved by the Impugned Judgement, the Appellant has filed this Appeal seeking the following reliefs:

> *"(a) set aside impugned Order 17.08.2023 passed by the Hon'ble Single Judge in Writ Petition (Civil) No.12264/2019; titled as ADARSH KANOJIA v. CPIO, Ministry of Home Affairs (Annexure A:1) whereby Hon'ble Court not allowed the setting aside of order dated 04.10.2019 passed by CIC under the provisions of RTI Act, 2005 and further*
>
> *(b) direct the Ministry to provide the evaluated OMR sheet to him to repose a trust/faith in the transparency of the examination. Or in the alternative*
>
> *(c) direct the respondent to deposit the OMR sheet with this Hon'ble Court for proper adjudication and furnish the marks secured by the last inducted SC category candidate i.e. cut off marks for SC category;*
>
> *(d) pass any other order or relief which this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case in favour of the petitioner and against the respondents.*

8. The main thrust of the arguments of Mr. Sudhir Sharma, the learned counsel appearing on behalf of the Appellant is that suspicion of corruption

is apparent in light of the news-articles dated (i) 21.10.2017; and (ii) 24.10.2017 regarding irregularities in the Examination, and accordingly, the information sought by the Appellant is squarely covered under the exception under the *proviso* to Section 24 of the RTI Act.

9. On the other hand, Mr. Rahul Sharma, Central Government Standing Counsel appearing on behalf of the Respondent(s) has adopted the arguments canvassed by him before the Learned Single Judge.

10. This Court has heard the counsel(s) for the parties and perused the record. The matter is being disposed of at the stage of admission with the consent of the learned counsels' appearing on behalf of the parties.

11. The limited issue before this Court is whether, theRespondent was justified in passing the CIC Order i.e., an order upholding the rejection of the Appellant's RTI Application, on account of (i) the IB being an organisation specified under the Second Schedule of the RTI Act read with Section 24 of the RTI Act; and (ii) the information failingto satisfy the exception enshrined under the *proviso* to Section 24 of the RTI Act. For ease of reference Section 24 of the RTI Act is reproduced below:

> *"24. Act not to apply in certain organisations.—*
>
> *(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:*
>
> *Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:*

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.

(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(5) Every notification issued under sub-section (4) shall be laid before the State Legislature.

12. Undoubtedly, the IB is an organisation specified under theSecond Schedule of the RTI Act and, accordingly, under Section 24 of the RTI Act, the IB is exempt from the rigours of the RTI Act.Certain exceptions have

been carved out wherein the information requisitioned is strictly in relation to (i) allegations of corruption; and / or (ii) allegations of human rights violations. Admittedly, the present case does not satisfy the exception as the underlying RTI Application (as more particularly identified in Paragraph 3 of this Judgement) does not seek information in relation to the category of information as outlined above.

13. Furthermore, unsubstantiated submissions; and bald averments alleging corruption cannot be made the bedrock of a direction from this Court to an organisation specified under the Second Schedule of the RTI Act. Accordingly, we find no infirmity with the Impugned Judgement passed by the Learned Single Judge.

14. With the observations above, the LPA is dismissed.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

OCTOBER 11, 2023

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

Date of Decision 26th April, 2023

\+ **W.P.(C) 11301/2017**

NISHA PRIYA BHATIA ..... Petitioner

Through: None.

versus

CPIO, DIRECTORATE OF ESTATES, MINISTRY OF URBAN DEVELOPMENT & ANR ..... Respondents

Through: Mr. Rakesh Kumar, CGSC with Mr. Sunil, Advocate for UOI. (M: 9811549455)

Mr. Sudhir Walia & Ms. Ishita Deswal, Advocate for R-2. (M: 9999449889)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

2. None appears for the Petitioner.

3. The present petition challenges the impugned order dated 30th October, 2017 by which the CIC has dismissed the appeal of the RTI Applicant and held that the RTI applicant is not entitled to get the information sought. The RTI applicant had sought the following information from the Directorate of Estates, Government of India on 23rd January, 2012:

> *"Certified copies of applications for allotment of government accommodation made by Shri S.K. Tripathi; IPS (UP; 1972) between 1986 to present"*

4. The allegation of the RTI Applicant is that no reply was received from the CPIO. Thus, an appeal was filed to the First Appellate Authority. However, no reply was received from the First Appellate Authority. Accordingly, a second appeal was preferred to the CIC. It is the case of the Petitioner that a letter dated 8th May, 2017 was written by Mr. G.P. Sarkar- Deputy director of Estates (A-1) to the Registrar of CIC requesting closure of Petitioner's RTI application. The said letter, which has been annexed with the present petition reads as under:

> *"Sir/ Madam,*
> *I am to refer to your Appeal/ Complaint No. CIC/VS/C/2012/000454 dated 28.03.2017 on the subject mentioned above and to inform you that Smt. Nisha Priya Bhatia vide her letter dtd. 30.01.2012 and appeal dated 03.03.2012 had requested to provide certified copies of applications for allotment of government accommodation made by Sh. S.K. Tripathi, IPS (UP; 1972) between 1986 to present.* ***She was informed vide this Dte's letter of even number dated 11.5.2012 that the information sought could not be provided to her as the Department of Sh. Tripathy did not want to disclose the information since he was the head of an organization known as RAW and the application form contained some service details whose exposure might not be in functional interest of the organization known as RAW and the application form contained some service details whose exposure might not be in the functional interest of the organization. Copy of the letter is enclosed for your kind perusal and information.***
> *2. In view of above, you are requested to close the Appeal/ Complaint No. CIC/VS/ C/ 2012/ 000454 dtd. 09.19.2012. ""*

5. Thereafter, the impugned order has been passed by the CIC in the second appeal filed by the Petitioner. The finding of the CIC is that the Research and Analysis Wing (RAW) is covered by Section 24 as an exempt organization and no case of human rights or corruption is made out in the present case to attract the exception. The findings of the CIC are set out below:

> *"After hearing parties and perusal of record, the Commission notes that the appellant has sought certified copy of application for allotment of Government accommodation by Sh. S K Tripathi from 1986 till date. The issue which arises for consideration is as follows:*
> *Whether application form for seeking Government accommodation, by a Government servant, deserves to be exempt from public disclosure on account of some confidential information which may be figuring in the application. For example, there are a number of personal details entered in the passport application form. These are essentially in the nature of private information and if disclosed would be a clear case of infringement of privacy. The allotment related details of official accommodation to Government employees are displayed on the website of Directorate of Estates. Hence a case of public interest is to be made out making available copies of application forms of individual Government employees to a third party. In any case, the provisions as laid out by the Section 11 of the RTI Act also have to be utilized in such cases.*
> *In the instant case however, R&AW being a secret organization, the Cabinet Secretariat has taken the plea in their communication to the Directorate of Estates that R&AW being listed as one of the organizations in Section 24, Second Schedule of the RTI Act, the information cannot be given. The Cabinet Secretariat has further stated that the application would contain*

service details of the concerned officer, whose disclosure will not be in functional interest of the Organisation - R&AW.

Given the facts and circumstances of the case, the appellant sought to establish that ***it is a case of misrepresentation of facts by Sh. Tripathi who despite being permanently seconded to the Organisation and serving as RAS i.e., the parent cadre of the Organisation, was still applying for Government accommodation as IPS officer and getting better accommodation in the process****. Her case is that since this points to an anomaly hinting at corruption, she should be provided the information.*

The Commission after hearing the views of both the parties is unable to uphold the appellant's contention that the said case is covered under either corruption or human rights. *As averred during the hearing, the Respondents stated that pay scale was the basic criterion was assigning a particular category of accommodation to a Government servant. It is the Directorate of Estates which allotted the accommodation to the officer, as per his entitlement, whether he belonged to RAS or the IPS.* ***The Commission also feels that it would not be advisable in public interest, to disclose information about his service in the various applications filed by him since 1986 till date.***

Moreover, in view of the fact that the information relates to the Head of a security Organization, which is expressly exempt from the ambit of the RTI Act, the tenets of the celebrated doctrine of colourable legislation are attracted. *By exercising the principle of the doctrine, that "Whatever legislature can't do directly, it can't do indirectly.* ***No case of overriding public interest has been made out, as noted above. Hence, the Commission is of the considered opinion that no further adjudication is required in this case.***

The case is closed as such."

6. Section 24 of the Right to Information Act provides that the said Act does not apply to the security and intelligence organizations specified in the Second Schedule of the Act. RAW is one of the organizations specified in the Second Schedule. However, the first proviso to Section 24 provides an exception to exemption provided in section 24 if the information sought pertains to the allegations of corruption and human rights violations. The said provision reads:

> *"24.* ***Act not to apply to certain organisations****.-(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:*
>
> *Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:*
>
> *Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request……."*

7. The Second schedule specifically mentions RAW as a listed entity which is exempt. The said entry reads:

> *"THE SECOND SCHEDULE*
>
> ***INTELLIGENCE AND SECURITY ORGANISATION ESTABLISHED BY THE CENTRAL GOVERNMENT***
>
> *1. Intelligence Bureau.*
>
> *[2. Research and Analysis Wing including its technical wing namely, the Aviation Research Centre*

of the Cabinet Secretariat]……..”

8. Recently, the Supreme Court in ***Union of India v. Central Information Commission [SLP(C) No.5557/2023, decision dated 11th April, 2023]*** has observed as under:

> *Respondent No. 2 has prayed for the following information under the Right to Information Act, 2005 (for short, the RTI Act’)-*
>
> *“(1) copies of all the seniority list in respect of LDCs for the period of 1991 till date;*
> *(2) copies of the proposal for promotion of LDCs placed before the DPC together with copies of the Minutes of the Meetings and copies of the promotion orders issued on the recommendations of the DPC from time to time.”*
>
> *It was the case on behalf of the appellant that the appellant/Directorate of Enforcement, being in the Second Schedule of the RTI Act, the RTI Act shall not be applicable/applied to the said Organisation.* ***However, the High Court by the impugned judgment and order has observed that the “information sought can be said to pertaining to the human rights violations” and therefore, Section 24 of the RTI Act shall not be applicable.***
>
> ***Though, we do not approve the reasoning given by the High Court****, however, taking into consideration the fact that what was sought was the service record, namely, seniority list and copies of the proposal for promotion of the Lower Division Clerks placed before the DPC, keeping the question of law open, whether on other aspects or with respect to other information whether RTI Act shall be applicable to the appellant or not, we do not entertain the present Special Leave Petition in the peculiar facts and circumstances of the documents sought.*
>
> ***At the cost of repetition, it is observed that we do not approve the reasoning given by the High Court****. However, still, for the reasons stated hereinabove, we refuse to entertain the present Special Leave Petition, keeping the*

question of law open."

9. In view of the above order of the Supreme Court, the words 'corruption' and 'human rights' have to be interpreted narrowly. Recently, this Court in ***W.P.(C) 9971/2019*** has held that the ***'State Police ATS'*** is an exempt organisation under RTI Act. In the said decision, this Court observed that reports and dossiers of State Police intelligence would not qualify under the exemption of human rights and corruption.

10. RAW is an organisation which is specifically mentioned in the Section Schedule to the RTI Act. It is an exempt organisation. Unless the nature of information sought relates to human rights or corruption related issues, information is not liable to be disclosed. In the present petition, the nature of information sought, i.e., the residences where the subject person who was the head of RAW which is a security agency, would not be covered in the exemption. In view of the above discussion, the impugned order does not deserve to be interfered with.

11. The Petition is accordingly, disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 26, 2023
dj/sk

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

Date of decision: 25th January, 2023

\+ **W.P.(C) 10124/2021 and CM APPL. 31234/2021**

CPIO, CENTRAL ECONOMIC INTELLIGENCE BUREAU ..... Petitioner

Through: Mr. Ravi Prakash, CGSC with Mr. Varun Agarwal & Mr. Farman Ali, Advocate (M-9717866618)

versus

G.S. SRINIVASAN ..... Respondent

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner – CPIO, Central Economic Intelligence Bureau challenging the impugned order dated 3rd July, 2020 passed by the Central Information Commission (CIC) by which disclosure of certain information to the Respondent/RTI Applicant has been directed

3. A complaint was preferred by the Respondent/RTI Applicant - G.S. Srinivasan on 15th May, 2017 by which information relating to money laundering business, hawala money transactions, smuggling and tax evasion was sought from the Central Economic Intelligence Bureau (CEIB). The said information related to certain individuals who were named in the complaint.

4. The Respondent/RTI Applicant filed his RTI Application dated 21st December, 2017 seeking information about the status of his complaint and action on the same.

5. The Petitioner vide order dated 1st January, 2018 refused the said information on the ground that the same is exempted under Section 24(1) read with Schedule II of the Right to Information Act, 2005 *(hereinafter, "RTI Act")*. Thereafter, first appeal was filed by the Respondent/RTI Applicant. The Appellate Authority, CEIB vide order dated 27th February, 2018 confirmed the order passed by the Petitioner. Aggrieved by the same the Respondent/RTI Applicant filed second appeal before the CIC. The CIC vide impugned order dated 3rd July, 2020 come to the conclusion that the CEIB is exempted under Section 24 of the RTI Act, however, it went on to direct as under:

> *"4. The respondent submitted that no specific allegations of human rights violation and corruption could be manifested from the averments of the appellant as far as the content of the RTI application is concerned. Hence, the RTI Act, 2005 is not applicable to their organization which has been placed at Serial No. 4 of the 2nd Schedule r/w Section 24 of the RTI Act, 2005.*
>
> ***Decision:***
>
> *5. Since the appellant is not present to attend the hearing, this Commission takes note of the documents annexed by him with the 2nd appeal wherein he has sought broad outcome of his complaint filed against one Mr. R.M. Abdul Samsad.*
>
> *6. This Commission observes that the Central Economic Intelligence Bureau has been placed at Serial No. 4 of the 2nd Schedule r/w Section 24 of the RTI Act, 2005 and as such, the RTI Act, 2005 is not applicable to his organization except in the case of corruption and human rights violations and appellant has also not established any specific instances of corruption and human rights violations in the matter. Therefore, details of the investigation cannot be*

provided. ***However, the respondent should consider providing only the outcome of the complaint to the appellant, within a period of 15 working days from the date of receipt of this order****."*

6. In this Petition, despite service, there is no appearance on behalf of the Respondent. Fresh notice was directed to be issued on 25th August, 2022. Ld. counsel for the Petitioner hands over the tracking report to show that the Respondent has been again served. In view of the fact that none appears for the Respondent, the Respondent is proceeded against *ex parte*.

7. Ld. Counsel for the Petitioner submits that since the CEIB is an exempted organization under Section 24(1) of the RTI Act thus, even the outcome of the complaint of the Respondent/RTI Applicant could not have been directed to be disclosed by the CIC.

8. Section 24(1) makes it clear that the RTI Act would not apply to the organizations which are specified in the Schedule II of the Act. The only exceptions to this mandate are if there are any allegations of corruption and human rights violations. Insofar as the CEIB is concerned, the same is listed at serial number 4 in Schedule II of the RTI Act under the heading "Intelligence and Security Organisation established by the Central Government".

9. A perusal of the complaint and the RTI Application show that the same relate to information relating to money laundering business, hawala money transactions, acts of tax evasion and smuggling activities. These do not relate to corruption or human rights violations. Thus, the same would not be covered by the exception under the proviso to Section 24(1).

10. This Court has had the occasion to consider the said provisions in the context of the Intelligence Bureau in ***W.P.(C) 7453/2011*** titled ***Union of India and Ors. v. Adarsh Sharma*** wherein the Court has observed as under:

> *"4. The information sought by the respondent was neither any information related to the allegations of corruption in Intelligence Bureau nor an information related to the human rights violations. The Commission, therefore, was clearly wrong in directing the Intelligence Bureau to provide the said information to the respondent under the provisions of Right to Information Act. Therefore, the order passed by the Central Information Commission being contrary to the provisions of the Act, cannot be sustained and is hereby quashed.*
>
> *5. However, in my view, if an information of the nature sought by the respondent is easily available with the Intelligence Bureau, the agency would be well-advised in assisting a citizen, by providing such an information, despite the fact that it cannot be accessed as a matter of right under the provisions of Right to Information Act. It appears that there is a litigation going on in Rajasthan High Court between the respondent and Dr. Vijay Kumar Vyas. It also appears that the respondent has a serious doubt as to whether Dr. Vijay Kumar Vyas, who was reported to have died on 03.09.2009, has actually died or not. The Intelligence Bureau could possibly help in such matters by providing information as to whether Dr. Vyas had actually left India on 10.10.2009 for Auckland on flight No CX708. Therefore, while allowing the writ petition, I direct the Intelligence Bureau to consider the request made by the respondent on administrative side and take an appropriate decision thereon within four weeks from today. It is again made clear that information of this nature cannot be sought as a matter of right and it would be well within the discretion of the Intelligence*

Bureau whether to supply such information or not. Whether a person aggrieved from refusal to provide such information can approach this Court under Article 226 of the Constitution, is a matter which does not arise for consideration in this petition. The writ petition stands disposed of. No order as to costs."

11. Thus, considering the fact that the Central Economic Intelligence Bureau is clearly exempted under Section 24(1) read with Schedule II of the RTI Act, the direction of the CIC to provide the outcome of the complaint to the Respondent/ RTI Applicant is not sustainable and the same would be contrary to law. Accordingly, the said finding and direction of the CIC is set aside.

12. The writ is allowed in the above terms with no orders to costs. All pending applications are disposed of.

PRATHIBA M. SINGH, J.

JANUARY 25, 2023

Rahul/KT

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

Date of decision: 24th January, 2023

\+ **W.P.(C) 3928/2020 and CM APPL. 14074/2020**

MINISTRY OF EXTERNAL AFFAIRS ..... Petitioner

Through: Mr. P. Roychaudhuri, Mr. Gagan Gupta & Mr. Mohan Khuller, Advocates.

versus

SOMA PANDEY ..... Respondent

Through: Mr. Asad Alvi, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present writ petition has been filed by Ministry of External Affairs (*'MEA'*) through Regional Passport Office, Delhi challenging the impugned order dated 10th June, 2020 passed by the Central Information Commission (CIC) by which the information sought by the Respondent (*'RTI Applicant'*) about her husband's passport was directed to be disclosed. The operative portion of the order reads as under:

> *"Keeping in view the facts of the case and the submissions made by both the parties and in the light of the decisions cited above, as also respecting the spirit enunciated by the superior Courts and maintaining consistency, the Commission while setting aside the decision of the CPIO / FAA instructs the Respondent (CPIO) to furnish the information as available on record to the Appellant within a period of 30 days from the date of receipt of this order depending upon the condition for containment of the*

> *Corona Virus Pandemic in the Country or through email.*
> *The Appeal stands disposed accordingly.*"

3. The RTI Applicant, who is the wife of Shri Suresh Pandey, sought disclosure of the following information about her husband's passport under the Right to Information Act, 2005 (RTI) from Central Public Inforamtion Officer (CPIO), Regional Passport Office (RPO), Hudco Trikoot-III, Bhikaji Cama Place, R.K. Puram.

> "*1. Kindly provide me the details of the certified copies of all documents of passport file including marriage certificate and application form as submitted in passport office of Mr. Suresh Pandey, son of Mr. Kapil Deo Pandey, date of birth 25.10.1975 Address: House / Flat No.-100-S, Sector 7 Jasola Vihar New Delhi 110025. His Passport number is M0967563,*
> *2. Kindly provide the certified copies of the visa issued for Mr. Suresh Pandey for his abroad tours for the period of January 2014 to January 2018 (if any).*
> *3. Has he declared his wife and children in his family details ot the passport while getting it re-issued on 11-08-2014 with File number DL1077981144014 when under the rules applicable that time, providing marital status and wife's name was mandatory?*"

4. The application requesting for the said information was rejected by the CPIO on the ground that the same was exempted under Section 8(1)(j) of the RTI Act, 2005. Insofar as serial no. 2 is concerned, the CPIO has referred the RTI Applicant to approach the concerned Visa issuing authority, given that the Regional Passport Office was only dealing with cases involving Passports.

5. An appeal dated 13th February, 2018 was filed by the RTI Applicant

under Section 19(1) of the RTI Act, 2005 and the same was rejected vide order dated 27th February, 2018 by the First Appellate Authority.

6. Finally, the matter reached the CIC, when the RTI Applicant filed a second appeal dated 26th September, 2018, under Section 19(3) of the RTI Act, 2005. In the decision dated 10th June, 2020 in the said appeal, CIC directed the CPIO that the information, which was sought would be liable to be disclosed within a period of 30 days. The operative portion of the decision of the CIC reads as:

> *"Keeping in view the facts of the case and the submissions made by both the parties and in the light of the decisions cited above, as also respecting the spirit enunciated by the superior Courts and maintaining consistency, the Commission while setting aside the decision of the CPIO / FAA instructs the Respondent (CPIO) to furnish the information as available on record to the Appellant within a period of 30 days from the date of receipt of this order depending upon the condition for containment of the Corona Virus Pandemic in the Country or through email.*
> *The Appeal stands disposed accordingly."*

7. Ld. Counsel appearing for the Petitioner- MEA submits that the information related to any person's passport is protected under Section 8(1)(j) of the Act. He submits that in order to protect the privacy of the individual concerned as also the safety and security of the information contained in the passport, this information is not provided. He relies upon the order of this Court dated 21st November, 2022 in ***W.P.(C) 3735/2020*** titled '***Ministry of External Affairs v. Asmita Sachin Waman'***, which according to him is also based on the similar facts. The relevant extract of the said decision reads as:

"4. It becomes pertinent to note that disclosures which may be sought under the provisions of the Act with respect to a passport or any other personal identification document of a third party is no longer res integra. This Court in Union of India vs. R. Jayachandran [2014 SCC OnLine Del 767] while considering whether passport details of a third party are liable to be provided to an RTI applicant observed as follows:

> *"11. This Court is also of the view that if passport number of a third party is furnished to an applicant, it can be misused. For instance, if the applicant were to lodge a report with the police that a passport bearing a particular number is lost, the Passport Authority would automatically revoke the same without knowledge and to the prejudice of the third party.*
>
> *12. Further, the observations of learned Single Judge in the aforesaid batch of writ petitions are contrary to the judgment of another learned Single Judge in Suhas Chakma v. Central Information Commission, W.P.(C) 9118/2009 decided on 2nd January, 2010 as well as a Division Bench's judgment in Harish Kumar v. Provost Marshal-Cum-Appellate Authority, LPA 253/2012 decided on 30th March, 2012. In Suhas Chakma (supra) another learned Single Judge has held as under:-*
>
> > *"5. The Court is of the considered view that information which involves the rights of privacy of a third party in terms of Section 8(1)(j) RTI Act cannot be ordered to be disclosed without notice to such third party. The authority cannot simply come to conclusion, that too, on a concession*

or on the agreement of parties before it, that public interest overrides the privacy rights of such third party without notice to and hearing such third party."

13. The relevant portion of the Division Bench in Harish Kumar (supra) is reproduced hereinbelow:-

"9. What we find in the present case is that the PIO had not refused the information. All that the PIO required the appellant to do was, to follow third party procedure. No error can be found in the said reasoning of the PIO. Under Section 11 of the Act, the PIO if called upon to disclose any information relating to or supplied by a third party and which is to be treated as confidential, is required to give a notice to such third party and is to give an opportunity to such third party to object to such disclosure and to take a decision only thereafter. 10. There can be no dispute that the information sought by the appellant was relating to a third party and supplied by a third party. We may highlight that the appellant also wanted to know the caste as disclosed by his father-in-law in his service record. The PIO was thus absolutely right in, response to the application for information of the appellant, calling upon the appellant to follow the third party procedure under Section 11. Reliance by the PIO on Section 8 (1) (j) which exempts from disclosure of personal information and the disclosure of which has no relationship to any public activity or interest and which

> *would cause unwanted invasion of the privacy of the individual was also apposite. Our constitutional aim is for a casteless society and it can safely be assumed that the disclosure made by a person of his or her caste is intended by such person to be kept confidential. The appellant however as aforesaid, wanted to steal a march over his father-in-law by accessing information, though relating to and supplied by the father-in-law, without allowing his father-in-law to oppose to such request."*

8. Mr. Alvi, ld. Counsel appearing for the RTI Applicant, on the other hand, submits that the only information that the RTI Applicant insists upon obtaining is whether the passport holder has disclosed the details of his wife and children while obtaining the passport which was issued on 11th August, 2014. According to the ld. Counsel the passport holder has indulged in concealment of material facts while obtaining the passport.

9. The present writ petition merely relates to the order dated 10th June, 2020 passed by the CIC. The question is whether the information sought under the RTI Act which relates to the passport details of the passport holder can be disclosed or not.

10. This issue is quite settled now in the recent order by the ld. Single Judge of this Court in ***Ministry of External Affairs (Supra)***. In the said case, the RTI Applicant had sought disclosure of details relating to the passport of her estranged husband and other supporting documents. The said information was refused and the ld. Single Judge relying upon the judgment of this Court in ***Union of India vs. R. Jayachandran [2014 SCC OnLine Del 767]*** and ***Vijay Prakash vs. Union of India [2009 SCC OnLine***

Del 1731]. After considering the above decisions, the Court observed as under:

> *"1. The petitioner impugns the validity of an order dated 15 May 2020 passed in a second appeal which was instituted by the respondent under the Right to Information Act, 2005 ["the Act"]. The respondent is stated to have made an application for disclosure of details relating to the passport held by her estranged husband along with marriage certificate, address proof, ID proof and other related documents. The Central Public Information Officer ["CPIO"], in terms of its communication of 08 June 2018, apprised the respondent that since the disclosure as sought would constitute third party information it is not liable to be provided in light of the provisions made in Section 8(1)(j) of the Act.*
> *2. Assailing the aforesaid decision, the respondent preferred a first appeal in which the order passed by the CPIO was upheld.*
> *3. Aggrieved by the aforesaid, the respondent moved the Central Information Commission ["Commission"] by way of a second appeal. That appeal came to be allowed with the Commission rejecting the view taken by the CPIO and the first appellate authority that the disclosures which are sought would fall foul of the injunct which stands placed under Section 8(1)(j) of the Act. The Commission further directed the petitioner to provide information as sought by respondent in her RTI application dated 26 May 2018.*
> *Xxxx*
> *6. Viewed in the backdrop of the principles which stand enunciated in Vijay Prakash, this Court is of the considered opinion that the order of the Chief Information Commissioner, directing the petitioner to make the requisite disclosures can neither be countenanced nor upheld.*

> *7. Accordingly, and for all the aforesaid reasons, the instant writ petition is allowed. The impugned order of 15 May 2020 shall consequently stand quashed and set aside.*"

11. The issue being squarely covered by the three decisions; the CIC order is not sustainable in law. The same, accordingly, is set aside.

12. The writ petition is allowed. However, it is made clear that the RTI Applicant's remedies, if any, available under the Passport Act, 1967 are left open. The Petitioner is given liberty to approach the concerned Passport authority regarding the alleged non-disclosure or mis-disclosure of information by the passport holder.

13. The present order would not, in any manner, be deemed to be an adjudication on any of the issues that may be raised by the RTI Applicant before the concerned Passport authority. If the Petitioner approaches the passport authorities, the same shall be considered in accordance with law on its own merits.

14. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

JANUARY 24, 2023/*dk/am*

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

\+ LPA 734/2018

UNION OF INDIA ..... Appellant

Through: Mr.Amit Mahajan, CGSC with Mr.Dhruv Pande, Advocate.

versus

CENTRAL INFORMATION COMMMISSION & ANR ..... Respondents

Through: Mr.Shiv Kumar, Advocate for R-2 with respondent no.2 in person.

% Date of Decision: 22nd March, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

MANMOHAN, J (Oral):

1. Present appeal had been received by way of transfer from the Court of Hon'ble the Chief Justice. The Apex Court vide order dated 1st October, 2021 had directed the High Court to decide the writ petition within eight weeks. Consequently, the matter was taken up for hearing on priority basis.

2. It is pertinent to mention that the present appeal has been filed challenging the order dated 07th December, 2018 passed by learned Single Judge in W.P.(C) No.13257/2018.

RELEVANT FACTS

3. Briefly stated, the relevant facts of the present case are that respondent No.2 is working as a Superintendent in Administration with

Enforcement Directorate ('ED'). She had filed an application under Right to Information Act, 2005 (hereinafter referred to as 'RTI Act') seeking the following information.:-

> *(1) copies of all the seniority list in respect of LDCs for the period of 1991 till date;*
> *(2) copies of the proposal for promotion of LDCs placed before the DPC together with copies of the Minutes of the Meetings and copies of the promotion orders issued on the recommendations of the DPC from time to time.*

4. The aforesaid information was directed to be furnished by the Appellant to respondent no.2 by CIC. Aggrieved by the said decision, the Appellant had filed writ petition, being W.P.(C) 13257/2018. However, the said writ petition was dismissed by learned Single Judge vide order dated 7th December, 2018, observing as under:

> *"Since the respondent was facing prejudices regarding the seniority, therefore, he sought information mentioned above, which information neither hamper with the Intelligence nor Security nor Secrecy of the petitioner organization. Though the petitioner organization is kept away from RTI Act, but that is not regarding the information to its employee, if any of his rights have been denied.*
>
> *The information sought by the respondent from the petitioner does not come under the Section 24 of the Act.*
>
> *Accordingly, I find no illegality or perversity in the order of the CIC dated 09.10.2018."*

5. Upon the present Letter Patent Appeal being filed, learned predecessor Division Bench, vide order dated 21st December, 2018 had issued notices. However, the application for stay filed by the Appellant was disposed of observing as under:

.....*"**C.M.No.54608/2018***

Subject to the outcome of the writ petition and taking note of the fact that the information sought for is only the service particulars of respondent No.2 like seniority list and DPC, the information sought for be provided to respondent No.2. The legal objections with regard to the applicability of Right to Information Act shall be considered at the time of hearing.

The application is, accordingly, disposed of."

6. The Appellant had filed a Special Leave Petition challenging the aforesaid order dated 21st December, 2018 refusing grant of stay. The Supreme Court disposed of the Special Leave Petition filed by the Appellant vide order dated 1st October, 2021 with a direction to this Court to decide the issue with respect to applicability of the RTI Act to the Appellant and thereafter decide the stay application. The order dated 1st October, 2021 passed by the Supreme Court is reproduced hereinbelow:

"O R D E R

Leave granted.

Heard the learned counsel appearing for the parties.

By the impugned order, the High Court, by way of an interim order, has directed the Appellant to furnish the information sought for like Seniority List and DPC etc. which are sought under the provisions of the Right to Information Act ('RTI Act' for short). It was/is the specific case on behalf of the Department that the RTI Act was not applicable to the Organization/Department. Despite the above and without deciding such an objection, the High Court has directed the Appellant to furnish the documents sought under the RTI Act without deciding the applicability of the RTI Act. That will be putting the cart before the horse. The High Court ought to have decided the issue with respect to the applicability of the RTI Act to the Organization/Department first.

Under the circumstances, the impugned order passed by the High Court in C.M No. 54608 of 2018 in LPA No. 734 of 2018 is hereby quashed and set aside. We direct the High Court

to decide first the issue with respect to the applicability of the RTI Act to the Appellant organization/department and thereafter decide the stay application/LPA. The aforesaid exercise shall be completed within a period of eight weeks from today.

The present Appeal is partly allowed to the aforesaid extent.

No costs."

ARGUMENTS ON BEHALF OF THE APPELLANT

7. Mr.Amit Mahajan, learned counsel for the Appellant, submits that the learned Single Judge while passing the impugned order has held that the information sought by respondent No.2 does not fall under the purview of Section 24 of the RTI Act. He submits that learned Single Judge has erred in holding that the information should be provided to respondent No.2 since it did not pertain to intelligence or security and secrecy of the Appellant organization.

8. Learned counsel for the Appellant contends that Section 24(1) of the RTI Act expressly excludes intelligence and security organizations specified in the Second Schedule of the Act from the purview of the Act. He submits that the Legislature has granted complete immunity to the organizations mentioned in the Second Schedule to the RTI Act and thus they cannot be called upon to disclose information under the provisions of the RTI Act. He further submits that the only exceptions as provided in the proviso to Section 24 are when the information so sought pertains to allegations of corruption and human rights violation [first proviso to Section 24 (1)].

9. He further submits that in relation to the organizations specified, providing information is an exception unlike others where withholding the information is an exception. According to him, it is of no consequence whether the information sought for is in relation to intelligence and security

functions of the organization or not, because only information furnished by such organization to the Government pertaining to the allegations of corruption and human rights violation is allowed to be provided and everything else is barred. In support of his submission, he relies upon the judgment of this Court in ***Dr. Neelam Bhalla Vs. Union of India and Ors., LPA 229/2014*** .

10. He lastly states that the present writ petition is infructuous, as the Central Administrative Tribunal, Principal Bench, New Delhi vide its order dated 10th October, 2018 has already directed the Appellant to furnish the information sought for by the respondent. The order dated 10th October, 2018 passed by Central Administrative Tribunal is reproduced hereinbelow:-

> ***"****Heard Shri Avneesh Garg, learned counsel for the Appellant and Shri S.K.Tripathi for Shri Gyanendra Singh, learned counsel for the respondents and perused the pleadings on record.*
>
> ***M.A.No.753/2018***
>
> *In the circumstances, the MA seeking condonation of delay is allowed.*
>
> ***O.A. 702/2018***
>
> *The applicant, who is presently working as LDC in the 2nd respondent-Directorate of Enforcement, filed the OA seeking the following reliefs:-*
>
> *(A) To direct the respondent No.2 to place on record the seniority list of LDCs purportedly prepared in the years 1996 and 1999.*
>
> *(B) To direct the Respondent to place on record, the record pertaining to applicant under F.No.16/03/2006-Ad. E.D.*
>
> *(C) Pass such further order or orders as this Hon'ble Tribunal may deem fit and proper."*
>
> *2. It is the short submission of the learned counsel for the applicant that the respondents have not issued any seniority list in the category of LDCs, in spite of repeated representations of*

the applicant and thereby the applicant's rights for seniority and for further promotions are being affected.

3. In the circumstances, the OA is disposed of, without going into the merits of the case, by directing the respondents to furnish copies of the tentative of final seniority lists of LDCs, if any, issued by the respondents from time to time, i.e., from the date of appointment of the applicant to till date, within a period of 60 days from the date of receipt of a certified copy of this order. If no tentative/final seniority lists in the category of LDCs, was in existence, the same may be informed to him, within the same time. No costs.'

ARGUMENTS ON BEHALF OF THE RESPONDENT

11. *Per contra*, learned counsel for the respondent states that in the absence of information sought for, the respondent is unable to enforce her fundamental and legal right to promotion. He specifically asserts that despite the order dated 10th October, 2018 passed by Central Administrative Tribunal, no information has been furnished by the Appellant to the respondent till date.

COURT'S REASONING

THE APPELLANT IS AN INTELLIGENCE AND SECURITY ORGANIZATION SPECIFIED IN SECOND SCHEDULE OF THE RTI ACT AND IS EXEMPT FROM THE PURVIEW OF THE RTI ACT EXCEPT WHEN THE INFORMATION PERTAINS TO ALLEGATION OF CORRUPTION AND HUMAN RIGHTS VIOLATION.

12. Since the present case primarily involves interpretation of Section 24 of the RTI Act, the said Section is reproduced hereinbelow:-

"24. Act not to apply to certain organizations –

(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government: ***Provided that the***

information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section*:*

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within fort-five days from the date of the receipt of request."

(emphasis supplied)

13. A Division Bench of this Court in ***Esab India Limited v. Special Director of Enforcement & Ors., 2011 SCC OnLine Del 1212*** has upheld the Constitutional validity of Section 24 of the RTI Act. The relevant portion of the said judgment is reproduced hereinbelow:

"*27. In the case at hand, as far as Section 24 is concerned, it is evincible that the said provision excludes the intelligence and security organizations specified in the Second Schedule. We have already reproduced the Second Schedule. The Petitioner is concerned with the Directorate of Enforcement which comes at Serial No. 5 in the Second Schedule. What has been denied in first part of Section 24 is the intelligence and security organizations. The first proviso adds a rider by stating that an information pertaining to allegations of corruption and human right violations shall not be excluded under the Sub-section. Thus, it is understood that information relating to corruption and information pertaining to human rights are not protected. In our considered opinion, the restriction on security and intelligence aspect cannot be scuttled as the same has paramountancy as far as the sovereignty and economic order is concerned. Article 19(1)(2), which deals with reasonable restriction, mentions a reasonable restriction which pertains to security of the State, integrity of India and public order.*

28. In our considered opinion, the restrictions imposed are absolutely reasonable and in the name of right to freedom of

speech and expression and right to information, the same cannot be claimed as a matter of absolute right. Thus, the submissions advanced on this score are untenable and accordingly we repel the same."

14. Undoubtedly, the Appellant is an intelligence and security organization specified in Second Schedule of RTI Act and is exempt from the purview of RTI Act except when the information pertains to allegation of corruption and human rights violation. Consequently, the submission made by Mr.Amit Mahajan is correct that the Appellant cannot be called upon to disclose information under the provisions of RTI Act except when the information sought pertains to the allegations of corruption and human rights violation.

THE EXPRESSION 'HUMAN RIGHTS' CANNOT BE GIVEN A NARROW OR PEDANTIC MEANING. HUMAN RIGHTS ARE BOTH PROGRESSIVE AND TRANSFORMATIVE.

15. Accordingly, the issue that arises for consideration in the present case is whether the information sought for by the respondent falls within the expression 'human rights'.

16. Though, the term 'human rights' has not been defined in the RTI Act, yet it has been defined in the Protection of Human Right Act, 1993 (in short '1993 Act'). Section 2(1)(d) of the 1993 Act provides for definition of the term 'human rights' which reads as under:

'2. Definitions – (1) In this Act, unless the context otherwise requires-

xxxx xxxx xxxx

(d) "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the

Constitution or embodied in the International Covenants and enforceable by courts in India. ……"

17. This Court is of the opinion that the expression 'human rights' cannot be given a narrow or pedantic meaning. It does not refer to the rights of the accused alone. Human rights have been used for a variety of purposes, from resisting torture and arbitrary incarceration to determining the end of hunger and of medial neglect. In fact, the human rights are both progressive and transformative.

IN THE PRESENT CASE, NON-SUPPLY OF THE INFORMATION/ DOCUMENTS IS A HUMAN RIGHTS VIOLATION AS IN THE ABSENCE OF THE SAME RESPONDENT NO.2 WOULD NOT BE ABLE TO AGITATE HER RIGHT TO PROMOTION.

18. It is settled law that employees have a legitimate expectation of promotion. It is not the case of the Appellant that its employees and officers cannot file legal proceedings to air their grievances with regard to service conditions and wrongful denial of promotions. The intent of service jurisprudence at the level of any establishment/organization is to promote peace and harmony and at the level of the society, the objective is to promote human rights. If employees of an establishment cannot agitate their grievances before judicial forums, these organizations/establishments may become autocratic.

19. In fact, RTI Act is a tool which facilitates the employees and officers in airing their grievances systematically. According to Statement of Objects and Reasons, the intent and purpose of RTI Act is to secure access to information in order to promote transparency and accountability in the working of every public authority. It is said that *'Sunlight is the best*

disinfectant' and RTI Act promotes the said concept. Consequently, both service and RTI laws '*act like a safety valve in the society*'.

20. In the opinion of this Court, the employees of a security establishment cannot be deprived of their fundamental and legal rights just because they work in an intelligence and security establishment. To hold so would amount to holding that those who serve in these organizations have no human rights.

21. Though, the Division Bench in ***Dr. Neelam Bhalla*** (supra) has stated that "…we agree with the view expressed by the learned Single Judge inasmuch as the information that was sought by the appellant/petitioner pertained to her service record which had nothing to do with any allegation of corruption or of human rights violations…", yet upon a perusal of the judgment passed by learned Single Judge (which was authored by one of us i.e., Manmohan, J), it is apparent that the Appellant-petitioner in that case had sought compensation and disciplinary action against certain Government officials for furnishing inaccurate and incomplete information. Consequently, the observations in the said judgment have to be read in the light of the issue that arose for consideration. Further, in ***Dr. Neelam Bhalla*** (supra), the concept of human rights was neither argued nor dealt with. Accordingly, the aforesaid judgment offers no assistance to the Appellant.

22. This Court is also not in agreement with the submission of learned counsel for the Appellant that only such information that is furnished by the exempted organization to the Government pertaining to allegations of corruption and human rights violation is to be provided.

23. It is also pertinent to mention that the respondent by way of RTI application in question is not seeking information with regard to any

investigation or intelligence or covert operations carried out nationally or internationally. This Court clarifies that the respondents may be well entitled to deny information under the RTI Act, if the facts of a case so warrant.

24. Consequently in the present case, non-supply of the information/documents is a human rights violation as in the absence of the same respondent No.2 would not be able to agitate her right to promotion.

INFORMATION PERTAINING TO PROPOSALS FOR PROMOTION OF THIRD PARTIES CANNOT BE PROVIDED TO THE RESPONDENT IN VIEW OF SECTION 11 OF THE RTI ACT.

25. However, this Court is of the view that information pertaining to proposals for promotion of third parties cannot be provided to the respondent in view of Sections 8(1)(j) and 11 of the RTI Act.

26. Consequently, this Court directs the Appellant to provide copies of all the seniority list in respect of LDCs for the period of 1991 till date as well as copies of the proposal for promotion of respondent (LDC) placed before the DPC together with copies of the Minutes of the Meetings and copy of the promotion/rejection order issued on the recommendations of DPC from time to time.

27. Accordingly, the present appeal stands disposed of with the above directions.

MANMOHAN, J

SUDHIR KUMAR JAIN, J

MARCH 22, 2022
KA

REP

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

\+ **WRIT PETITION (CIVIL) NO. 7265 OF 2007**

Reserved on : 15th September, 2009.

% **Date of Decision** : 25th September, 2009.

POORNA PRAJNA PUBLIC SCHOOL ….Petitioner.

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

VERSUS

CENTRAL INFORMATION COMMISSION & OTHERS …..Respondents

Mr.Sanjeev Sabharwal, advocate for respondent no.2-GNCTD.

Mr.K.K. Nigam, advocate for respondent 3-CIC.

Mr.Tushti Chopra, advocate for respondent no.4.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

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

SANJIV KHANNA, J.:

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

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

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

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

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

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

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

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

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

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

> "**2(f).** "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force"
>
> **2(j).** "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to –
>
> (i) inspection of work, documents, records;
> (ii) taking notes, extracts, or certified copies of documents or records;
> (iii) taking certified samples of material;
> (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"
>
> (emphasis supplied)

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

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

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

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

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

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

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

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

14. Section 22 of the RTI Act, reads:-

> "22. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of

> 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

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

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

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

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

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

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

> recognized, by the appropriate authority unless school fulfills the following conditions, namely-
>
> (i) - (xvii) x x x x x x
>
> (xviii) the school furnishes such reports and information as may be required by the Director from time to time and complies with such instructions of the appropriate authority or the Director as may be issued to secure the continue fulfillment of the condition of recognition or the removal of deficiencies in the working of the school;"

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

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

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

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

(SANJIV KHANNA)
JUDGE

SEPTEMBER 25, 2009.
P