Some Case Laws on Frequently Sought Information

*** Please click on Answer for Details of Case**

High Court Decisions

Question - Whether source of income can be disclosed?

Answer - Brij Lal V/s Central Information commission

Question - Whether disciplinary proceedings of an individual to be disclosed to him?

Answer - Union of India V/s V K Shad

Question - Where question bank is limited, whether it can be disclosed?

Answer - AIIMS V/S Vikrant Bhuria

Question - Whether Prosecution note can be provided?

Answer - **(a)** Sudhirajan Senapati V/s Union of India

(b) Union of India V/S O P Nahar

Question - Whether the details submitted by third party for obtaining Passport can be provided?

Answer - Union Of India V/s R Jaya Chandran

Question - Whether spouse service details/financial details can be provided?

Answer - Vijay Parkash V/S Union of India

Question - Whether Optical Response Sheet (ORS) can be provided?

Answer - Indian Institute of Technology V/S Navin Talwar

Question - Whether case diary can be provided?

Answer - DCP Delhi V/S D K Sharma

Question - Whether copy of FIR can be provided?

Answer - Rajinder Jaina V/S Central Information Commission

Question - Whether Service matters can be considered as human right violations?

Answer - DG of Security V/S Harendra

Question - Whether file notings / opinion by UPSC can be provided?

Answer - Union Public Service Commission V/S GS Sindhu

Question - Whether copy of enquiry report on complaint can be provided?

Answer - Union of India V/s Balendra Kumar

Question - Whether call details of third party can be disclosed?

Answer - Telecom Regulatory Authority of India V/S Yashpal

Question - Whether interview marks of third party candidates disclosable?

Answer - THDC India Ltd V/S R K Raturi

Question - Whether details of third party bank accounts can be disclosed?

Answer - High Court – Rekha Chopra V/S State bank of Bikaner and Jaipur

Question - Whether Medical expenses of employees are disclosable?

Answer - The Registrar, Supreme Court V/S Subash Chander Aggarwal

Question - Whether Bio-data of candidates disclosable?

Answer - Union Public Service Commission V/S Hawa Singh

Question - Whether date of birth, institution, year of passing ,field experience, caste etc can be provided?

Answer - Union Public Service Commission V/S Pinki Ganeriwal

Question - Whether personal assets of employees can be disclosed?

Answer - **(a)** Municipal corporation of Delhi V/S Rajbir

(b) Allahabad bank V/s Nitesh Kumar Tripathi

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3057/2012

MR. BRIJ LAL ..... Petitioner

Through: Mr. Moni Cinmoy, Adv.

versus

THE CENTRAL INFORMATION COMMISSION AND ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

21.05.2012

C.M. No. 6593/2012 (exemption)

Allowed subject to just exceptions.

The application stands disposed of.

W.P. (C) 3057/2012

The petitioner by this writ petition under Article 226 of the Constitution of India assails the order dated 01.07.2011 passed by the Central Information Commissioner in Appeal No. CIC/DS/A/2010/002004.

The petitioner moved a RTI application to the Commissioner of Income Tax, ITO, Aayakar Bhawan, Sanjay Place, Agra on 03.02.2010. In this application the petitioner stated that he had moved a Tax Evasion Petition (TEP), and sought the conduct of an enquiry on the known sources of income of one Shri M. P. Singh. He stated that despite passage of seven months, he had not received any response. Therefore, under the Right to Information Act, he sought information with regard to the action taken on the said complaint.

This query was responded to on 09.03.2010 by the Assistant Commissioner of Income Tax/CPIO, Agra. The CPIO declined the application of the petitioner seeking direct information with regard to the sources of income of Shri M. P. Singh by placing reliance on Section 8(1)(j) on the ground that it related to a third party and disclosure of the said information was not in public interest. It appears that before disposing of the application, the CPIO also issued notice to Shri M. P. Singh and Shri M. P. Singh objected to disclosure of the information.

The petitioner then preferred an appeal before the first appellate authority. The first appellate authority rejected the appeal on 29/30.04.2010, again placing reliance on Section 8(1)(j) of the Act. The petitioner then preferred a further appeal to the CIC, which has been disposed of by the impugned order.

Learned counsel for the petitioner submits that the Joint Commissioner of Income Tax Range-5, Forozabad has declined to act on the tax revision petition of the petitioner on the ground that the information desired by the petitioner is six years old and is barred by limitation as per the provisions of Income Tax Act. It is stated that the information is not in custody of the CPIO. He also observed that Shri M. P. Singh, against whom the complaint was lodged by the petitioner, is presently assessed with ITO 3(iv), Mathura and the jurisdiction does not lie with the Joint Commissioner of Income Tax, Range-5, Firozabad. He held that since no larger public interest is involved in the matter, the petitioner?s appeal is disposed of.

The submission of counsel for the petitioner is that since the TEP of the petitioner has not been actioned on account of the same being barred by limitation, effectively, the information sought by the petitioner has not been provided.

Learned counsel for the petitioner places reliance on the decision

of this Court in W.P.(C) No. 3114/2007 in support of his submission that the respondent was neither provided information with regard to the sources of income of Shri M. P. Singh nor conducted an enquiry/investigation on the TEP of the petitioner.

A perusal of the decision in Bhagat Singh vs. Chief Information Commissioner and Ors. W.P.(C) No. 3114/2007 decided on 03.12.2007 shows that in that case on the TEP action was taken, but the TEP investigation report was not provided under the Right to Information Act. All that the Court held was that the queriest was entitled to receive a copy of the said TEP investigation report. In the present case, the Joint Commissioner of Income Tax has held that the said TEP cannot be actioned as it is barred by limitation. That, in my view, is sufficient disclosure so far as the action taken on the TEP is concerned.

So far as the petitioner?s grievance with regard to non supply of information with regard to sources of income of Shri M. P. Singh is concerned, in my view, the CPIO correctly relied upon Section 8(1)(j) of the Act to deny information to the petitioner. Section 8(1)(j) reads as follows:-

?8(1)(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:?

The information sought by the petitioner in relation to the sources of income of Shri M. P. Singh is undoubtedly personal information, disclosure of which has no relationship to any public activity or public interest of, or in relation to, Shri M. P. Singh. I, therefore, find no merit in this petition. The same is dismissed.

VIPIN SANGHI, J

MAY 21, 2012

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

Judgment Reserved on: 30.08.2012
% Judgment Delivered on: 09.11.2012

\+ WP(C) 499/2012 & CM 1059/2012

UNION OF INDIA & ORS. ..... Petitioners

Vs

COL. V.K. SHAD ..... Respondent

AND

\+ WP(C) 1138/2012 & CM 2462/2012

UNION OF INDIA & ANR. ..... Petitioners

Vs

COL. P.P. SINGH ..... Respondent

AND

\+ WP(C) 1144/2012 & CM 2486/2012

UNION OF INDIA & ORS. ..... Petitioners

Vs

BRIG. S. SABHARWAL ..... Respondent

Advocates who appeared in this case:
For the Petitioners: Mr Rajeeve Mehra, Additional Solicitor General with Mr Ankur Chibber, Ms Aakriti Jain & Mr Ashish Virmani, Advocates.
For the Respondents: Col. V.K. Shad, Respondent in person in WP(C) No. 499/2012.

CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The captioned writ petitions raises a common question of law, which is, whether the petitioners are obliged to furnish information to respondent which is retained with them in the record, in the form of file notings as also the opinion of the Judge Advocate General (in short JAG) found in records of the respondents, under the relevant provisions of the Right to Information Act, 2005 (in short the RTI Act).

1.1 In each of the matters, the Union of India (UOI) has been represented by Mr Rajeeve Mehra, ASG, while the respondents have appeared in person. Amongst the respondents, Col. V.K. Shad has appeared in person and made submission at each date, while the same cannot be said of the other two respondents, Col P.P. Singh and Brig. S. Sabharwal who have put in appearances occasionally. In particular, they were absent on the last two dates of hearing when matters were heard at length and the judgment was reserved in the matters. Nevertheless, it appears that, the said officers have adopted and are in sync, with the submissions made by Col. V.K. Shad.

1.2 The orders impugned in each of the captured writ petitions were those passed by the Central Information Commission (in short CIC). In WP(C) 499/2012, two orders are impugned. The principal order being order dated 15.06.2011, followed by a consequential order, dated 13.12.2011.

1.3 In WP(C) 1138/2012, there are, once again, two orders, which are impugned. The first order impugned is, the principal order, which is, dated 04.11.2011. This order follows the decision taken by the CIC in Col. V.K. Shad's case. The second order is dated 05.01.2012, which actually, only records, the fact that the matter had been concluded by the order dated

4.11.2011, and that the registry of the CIC had mistakenly relisted the matter. The order however, also goes on to record the fact that, a written representation was submitted on behalf of the petitioners herein that, they be given, thirty (30) days time to comply with the order of the CIC.

1.4 In the third and last writ petition being: WP(C) 1144/2012, the order impugned is dated 9.6.2011.

1.5 In each of these matters, the impugned orders have been passed by the same Chief Information Commissioner.

2. Though the question of law is common, for the sake of completeness, I propose to briefly touch upon the relevant facts involved in each of the matters, which led to institution of the instant writ petitions.

2.1 For the sake of convenience, however, each of the respondents in their respective writ petitions will be referred to by their name.

WP(C) NO. 499/2012

3. Col. V.K. Shad was posted to the Army Core Supply Battalion 5628 in September, 2008. Evidently, he fell out with his deputy, one, Lt. Col. B.S. Goraya. Col. V.K. Shad had issues with regard to Lt. Col. B.S. Goraya, which in his perception impacted the functioning in the unit. Lt. Col. B.S. Goraya, on his part made counter allegations against Col. V.K. Shad qua issues which he regarded as infractions of standard operating procedures governing the functioning of the personnel inducted into the army.

3.1 Consequently, in May, 2009, a Court of Inquiry was ordered by the Head Quarter, Western Command, to investigate, charges of alleged acts of indiscipline leveled by Col. V.K. Shad against Lt. Col. B.S. Goraya as also counter charges made by Lt. Col. B.S. Goraya against Col. V.K. Shad.

3.2 The inquiry against Col. V.K. Shad pertained to the following:

> "(i) Failure to follow laid down procedure with respect to sale of BPL watches, as a non CSD item between October,

2008 and March, 2009.

(ii) Accepting money in Regt Fund Acct amounting to Rs 27,133/- (Rupees twenty seven thousand one hundred and thirty three only) as sponsorship from CSD Liquor Vendors between January and February 2009.

(iii) Improperly passed instructions to JC-664710W Nb Sub AR Ghose of 5682 ASC Bn, JCO in-Charge AWWA Venture Shop, to not to charge the profit of 5% on the sale of fruits and vegetables to MG-IC-Adm. MG ASC and DDST of HQ Western Command."

3.3 As regards, Lt. Col. B.S. Goraya (later on promoted as colonel), what one was able to glean from the record is that, he was charged with making unwarranted allegations against his commanding officer Col. V.K. Shad, relating to counseling letters to officers; non-payment of mess bills; and purchase of pickle from officer's mess fund for personal use.

3.4 The Court Of Inquiry concluded its proceedings in August, 2009. The opinion of the Court Of Inquiry was as follows:

"....(a) No case of financial misappropriation or malafide intention on part of IC-48682N Co. VK Shad, CO 5682 ASC Bn has been ascertained by the court.

(b) Actions taken by Col VK Shad, CO 5682 ASC Bn in all the cases examined by the court, though at places not strictly as per laid down procedures, are on issues pertaining to routine day to day functioning of the unit and did not have any serious ramifications or resulted in any gross violation/ deviation from the accepted norms.

(c) IC-46873K Lt. Col BS Goraya, 2IC, 5682 ASC Bn has apparently got into a personality clash with the CO, Vol. V.K. Shad. In the bargain, the former has attempted to polarize the Unit and in effect adversely affected the day to day functioning of the unit in gen and the CO in particular.

(d) All issues which the court examined were of routine/ mundane nature and could have been resolved in the departmental channel itself.

2. The court recommends that:-

(a) IC 48682N Col V K Shad, CO 5682 Bn (MT) should be suitably counselled for lapses in laid down procedures

> with reference to the issues of "sale of BPL Watches", "acceptance of sponsorship money from CSD Liquor Vendors" and "Functioning of AWWA Venture Shop, Chandimandir".
>
> (b) IC-46873K Lt. Col B S Goraya, 2IC 5682 ASC Bn (MT) is recommended to be posted out of the Unit forthwith as the presence of the offr in the Bn as 2IC, is detrimental to the administrative and operational efficiency of the Bn.
>
> (c) Suitable Disciplinary/administrative action be initiated against IC-46873K Lt Col BS Goraya for leveling baseless allegations against Col VK Shad, CO on routine/ mundane issues and acting in a manner not befitting the Second in Command of the Bn by adversely affecting the functioning of the Bn....."

3.5 It appears that the reviewing authority, which in this case was the Commander P.H. & H.P(1) Sub Area, differed with the opinion of the Court Of Inquiry, and thus, recommended, initiation of administrative and disciplinary action against Col. V.K. Shad. In so far as Lt. Col. B.S. Goraya was concerned, in addition to initiating administrative action; a recommendation was also made that, he should be posted out of the unit forthwith as the presence of the said officer in the battalion as the second-in-command was detrimental to the administrative and operational efficiency of the Battalion.

3.6 The matter reached the next level of command which was the General Officer Commanding (GOC) Head Quarters 2 Corps (GOC-in-Chief).

3.7 The GOC-in-Chief, while partially agreeing with the findings and opinion of the Court Of Inquiry, noted that, it agreed with the recommendations of the Commander P.H. & H.P. (1) Sub Area. In conclusion the GOC-in-Chief, while recommending administrative action against both Col. V.K. Shad and Lt. Col. B.S. Goraya; and concurring with the view that Lt. Col. B.S. Goraya needed to be posted outside the battalion 5682 - proceeded to convey his severe displeasure (non-recordable) to Col.

V.K. Shad.

3.8 This direction was issued on 10.7.2010, though after a show cause notice was issued to Col. V.K. Shad on 8.4.2010, to which he was given an opportunity to file his defence/ reply.

4. It is in this background that Col. V.K. Shad vide an application dated 23.8.2010, took recourse to the RTI Act seeking information with regard to the following:

> "(a) Opinion and findings of the C of I convened by the convening order ref in para 1 above.
> (b) Recommendations on file of staff at various HQs.
> (c) Recommendations of Cdrs in chain of comd.
> (d) Directions of the GOC-in-C on the subject inquiry.
> (e) Copies of all letters written by Lt. Col. B.S. Goraya where he has leveled allegations against me to HQ Western Command including those written to HQ Corps and HQ PH & HP(1) Sub Area till date. I may also be info of action taken, if any, against Lt Col BS Goraya for his numerous acts of indiscipline."

5. The PIO, vide communication dated 29.9.2010, declined to give any information. The said communication, however, did indicate that under Army Rule 184 (Amended), the statement of exhibits of the Court Of Inquiry proceedings are made available to those persons whose character and military reputation is in issue in the proceedings before the Court Of Inquiry. The officer was advised by the said communication to apply accordingly.

6. Being aggrieved, Col. V.K. Shad, approached the first appellate authority. The first appellate authority agreed with the view taken by the PIO except, with regard to, the denial of access to letters written by Lt. Col. B.S. Goraya to the Head Quarters, Western Command including those written to Head Quarter 2 Corps and Head Quarters PH & HP (1) Sub Area. The rationale employed by the first appellate authority was that once investigation were over, copies of letters written by Lt. Goraya uptil March, 2010 could be

provided to Col. V.K. Shad. In addition to the above, a further direction was issued, which was, to inform Col. V.K. Shad as regards the action, if any, initiated, against Lt. Col. B.S. Goraya.

7. Not being satisfied, Col. V.K. Shad, approached the CIC. The CIC, vide order dated 15.06.2011, directed the petitioners to supply to Col. V.K. Shad, the entire information, to the extent not supplied, within a period of four weeks from the date of the order.

8. Since, there was a failure, on the part of the petitioners to comply with the directions of the CIC, within the time stipulated, a complaint was lodged by the Col. V.K. Shad, with the CIC, on 2.8.2011. Accordingly, a show cause notice was issued by the CIC, on 6.9.2011, to the PIO, Head Quarter Western Command. The notice was made returnable on 27.9.2011.

8.1 Vide communication dated 19.9.2011, the hearing before the CIC was rescheduled for 5.10.2011. By yet another notice dated 26.9.2011, the hearing was, once again, rescheduled for 12.10.2011.

8.2 At the hearing held on, 12.10.2011, the CIC extended the time for implementation of its order by a period of (40) days, at the request of the CPIO. The proceedings were posted for 1.12.2011.

8.3 By a notice dated 29.11.2011, the said proceedings, were rescheduled for 30.12.2011. On 30.12.2011, the CIC passed the second impugned order, in view of non-compliance of its earlier order dated 15.6.2011. By order dated 30.2.2011, the CIC issued a show cause notice to the then PIO, as to why, penalty of Rs 25000 should not be imposed on him under Section 20(1) of the RTI Act, for failure to implement its order. A show cause notice was also issued to the Secretary, Government of India, Ministry of Defence, as to why compensation to the tune of Rs 50,000/- should not be awarded to Col. V.K.Shad, under the provisions of Section 19(8)(b) of the RTI Act, for failure to supply information, in compliance, with its orders. The personal

appearance of the two named officers alongwith their written representation, was also directed. The matter was posted for further proceedings, on 7.2.2012.

8.4 It is in this background that writ petition 499/2012, was moved in this court, on 24.01.2012 when, the impugned orders in so far as it directed provision of the opinion of the JAG branch, was stayed.

WP(C) No. 1138/2012

9. In this case a Court Of Inquiry was ordered by the Head Quarter Central Command, to investigate circumstances in which, one (1) rifle 5.56 mm INSAS alongwith one (1) magazine and 40 (forty) cartridges, SAS 5.56 mm Ball INSAS, from 40 Company ASC (Sup) Type 'D', was lost on the night of 14/15 January, 2006 and thereafter, recovered on 18.01.2006.

9.1 On the conclusion of the Court Of Inquiry, the proceedings, the findings as also the recommendations as in the first case, were finally placed before the GOC-in-Chief, Central Command, who came to the conclusion that administrative action was imperative against Col. P.P. Singh, for his failure to supervise the duties which were required to be performed by his subordinates and, in ensuring, the safe custody of weapons, taken on charge, by his unit, contrary to the provisions of para 37(c) of the Regulations For The Army 1987 (Revised) and para 193 of the Military Security Instructions, 2001.

9.2 Based on the directions of the GOC-in-Chief, a show cause notice was issued to Col. P.P. Singh, on 28.10.2006. After perusing the reply of Col. P.P. Singh, and based on the record the GOC-in-Chief, Central Command directed that his severe displeasure (Recordable) be conveyed to Col. P.P. Singh.

9.3 It is in this background that Col. P.P. Singh also took recourse to the RTI Act, and sought, the following information vide his application dated

29.1.2011:

> "(a) Findings and opinion of the Court alongwith recommendations of the Cdrs in chain and dirn of the competent authority (GOC UB Area, GOC-in-C Central Command) on the Court Of Inquiry convened under Stn. SQs Cell, Meerut convening order no. 124901/4/G dt 21 Jan 2006.
> (b) Noting sheets relating to processing this case at HQ UB Area and HQ Central Command based on which GOC-in-C awarded me Severe Displeasure (Recordable). In this connection refer dirn issued HQ Central Command letter no. 190105/653/U/DV dt. 10 feb 2007.
> (c) Please provide copy of the authority under which this Court Of Inquiry was forwarded to HQ UB Area and further on to HQ Central Command whereas the convening authority of the Court Of Inquiry was St. HQ Cell Meerut."

9.4 By communication dated 21.2.2011, the PIO rejected the application of Col. P.P. Singh by taking recourse to the provisions of Section 8(1)(e) of the RTI Act.

9.5 Being aggrieved, Col. P.P. Singh preferred an appeal with the first appellate authority. Interestingly, the first appellate authority while agreeing with the conclusions of the PIO observed that the PIO had "correctly disposed" of Col. P.P. Singh application as it fell squarely under the exceptions provided in Section 8(1) (g) & (h) of the RTI Act. It may be pertinent to point out that the PIO had in fact taken recourse to provisions of Section 8(1)(e) of the RTI Act.

9.6 Col. P.P. Singh preferred an appeal with the CIC. The CIC, while taking note of the fact that no proceedings were pending against Col. P.P. Singh, directed the release of information sought by him based on the reasoning provided in its order passed in Col. V.K. Shad's case, though after redacting the names and designations of the officers, who had made notings in the files, in accordance with the provisions of Section 10(1) of the RTI Act. The petitioners were directed to furnish the information, as directed, within

four (4) weeks of the order.

9.7 As noticed above, though Col. P.P. Singh's appeal before the CIC was disposed on 4.5.2011, it got listed again on 5.1.2012, on which date thirty (30) days were sought on behalf of the petitioners, to comply with the order of the CIC.

WP(C) No. 1144/2012

10. On 5.12.2009, a Court Of Inquiry was ordered by the Head Quarters Western Command to investigate the alleged irregularities, in the procurement of shoes, as part of personal kit stores item for Indian troops, proceedings on a United Nation's assignment, during the period January, 2006 till the date of issuance of the convening order.

10.1 The Court Of Inquiry, evidently, found Brig. S. Sabharwal guilty of certain lapses alongwith four officers of the Ordinance Services Directorate, Integrated Head Quarters, Ministry of Defence. Brig. S. Sabharwal's conduct was found blameworthy, in so far as, he had omitted to obtain formal written sanction of the Major General of the Ordinance prior to issuing orders to carry out a major amendment vis-a-vis the scope and composition of the board of officers, who were involved in the short-listing of eligible firms; and for omitting to comply with instructions, which required him to nominate an officer of the rank of brigadier who belonged to a Branch other than the Ordinance Branch, for inclusion in the price negotiation committee. It appears that Brig. S. Sabharwal had, contrary to the stipulated norms, nominated instead an officer of the rank of Major General attached to the Ordinance Services Directorate.

10.2 Based on the findings of the Court Of Inquiry, a show cause notice was issued to Brig. S. Sabharwal, on 10.04.2010, by the Head Quarters Western Command. Brig. S. Sabharwal, replied to the show cause notice vide communication dated 20.05.2010. However, by a communication dated

14.6.2010, Brig. S. Sabharwal called upon the concerned authority to defer its decision on the show cause notice, till such time it had sought clarifications from officers named in the said communication with regard to his assertion that he had been issued verbal instructions with regard to the matter under consideration.

10.3 On 18.6.2010, Brig. S. Sabharwal wrote to the authority concerned that since, he was one of the last witnesses summoned for cross-examination by the Court Of Inquiry, he was not able to present his case effectively. In these circumstances, he requested the convening authority to accord permission to cross-examine the witnesses in his defence, so that he could bring out the facts of the case in their correct perspective.

10.4 Evidently, a day prior to the aforesaid request, i.e., on 17.6.2010, the GOC-in-Chief, after considering the recommendations of the Court Of Inquiry, the contents of the show cause notice and the reply of Brig. S. Sabharwal, directed that his severe displeasure (recordable), be conveyed to Brig. S. Sabharwal.

10.5 This resulted in Brig. S. Sabharwal approaching the PIO with an application under the RTI Act. The application was preferred with the PIO, on 3.12.2010. Brig. S. Sabharwal sought the following information:

> "(a) All notings and correspondence of case file No. 0337/UN/PERS KIT STORES/DV2 of HQ Western Command.
> (b) Action taken Notings initiated by HQ Western Comd (DV) on HQ 335 Msl Bde Sig No. A-0183 dt 14 Jun 10 (Copy encl)."

10.6 The PIO, however, vide communication dated 10.12.2010, denied the information by relying upon the provisions of Section 8(4)(e) and (h) [sic 8(1)(e) and (h)] of the RTI Act. It was the opinion of the PIO that, notings and correspondence on the subject including legal opinions generated in the

case could not be given to Brig. S. Sabharwal in view of a "***fiduciary relationship existing in the chain of command and staff processing the case***". It was also observed by the PIO that the notings and contents of the classified files were exempt from disclosure under the provisions of the Department of Personnel and Training (in short DoPT) letter no. 1/20/2009-IR dated 23.6.2009, and that, no public interest would be served in disclosing the information sought for other than the applicant's own interest.

10.7 Being aggrieved, Brig. S. Sabharwal filed an appeal with the first appellate authority, on 12.1.2011. The first appellate authority rejected the appeal, which was conveyed under the cover of the letter dated 11.2.2011. To be noted, that even though, the letter dated 11.2.2011 is on record, the order of the first appellate authority has not been placed on record by the petitioners herein.

11. Brig. S. Sabharwal, being dissatisfied with result, filed a second appeal with the CIC. The CIC, passed a similar order, as was passed in the other two cases, whereby it directed that copy of file notings be supplied to Brig. S. Sabharwal after redacting the names and designations of the officers, who made the notings, in accordance with, the provisions of Section 10(1) of the RTI Act.

SUBMISSIONS OF COUNSELS

12. In the background of the aforesaid facts, it has been argued by Mr Mehra, learned ASG, that the CIC in several cases, contrary to the decision in V.K. Shad's case, has taken the view that the file notings, which include legal opinions, need not be disclosed, as it may affect the outcome of the legal action instituted by the applicant/querist seeking the information. Before me, however, reference was made to the case of ***Col. A.B. Nargolkar vs Ministry of Defence passed in appeal no. CIC/LS/A/2009/000951 dated 22.9.2009***.

12.1 It was thus the submission of the learned ASG that, in the impugned

orders, a contrary view has been taken to that which was taken in ***Col. A.B. Nargolkar's*** case. This, he submitted was not permissible as it was a bench of co-equal strength. It was submitted that in case the CIC disagreed with the view taken earlier, it ought to have referred the matter to a larger Bench.

12.2 Apart from the above, Mr Mehra has submitted that, the petitioner's action of denying information, which pertains to file notings and opinion of the JAG branch is sustainable under Section 8(1)(e) of the RTI Act. It was contended that there was a fiduciary relationship between the officers in the chain of command, and those, who were placed in the higher echelons, of what was essentially a pyramidical structure. In arriving at a final decision, the GOC-in-Chief takes into account several inputs, which includes, the notings on file as well as the opinion of the JAG branch. It was submitted that since, the JAG branch has a duty to act and give advice on matters falling within the ambit of its mandate, the disclosure of information would result in a breach of a fiduciary relationship qua those who give the advice and the final decision making authority, which is the recipient of the advice.

12.3 Mr Mehra submitted that, in all three cases, the advice rendered by the JAG branch was taken into account both while initiating proceedings and also at the stage of imposition of punishment against the delinquent officers.

12.4 Though it was not argued, in the grounds, in one of the writ petitions, reliance is also placed on Army Rule, 184, to contend that only the copy of the statements and documents relied upon during the conduct of Court Of Inquiry are to be provided to the delinquent officers. It is contended that the directions contained in the impugned orders of the CIC, are contrary to the said Rule.

12.5 In order to buttress his submissions reliance was placed by Mr Mehra, on the observations of the Supreme Court, in the case of ***Central Board of Secondary Education & Ors. vs Aditya Bandopadhayay & Ors. (2011) 8***

SCC 497. A particular stress, was laid on the observations made in paragraphs 38, 39, 44, 45 and 63 of the said judgment.

13. On the other hand, the respondents in the captioned writ petitions, who were led by Col. V.K. Shad, contended to the contrary and relied upon the impugned orders of the CIC. Specific reliance was placed on the judgments of this court, in the case of, ***Maj. General Surender Kumar Sahni vs UOI & Ors in CW No. 415/2003 dated 09.04.2003*** and ***The CPIO, Supreme Court of India vs Subhash Chandra Agarwal & Anr. WP(C) 288/2009 pronounced on 02.09.2009;*** and the judgment of the Supreme Court in the case of ***CBSE vs Aditya Bandopadhayay***.

REASONS

14. I have heard the learned ASG and the respondents in the writ petitions. As indicated at the very outset, the issue has been narrowed down to whether or not the file notings and the opinion of the JAG branch fall within the provisions of Section 8(1)(e) of the RTI Act. I may only note, even though the authorities below have fleetingly adverted to the provisions of Section 8(1)(h) of the RTI Act, the said aspect was neither pressed nor argued before me, by the learned ASG. The emphasis was only qua the provisions of Section 8(1)(e) of the RTI Act. The defence qua non-disclosure of information set up by the petitioners is thus, based on, what is perceived by them as subsistence of a fiduciary relationship between officers who generate the notes and the opinions which, presumably were taken in account by the final decision making authority, in coming to the conclusion which it did, with regard to the guilt of the delinquent officers and the extent of punishment, which was accorded in each case.

15. In order to answer the issue in the present case, fortunately I am not required to, in a sense, re-invent the wheel. The Supreme Court in two recent judgments has dealt with the contours of what would constitute a fiduciary

relationship.

15.1 Out of the two cases, the first case, was cited before me, which is ***CBSE vs Aditya Bandopadhayay*** and the other being ***ICAI vs Suaunak H. Satya and Ors. (2011) 8 SCC 781***.

15.2 Before I proceed further, as has been often repeated in judgment after judgments the preamble of the RTI Act, sets forth the guideline for appreciating the scope and ambit of the provisions contained in the said Act. The preamble, thus envisages, a practical regime of right to information for citizens, so that they have access to information which is in control of public authorities with the object of promoting transparency and accountability in the working of every such public authority. This right of the citizenry is required to be balanced with other public interest including efficient operations of the government, optimum use of limited physical resources and the preservation of confidentiality of sensitive information. The idea being to weed out corruption, and to hold, the government and their instrumentalities accountable to the governed.

15.3 The RTI Act is, thus, divided into six chapters and two schedules. For our purpose, what is important, is to advert to, certain provisions in chapter I, II and VI of the RTI Act.

15.4 Keeping the above in mind, what is thus, required to be ascertained is: (i) whether the material with respect to which access is sought, is firstly, information within the meaning of the RTI Act? (ii) whether the information sought is from a public authority, which is amenable to the provisions of the RTI Act? (iii) whether the material to which access is sought (provided it is information within the meaning of the RTI Act and is in possession of an authority which comes within the meaning of the term public authority) falls within the exclusionary provisions contained in Section 8(1)(e) of the RTI Act?

15.5 In order to appreciate the width and scope of the aforementioned provision, one would also have to bear in mind the provisions of Sections 9, 10, 11 & 22 of the RTI Act.

16. In the present case, therefore, let me first examine whether file notings and opinion of the JAG branch would fall within the ambit of the provisions of the RTI Act.

16.1 Section 2(f), inter alia defines information to mean "***any***" "***material***" contained in any form including records, documents, memo, emails, ***opinions***, ***advises,*** press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body, which can be, accessed by a public authority under any other law for the time being in force. Section 2(i) defines record as one which includes - any document, manuscript and file; (ii) any microfilm and facsimile copy of a document; (iii) reproduction of image or images embodied in such microfilm; and (iv) any other material produced by a computer or any other device.

16.2 A conjoint reading of Section 2(f) and 2(i) leaves no doubt in my mind that it is an expansive definition even while it is inclusive which, brings within its ambit any material available in any form. There is an express reference to **"*opinions*"** and **"*advices*"**, in the definition of information under Section 2(f). While, the definition of record in Section 2(i) includes a "***file***".

16.3 Having regard to the above, there can be no doubt that file notings and opinions of the JAG branch are information, to which, a person taking recourse to the RTI Act can have access provided it is available with the concerned public authority.

16.4 Section 2(h) of the RTI Act defines a public authority to mean any authority or body or institution of Central Government established or constituted, inter alia, by or under, the Constitution or by or under a law made

by Parliament. There can be no doubt nor, can it be argued that the Indian Army is not a public authority within the meaning of the RTI Act; which has the Ministry of Defence of the Government of India as its administrative ministry

16.5 The scope and ambit of the right to the information to which access may be had from a public authority is defined in Section 2(j). Section 2(j), inter alia, gives the right to information, which is accessible under this Act and, is held by or, is in control of the public authority by seeking inspection of work, documents, records by taking notes, extracts of certified copy of documents on record, by taking certified copy of material and also obtaining information in the form of discs, floppy, tapes, video cassetes, which is, available in any other electronic mode, whether stored in the computer or any other device.

16.6 Therefore, information which is available in the records of the Indian Army and, records as indicated hereinabove includes files, is information to which the respondents are entitled to gain access. The question is: which is really the heart of the matter, as to whether the information sought, in the present case, falls in the exclusionary (1)(e) of Section 8 of the RTI Act.

16.7 It may be important to note that Section 3 of the RTI Act, is an omnibus provision, in a sense, it mandates that all citizens shall have right to information subject to the other provisions of the RTI Act. Therefore, unless the information is specifically excluded, it is required to be provided in the form in which it is available, unless: (i) it would disproportionately divert the resources of public authority or, (ii) would be detrimental to the safety and preservation of the record in question [See Section 7(9)] or, the provision of information sought would involve an infringement of copy right subsisting in a person other than the State (see Section 9).

16.8 One may also be faced with a situation where information sought is

dovetailed with information which though falls within the exclusionary provisions referred to above, is severable. In such a situation, recourse can be taken to Section 10 of the RTI Act, which provides for severing that part of the information which is exempt from disclosure under the RTI Act, provided it can be "reasonably" severed from that which is not exempt. In other words, information which is not exempted but is otherwise reasonably severable, can be given access to a person making a request for grant of access to the same.

16.9 Section 11 deals with a situation where information available with a public authority which relates to or has been supplied by a third party, and is treated as confidential by that third party. In such an eventuality the PIO of the public authority is required to give notice to such third party of the request received for disclosure of information, and thereby, invite the said third party to make a submission in writing or orally, whether the information should be disclosed or not. In coming to a conclusion either way, the submissions made by the third party, will have to be kept in mind while taking a decision with regard to disclosure of information.

17. The last Section, which is relevant for our purpose, is Section 22. The said Section conveys in no uncertain terms the width of the RTI Act. It is a non-obstante clause which proclaims that the RTI Act shall prevail notwithstanding anything inconsistent contained in the Official Secrets Act, 1923 or 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. In other words, it overrides every other act or instrument having the effect of law including the Official Secrets Act, 1923.

17.1 Thus, an over-view of the Act would show that it mandates a public authority, which holds or has control over any information to disclose the same to a citizen, when approached, without the citizen having to give any reasons for seeking a disclosure. And in pursuit of this goal, the seeker of

information, apart from giving his contact details for the purposes of dispatch of information, is exempted from disclosing his personal details [see Section 6(2)].

17.2 Therefore, the rule is that, if the public authority has access to any material, which is information, within the meaning of the RTI Act and the said information is in its possession and/or its control, the said information would have to be disseminated to the information seeker, i.e., the citizen of this country, without him having to give reasons or his personal details except to the extent relevant for transmitting the information.

17.3 As indicated above, notes on files and opinions, to my mind, fall within the ambit of the provisions of the RTI Act. The possessor of information being a public authority, i.e., the Indian Army it could only deny the information, to the seeker of information who are respondents in the present case, only if the information sought falls within the exceptions provided in Section 8 of the RTI Act; in the instant case protection is claimed under clause (1)(e) of Section 8. Therefore, the argument of the petitioners that the information can be denied under Army Rule, 184 or the DoPT instructions dated 23.06.2009 are completely untenable in view of the over-riding effect of the provisions of the RTI Act. Both the Rule and the DoPT instructions have to give way to the provisions of Section 22 of the RTI Act. The reason being that, they were in existence when the RTI Act was enacted by the Parliament and the legislature is presumed to have knowledge of existing legislation including subordinate legislation. The Rule and the instruction can, in this case, at best have the flavour of a subordinate legislation. The said subordinate legislation cannot be taken recourse to, in my opinion to nullify the provisions of the RTI Act.

17.4 Therefore, one would have to examine the provisions of Section 8(1)(e) of the RTI Act. The relevant parts of the said Section read 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
> (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.
> xxxx
> xxxx
> Provided that the information, which cannot be denied to the Parliament or State Legislature shall not be denied to any person.
> (2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.
> (3) x x x x x
> Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."

17.5 In ***CBSE vs Aditya Bandopadhyay*** case, the Supreme Court was called upon to decide the issue as to whether, an examinee was entitled to an inspection of his answer books, in view of the appellant before the Supreme Court, i.e., the CBSE, claiming exemption under Section 8(1)(e) of the RTI Act.

17.6 In this context, the court considered the issue: whether the examining body holds the evaluated answer books in a fiduciary relationship with the examiners.

17.7 The Supreme Court after noting various meanings ascribed to the term

"fiduciary" in various dictionaries and texts, summed up what the term fiduciary would mean, in the following paragraph of its judgment:

> "……39. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term *'fiduciary relationship'* is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and expected not to disclose the thing or information to any third party…."

17.8 Examples of certain relationships, where both parties act in a fiduciary capacity, while treating the other as beneficiary, are set out in paragraph 40 and 41 of the judgment. In paragraph 41 onwards the Court examined what would be the true scope of the expression "information available to a person in his capacity as fiduciary relationship", as used in Section 8(1)(e) of the RTI Act. In that context several fiduciary relationships were referred to like the one between a trustee and a beneficiary of a trust; a guardian with reference to a minor or, a physically infirm or mentally incapacitated person; a parent with reference to a child; a lawyer or a chartered accountant with reference to a client etc. After considering the matter at length, the Supreme Court came to the conclusion that there was no fiduciary relationship between the examining body and the examiner with reference to evaluated answer books. The court also examined the issue that if one were to assume that there was a

fiduciary relationship between the examiner and the examining body, whether the exemption would operate vis-a-vis third parties. In paragraph 44 of the judgment, the court concluded that if there was a fiduciary relationship, the exemption would operate vis-a-vis a third party, however, there would be no question of withholding information relating to the beneficiary from the beneficiary himself.

17.9 In paragraphs 49 and 50, the court concluded that since the examiner is acting as an agent of the examining body, in principle, the examining body is not in the position of a fiduciary, with reference to the examiner. On the other hand, once the examiner hands over the custody of the evaluated answer books, whose contents he is barred from disclosing as he acts as a fiduciary, uptill that point of time, ceases to be in that relationship once the work of evaluation of answer books is concluded, and the evaluated answer sheets are handed over to the examining body. In other words, since the examiner does not have any copyright or proprietary right or a right of confidentiality, in the evaluated answer books, the examining body cannot be said to be holding the evaluated answer books in a fiduciary relationship qua the examiner.

18. A similar view was held by the same Bench of the Supreme Court in the case of ***ICAI vs Shaunak H. Satya.*** The Supreme Court, while dealing with the issue whether the instructions and solutions to questions are information available to examiner and moderators in their fiduciary capacity, and therefore, exempt under Section 8(1)(e) of the RTI Act, made the following observations in paragraph 22 of the judgment:

> "....22. It should be noted that Section 8(1)(e) uses the words *"information available to a person in his fiduciary relationship.* Significantly Section 8(1)(e) does not use the words *"information available to a public authority in its fiduciary relationship"*. The use of the words "person" shows that the holder of the information in a fiduciary relationship need not only be a 'public authority' as the

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

19. The court also made clear in paragraph 26 of the judgment that there were ten categories of information which were exempt from Section 8 of the RTI Act. Out of the ten categories, six categories enjoyed absolute exemption. These being: those information, which fell in clauses (a), (b), (c), (f), (g) & (h) of Section 8(1) of the RTI Act, while information enumerated in clauses (d), (e) & (j) of the very same Section enjoyed ***"conditional"*** exemption to the extent that the information was subject to over-riding power of the competent authority under the RTI Act in larger public interest, which could in a given case, direct disclosure of such information. Clause (i), the Supreme Court noted, was period specific in as much as under Sub-Section (3) such information could be provided if the event or matter in issue had occurred 20 years prior to the date of the request being made under Section 6 of the RTI Act. It inter alia concluded, that, information relating to fiduciary relationship under clause 8(1)(e) did not enjoy absolute exemption.

20. Before I proceed further, I may also note that the first proviso in Section 8 says that, information which cannot be denied to the Parliament or the State Legislature, shall not be denied to any person. Subsection (2) of

Section 8, states that notwithstanding anything contained in the Official Secret Acts, 1923, or any of the exemptions provided in Subsection (1), would not come in the way of a public authority in allowing access to information if, public interest in its disclosure outweighs the harm to the protected interest.

20.1 A Full Bench of this court in the case of ***Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal, 166 (2010) DLT 305***, in the context of provisions of Section 8(1)(j) also examined what would constitute a fiduciary relationship. The observations contained in paragraph 97 to 101, being apposite are extracted hereinbelow:

> ".....97. As Waker defines it: "A "fiduciary" is a person in a position of trust, or occupying a position of power and confidence with respect to another such that he is obliged by various rules of law to act solely in the interest of the other, whose rights he has to protect. He may not make any profit or advantage from the relationship without full disclosure. The category includes trustees, Company promoters and directors, guardians, solicitors and clients and other similarly placed." [Oxford Companion to Law, 1980 p.469]
>
> 98. "A fiduciary relationship", as observed by Anantnarayanan, J., "may arise in the context of a jural relationship. Where confidence is reposed by one in another and that leads to a transaction in which there is a conflict of interest and duty in the person in whom such confidence is reposed, fiduciary relationship immediately springs into existence." [see Mrs. Nellie Wapshare v. Pierce Lasha & Co. Ltd. AIR 1960 Mad 410]
>
> 99. In Lyell v. Kennedy (1889) 14 AC 437, the Court explained that whenever two persons stand in such a situation that confidence is necessarily reposed by one in the other, there arises a presumption as to fiduciary relationship which grows naturally out of that

confidence. Such a confidential situation may arise from a contract or by some gratuitous undertaking, or it may be upon previous request or undertaken without any authority.

100. In Dale & Carrington Invt. (P) Ltd. v. P.K. Prathaphan: (2005) 1 SCC 212 and Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. (1981) 3 SCC 333, the Court held that the directors of the company owe fiduciary duty to its shareholders. In P.V. Sankara Kurup v. Leelavathy Nambier: (1994) 6 SCC 68, the Court held that an agent and power of attorney can be said to owe a fiduciary relationship to the principal.

101. Section 88 of the Indian Trusts Act requires a fiduciary not to gain an advantage of his position. Section 88 applies to a trustee, executor, partner, agent, director of a company, legal advisor or other persons bound in fiduciary capacity. Kinds of persons bound by fiduciary character are enumerated in Mr. M. Gandhi's book on "Equity, Trusts and Specific Relief" (2nd ed., Eastern Book Company)

(1) Trustee,
(2) Director of a company,
(3) Partner,
(4) Agent,
(5) Executor,
(6) Legal Adviser,
(7) Manager of a joint family,
(8) Parent and child,
(9) Religious, medical and other advisers,
(10) Guardian and Ward,
(11) Licensees appointed on remuneration to purchase stocks on behalf of government,
(12) Confidential Transactions wherein confidence is reposed, and which are indicated by (a) Undue influence, (b) Control over property, (c) Cases of unjust enrichment, (d) Confidential information, (e) Commitment of job,
(13) Tenant for life,

(14) Co-owner,
(15) Mortgagee,
(16) Other qualified owners of property,
(17) De facto guardian,
(18) Receiver,
(19) Insurance Company,
(20) Trustee de son tort,
(21) Co-heir,
(22) Benamidar.

20.2 The above would show that there are two kinds of relationships. One, where a fiducial relationship exists, which is applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, executors and beneficiaries of a testamentary succession; while the other springs from a confidential relationship which is pivoted on confidence. In other words confidence is reposed and exercised. Thus, the term fiduciary applies, it appears, to a person who enjoys peculiar confidence qua other persons. The relationship mandates fair dealing and good faith, not necessarily borne out of a legal obligation. It also permeates to transactions, which are informal in nature. [See words and phrases Permanent Edn. (Vol. 16-A, p. 41) and para 38.3 of the ***CBSE vs Aditya Bandopadhyay***]. As indicated above, the Supreme Court in the very same judgment in paragraph 39 has summed up as to what the term fiduciary would mean.

20.3 In the instant case, what is sought to be argued in sum and substance that, it is a fiducial relation of the latter kind, where the persons generating the note or opinion expects the fiduciary, i.e., the institution, which is the Army, to hold their trust and confidence and not disclose the information to the respondents herein, i.e., Messers V.K. Shad and Ors. If this argument were to be accepted, then the persons, who generate the notes in the file or the opinions, would have to be, in one sense, the beneficiaries of the said information. In an institutional set up, it can hardly be argued that notes on

file qua a personnel or an employee of an institution, such as the Army, whether vis-a-vis his performance or his conduct, in any manner, can benefit the person, who generates the note or renders an opinion. As a matter of fact, the person who generates the note or renders an opinion is presumed to be a person who is objective and not conflicted by virtue of his interest in the matter, on which, he is called upon to deliberate. If that position holds, then it can neither be argued nor can it be conceived that notes on file or opinions rendered in an institutional setup by one officer qua the working or conduct of another officer brings forth a fiduciary relationship. It is also not a relationship of the kind where both parties required the other to act in a fiduciary capacity by treating the other as a beneficiary. The examples of such situations are found say in a partnership firm where, each partner acts in fiduciary capacity qua the other partner(s).

20.4 If at all, a fiduciary relationship springs up in such like situation, it would be when a third party seeks information qua the performance or conduct of an employee. The institution, in such a case, which holds the information, would then have to determine as to whether such information ought to be revealed keeping in mind the competing public interest. If public interest so demands, information, even in such a situation, would have to be disclosed, though after taking into account the rights of the individual concerned to whom the information pertains. A denial of access to such information to the information seekers, i.e., the respondents herein, (Messers V.K. Shad & Co.) especially in the circumstances that the said information is used admittedly in coming to the conclusion that the delinquent officers were guilty, and in determining the punishment to be accorded to them, would involve a serious breach of principles of natural justice, as non-communication would entail civil consequences and would render such a decision vulnerable to challenge under Article 14 of the Constitution of India

provided information is sought and was not given. [See ***UOI vs R.S. Khan 173 (2010) DLT 680***].

21. It is trite law that the right to information is a constitutional right under Article 19(1)(a) of the Constitution of India which, with the enactment of the RTI Act has been given in addition a statutory flavour with the exceptions provided therein. But for the exceptions given in the RTI Act; the said statute recognizes the right of a citizen to seek access to any material which is held or is in possession of public authority.

22. This brings me to the first proviso of Section 8(1), which categorically states that no information will be denied to any person, which cannot be denied to the Parliament or the State Legislature. Similarly, sub-section (2) of Section 8, empowers the public authority to over-ride the Official Secrets Act, 1923 and, the exemptions contained in sub-section (1) of Section 8, of the RTI Act, if public interest in the disclosure of information outweighs the harm to the protected interest. As indicated hereinabove, the Supreme Court in ***CBSE vs Aditya Bandopadhayay*** case has clearly observed that exemption under Section 8(1)(e) is conditional and not an absolute exemption.

23 I may only add a note of caution here: which is, that protection afforded to a client vis-à-vis his legal advises under the provisions of Section 126 to 129 of the Evidence Act, 1872 is not to be confused with the present situation. The protection under the said provisions is accorded to a client with respect to his communication with his legal advisor made in confidence in the course of and for the purpose of his employment unless the client consents to its disclosure or, it is a communication made in furtherance of any illegal purpose. The institution i.e The Indian Army in the present case cannot by any stretch of imagination be categorized as a client. The legal professional privilege extends only to a barrister, pleader, attorney or Vakil. The persons who have generated opinions and/or the notings on the file in the present case

do not fall in any of these categories.

23.1 Having regard to the above, I am of the view that the contentions of the petitioners that the information sought by the respondents (Messers V.K. Shad & Co.) under Section 8(1)(e) of the Act is exempt from disclosure, is a contention, which is misconceived and untenable. For instance, can the information in issue in the present case, denied to the Parliament and State Legislature. In my view it cannot be denied, therefore, the necessary consequences of providing information to Messers V.K. Shad should follow.

24. The argument of the learned ASG that, the CIC had taken a diametrically opposite view in the other cases and hence the CIC ought to have referred the matter to a larger bench, does have weight. This objection ordinarily may have weighed with me but for the following reasons :-

24.1 First, the judgment of the CIC cited for this purpose i.e., Col. A.B. Nargolkar case, dealt with the situation where an order of remand was passed directing the PIO to apply the ratio of the judgment of a Single Judge of this court in the case of the ***CPIO, Supreme Court of India Vs. Subhash Chandra Agarwal and Anr., WP (C) 288/2009, pronounced on 02.09.2009.*** The CIC by itself did render a definite view.

24.2 Second, keeping in mind the fact that the information commissioners administering the RTI Act are neither persons who are necessarily instructed in law, i.e., are not trained lawyers, and nor did they have the benefit of such guidance at the stage of argument, I do not think it would be appropriate to set aside the impugned judgment on this ground and remand the matter for a fresh consideration by a larger bench of the CIC. This view, I am inclined to hold also, on account of the fact that, since then there have been several rulings of various High Courts including that of the Supreme Court, to which I have made a reference above, and that, remanding the matter to the CIC would only delay the cause of the parties before me.

24.3 These are cases which affect the interest of both parties, especially the petitioners in a large number of cases, and therefore, the need for a ruling of a superior court one way or the other, on the issue. It is in this context that I had proceeded to decide the matter on merits, and not take the route of remand in this particular case. The CIC is, however, advised in future to have regard to the discipline of referring the matters to a larger bench where a bench of co-ordinate strength takes a view which is not consistent with the view of the other.

25. For the foregoing reasons, the writ petitions are dismissed. The impugned orders passed by the CIC are sustained. The information sought by Messers V.K. Shad and Ors will be supplied within two weeks from today, in terms of the orders passed by the CIC. However, having regard to the peculiar facts and circumstances of the case, parties are directed to bear their own costs save and except to the extent that the sum of Rs 5000/- each, deposited pursuant to the two orders of my predecessor of even date, passed on 27.02.2012, in WP(C) Nos. 1144/2012 and 1138/2012, shall be released, on a pro rata basis, to the three respondents, towards incidental expenses.

RAJIV SHAKDHER, J

NOVEMBER 09, 2012
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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 28th May, 2012**

\+ **LPA No.487/2011**

ALL INDIA INSTITUTE OF MEDICAL SCIENCES **.....** Appellant
Through: Mr. Sahil S. Chauhan, Adv for Mr. Mehmood Pracha, Adv.

Versus

VIKRANT BHURIA **.....** Respondent
Through: None.

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

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the order dated 22nd December, 2010 of the learned Single Judge dismissing *in limine* WP(C) No. 8558/2010 preferred by the appellant. The said writ petition was preferred impugning the decision dated 12th November, 2010 of the Central Information Commission (CIC) directing the appellant to furnish to the respondent the information sought by the respondent. Notice of this appeal and of the application for condonation of 106 days delay in filing this appeal was issued vide order dated 26th May, 2011 and the operation of the order dated 22nd December, 2010 of the learned Single Judge was also stayed. The

respondent remained unserved with the report that "a lady at the address of the respondent refused to accept the notice on the ground that the respondent was working at "Jabwa" and she had no knowledge of the notice". The respondent was directed to be served afresh but no steps were taken by the appellant. When the matter came up before us on 1st March, 2012, being of the view that the matter was fully covered by the judgment of the Supreme Court in ***The Institute of Chartered Accountants of India v. Shaunak H. Satya*** (2011) 8 SCC 781, the counsel for the appellant was asked to satisfy this Court as to the merit of this appeal. The counsel for the appellant sought adjournment from time to time and in these circumstances on 30th March, 2012 orders were reserved in the appeal with liberty to the counsel for the appellant to file written arguments. Written arguments dated 11th April, 2012 have been filed by the appellant and which have been considered by us.

2. The respondent in his application dated 5th April, 2010 had sought the following information from the Information Officer of the appellant.

> "1. Certified copies of original questions papers of all Mch super-speciality entrance exam conducted from 2005-2010.

2. Certified copies of correct answers of all respective questions asked in Mch super-speciality entrance exam conducted from 2005-2010."

3. The Information Officer of the appellant vide reply dated 21st April, 2010 refused to supply the information sought on the ground that the "questions and their answers are prepared and edited by AIIMS, thus the product remains 'intellectual property' of AIIMS. Since these questions are part of the question bank and likely to be used again, the supply of question booklet would be against larger public interest". The provisions of Section 8 (1) (d) and 8(1) (e) of the Right to Information Act, 2005 were also invoked.

4. The respondent preferred an appeal to the First Appellate Authority. The First Appellate Authority sought the comments of the appellant AIIMS. AIIMS, besides reiterating what was replied by its Information Officer added that the information asked was a part of confidential documents which compromises the process of selection and thus could not be disclosed. Though the order of the First Appellate Authority is not found in the paper book, but it appears that the appeal was dismissed as the respondent preferred a second appeal to the CIC.

5. It was the contention of the appellant before the CIC that there are limited number of questions available with regard to super-speciality subjects in the question bank and that the disclosure of such questions would only encourage the students appearing for the exam to simply memorize the answers for the exam, thereby adversely affecting the selection of good candidates for super-speciality courses. It was thus argued that the question papers of the entrance examination for super-speciality courses could not be made public.

6. CIC vide its order dated 12th November, 2010 (supra), noticing the admission of the appellant that the question papers could not be termed as 'intellectual property' and observing that the appellant had been unable to invoke any exemption sub-clause of Section 8(1) of the Act to deny information and further holding that the refusal of information was not tenable under the Act, allowed the appeal of the respondent and directed the appellant to provide complete information to the respondent.

7. The learned Single Judge, as aforesaid dismissed the writ petition of the appellant challenging the aforesaid order of CIC *in limine* observing that the appellant had not been able to show how the disclosure of the entrance

exam question papers would adversely affect the competitive position of any third party and thus Section 8(1)(d) was not attracted. It was further observed that there was no fiduciary relationship between the experts who helped to develop the question bank and the appellant and thus Section 8(1)(e) also could not be attracted.

8. The appellant in its written submissions before us urges:

i. that the subject matter of this appeal is not covered by the judgment of the Supreme Court in ***Shaunak H. Satya*** (supra) as the facts and circumstances are completely different;

ii. that the entrance examination for super-speciality courses was introduced by the appellant only in the year 2005;

iii. that at the level of super-speciality examinations, there can be very limited questions, which are developed gradually; that such question papers are not in public domain; that a declaration is also taken from the examinee appearing in the said examination that they will not copy the questions from the question papers or carry the same;

iv. per contra, in ***Shaunak H. Satya*** (supra) the Institute of Chartered Accountants (ICA) was voluntarily publishing the suggested answers of the question papers in the form of a paper book and offering it for sale every year after examination and it was owing to the said peculiar fact that it was held that disclosure thereof would not harm the competitive position of any third party;

v. that the information seeker in ***Shaunak H. Satya*** (supra) was a candidate who had failed in examination and who was raising a question of corruption and accountability in the checking of question papers; per contra the respondent herein is neither a candidate nor has appeared in any of the super-speciality courses examination conducted by the appellant;

vi. that the appellant consults the subject experts, designs the question papers and takes model answers in respect of each question papers; such question papers prepared by experts in a particular manner for the appellant are original literary work and copyright in respect thereof vests in the appellant;

vii that the examinees taking the said examination are informed by a stipulation to the said effect on the admit card itself that civil and criminal proceedings will be instituted if found taking or attempting to take any part of the question booklets;

viii. that copyright of appellant is protected under Section 8(1)(d);

ix. that Section 9 of the Act also requires the Information Officer to reject a request for information, access whereto would involve an infringement of copyright subsisting in a person other than a State;

x. that the appellant also gives a declaration to the paper setters to protect their literary work - reliance in this regard is placed on Section 57 of the Copyright Act, 1957;

xi. that at the stage of super-speciality, there can be very limited questions which can be framed and if the question papers of all the examinations conducted from 2005-2010 are disclosed, then all possible questions which can be asked would be in public

domain and that would affect the competitive position of students taking the examinations.

9. We have minutely considered the judgment of the Apex Court in ***Shaunak H. Satya*** (supra) in the light of the contentions aforesaid of the appellant and find -

i. that the information seeker therein was an unsuccessful examinee of the examination qua which information was sought;

ii. that the ICA had pleaded confidentiality and invoked Section 8(1)(e) of the Act for denying the information as to "number of times the marks of any candidate or class of candidates had been revised, the criteria used for the same, the quantum of such revision and the authority which exercised the said power to revise the marks";

ii. that the CIC in that case had upheld the order refusing disclosure observing that the disclosure would seriously and irretrievably compromise the entire examination process and the instructions issued by the Examination Conducting Public Authority to its examiners are strictly confidential;

iii. it was also observed that the book annually prepared and sold by the ICA was providing 'solutions' to the questions and not 'model answers';

iv. however the High Court in that case had directed disclosure for the reason of the suggested answers being published and sold in open market by the ICA itself and there being thus no confidentiality with respect thereto. It was also held that the confidentiality disappeared when the result of the examination was declared.

10. The Supreme Court, on the aforesaid finding, held-

i. that though the question papers were intellectual property of the ICA but the exemption under Section 8(1)(d) is available only in regard to intellectual property disclosure of which would harm the competitive position of any third party;

ii. that what may be exempted from disclosure at one point of time may cease to be exempted at a later point of time;

iii. that though the question papers and the solutions/model answers and instructions cannot be disclosed before the

examination but the disclosure, after the examination is held would not harm the competitive position of any third party inasmuch as the question paper is disclosed 'to everyone' at the time of examination and the ICA was itself publishing the suggested answers in the form of a book for sale every year, after the examination;

iv. the word "State" used in Section 9 of the Act refers to the Central Government or the State Government, Parliament or Legislature of a State or any local or other authority as described under Gazette of the Constitution;

v. use of the expression "State" instead of "public authority" showed that State includes even non-government organizations financed directly or indirectly by funds provided by the appropriate Government;

vi. ICA being a 'State' was not entitled to claim protection against disclosure under Section 9.

vii. furnishing of information by an examining body, in response to a query under RTI Act, may not be termed as an infringement of copyright. The instructions and solutions to questions communicated by the examining body to the examiners, head examiners and moderators are information available to such persons in their fiduciary relationship and therefore exempted from disclosure under section 8(1)(d) of the Act and there is no larger public interest requiring denial of the statutory exemption regarding such information;

viii. the competent authorities under the RTI Act 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.

11. The dissection aforesaid of the judgment ***Shaunak H. Satya*** in the light of the arguments of the appellant noted above does show that the

learned Single Judge has not dealt therewith. We have satisfied ourselves from perusal of the writ record that, at least in the writ petition, the same grounds were taken, whether orally urged or not. The same do require consideration and we do not at this stage deem it appropriate to remand the matter to the Single Judge.

12. We are conscious that though notice of this appeal was issued to the respondent but the respondent remains unserved. We have wondered whether to again list this appeal for service of the respondent, to consider the aforesaid arguments of the appellant and the response if any of the respondent thereto but have decided against the said course, finding the respondent to be a resident of Indore, having participated in the hearing before the CIC also through audio conferencing and also for the reason that inspite of the order of the learned Single Judge having remained stayed for the last nearly two years, the respondent has not made any effort to join these proceedings. We have in the circumstances opted to decipher the contentions of the respondent from the memoranda of the first and the second appeals on record and from his contention in the audio conferencing, as recorded in the order of the CIC.

13. The respondent in the memorandum of first appeal, while admitting the question papers and model answers to be intellectual property of appellant, had pleaded that publication thereof was in larger public interest as the aspiring students would be able to prepare and understand the pattern of questions asked in super-speciality entrance examination in future. It was also pleaded that question papers of most of the other examinations held were available to the students and generally only 10-20% of the questions were repeated. It was also his case that with the galloping advancement in medical science, the average student is not able to understand what to study and follow and preparation for the examination would be facilitated for the prospective examinees if the question papers are made public. In the memorandum of the second appeal it was also pleaded that when the best faculty was available to the appellant, if did not need to depend on old question papers. During the hearing via audio conferencing before the CIC, the respondent had contended that the question papers could not be termed as intellectual property and it was in larger public interest to provide the questions to the aspiring students who will be able to understand the pattern in which the questions are framed.

14. We tend to agree with the counsel for the appellant that the judgment of the Apex Court in ***Shaunak H. Satya*** (supra) cannot be blindly applied to the facts of the present case. The judgment of the Apex Court was in the backdrop of the question papers in that case being available to the examinees during the examination and being also sold together with suggested answers after the examination. Per contra in the present case, the question papers comprises only of multiple choice questions and are such which cannot be carried out from the examination hall by the examinees and in which examination there is an express prohibition against copying or carrying out of the question papers. Thus the reasoning given by the Supreme Court does not apply to the facts of the present case.

15. We are satisfied that the nature of the examination, subject matter of this appeal, is materially different from the examination considered by the Supreme Court in the judgment supra. There are few seats, often limited to one only, in such super-speciality courses and the examinees are highly qualified, post graduates in the field of medicine. Though the respondent, as aforesaid, has paid tributes to the faculty of the appellant and credited them with the ingenuity to churn out now questions year after year but we cannot ignore the statement in the memorandum of this appeal supported by the

affidavit of the Sub-Dean (Examinations) of the appellant to the effect that the number of multiple choice questions which can be framed for a competitive examination for admission to a super-speciality course dealing with one organ only of the human body, are limited. This plea is duly supported by the prohibition on the examinees from copying or carrying out from the examination hall the question papers or any part thereof. We have no reason to reject such expert view.

16. The Sub-Dean of Examinations of the appellant in the Memorandum of this appeal has further pleaded that if question papers are so disclosed, the possibility of the examination not resulting in the selection of the best candidate cannot be ruled out. It is pleaded that knowledge of the question papers of all the previous years with correct answers may lead to selection of a student with good memory rather than an analytical mind. It is also pleaded that setting up of such question papers besides intellectual efforts also entails expenditure. The possibility of appellant, in a given year cutting the said expenditure by picking up questions from its question bank is thus plausible and which factor was considered by the Supreme Court also in the judgment aforesaid.

17. We also need to remind ourselves of the line of the judgments of which reference may only be made to ***State of Tamil Nadu Vs. K. Shyam Sunder*** AIR 2011 SC 3470, ***The Bihar School Examination Board Vs. Subhas Chandra Sinha*** (1970) 1 SCC 648, ***The University of Mysore Vs. C. D. Govinda Rao*** AIR 1965 SC 491, ***Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth*** (1984) 4 SCC 27 holding that the Courts should not interfere with such decisions of the academic authorities who are experts in their field. Once the experts of the appellant have taken a view that the disclosure of the question papers would compromise the selection process, we cannot lightly interfere therewith. Reference in this regard may also be made to the recent dicta in ***Sanchit Bansal Vs. The Joint Admission Board (JAB)*** (2012) 1 SCC 157 observing that the process of evaluation and selection of candidates for admission with reference to their performance, the process of achieving the objective of selecting candidates who will be better equipped to suit the specialized courses, are all technical matters in academic field and Courts will not interfere in such processes.

18. We have in our judgment dated 24.05.2012 in LPA No.1090/2011 titled ***Central Board of Secondary Education Vs. Sh. Anil Kumar Kathpal***,

relying on the ***Institute of Chartered Accountants of India Vs. Shaunak H. Satya*** (2011) 8 SCC 781 held that in achieving the objective of transparency and accountability of the RTI Act, other equally important public interests including preservation of confidentiality of sensitive information are not to be ignored or sacrificed and that it has to be ensured that revelation of information in actual practice, does not harm or adversely affect other public interests including of preservation of confidentiality of sensitive information. Thus, disclosure of, marks which though existed, but were replaced by grades, was not allowed. Purposive, not literal interpretation of the RTI Act was advocated.

19. We may further add that even in ***Central Board of Secondary Education Vs. Aditya Bandopadhyay*** (2011) 8 SCC 497 that Apex Court though holding that an examining body does not hold evaluated answer books in fiduciary relationship also held that the RTI Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy i.e. of transparency and accountability on one hand and public interest on the other hand. It was further held that when Section 8 exempts certain information, it should not be considered to be a fetter on the Right to Information, but an equally important provision

protecting other public interests essential for fulfillment and preservation of democratic ideas. The Supreme Court further observed that it is difficult to visualize and enumerate all types of information which require to be exempted from disclosure in public interest and the legislature has in Section 8 however made an attempt to do so. It was thus held that while interpreting the said exemptions a purposive construction involving a reasonable and balanced approach ought to be adopted. It was yet further held that indiscriminate and impractical demands under RTI Act for disclosure of all and sundry information, unrelated to transparency and accountability would be counter productive and the RTI Act should not be allowed to be misused or abused.

20. The information seeker as aforesaid is not the examinee himself. The possibility of the information seeker being himself or having acted at the instance of a coaching institute or a publisher and acting with the motive of making commercial gains from such information also cannot be ruled out. The said fact also distinguishes the present from the context in which ***Shaunak H. Satya*** (supra) was decided. There are no questions of transparency and accountability in the present case.

21. When we apply the tests aforesaid to the factual scenario as urged by the appellants and noted above, the conclusion is irresistible that it is not in public interest that the information sought be divulged and the information sought is such which on a purposive construction of Section 8 is exempt from disclosure.

22. We therefore allow this appeal and set aside the orders of the CIC directing the appellant to disclose the information and the order of the learned Single Judge dismissing the writ petition preferred by the appellant. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MAY 28, 2012
'M'

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7048/2011

SUDHIRRANJAN SENAPATI

ADDL.COMMISSIONER OF INCOME TAX ..... Petitioner

Through: Mr. K.G. Sharma, Advocate

versus

UNION OF INDIA AND ORS ..... Respondents

Through: Mr. B.V. Niren, CGSC for R-1

Mr. A.S. Singh and Mr. R.N. Singh, Advocates for R-2 and 3

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

05.03.2013

1. This petition has been filed to impugn the order dated 18.07.2011 passed by the Central Information Commission (in short CIC).

2. The broad facts which have led to the institution of the present writ petition are as follows :-

3. The petitioner herein is admittedly an accused in criminal proceedings lodged against him by the State, under the Prevention of Corruption Act, 1988. The prosecution of the petitioner was apparently sanctioned, at the relevant time, by the concerned authority.

4. It is the sanction accorded qua prosecution, which triggered the petitioner?s request for furnishing information with regard to the decision arrived at in that behalf. Accordingly, an application dated 17.05.2010 was

filed by the petitioner with the Central Public Information Officer (in short CPIO), under the Right to Information Act, 2005 (in short the RTI Act).

4.1 More specifically, the information sought was as follows :-

?..Certified true copies of ?all order sheet entries / Note Sheet entries / File notings of US, VandL / DS, VandL/Director, VandL/JS (Admn.)/Member (PandV)/Chairman, CBDT/Secretary, Revenue/MOS (R), if any, / Finance Minister, if any? pertaining to prosecution sanction by the Central Government u/s. 19(1)(a) of Prevention of Corruption Act, 1988 vide such sanction order dated 09.04.2009 in F.No.C-14011/8/2008-VandL of Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, GOI, New Delhi..?

4.2 The CPIO vide order dated 16/17.08.2010, declined the request for furnishing information by taking recourse to the provisions of Section 8(1)(h) of the RTI Act. Pertinently, no reasons were set out in the order. All that is said, in the order of the CPIO is that, requisite information cannot be supplied as the same is exempted from disclosure under Section 8(1)(h) of the RTI Act.

5. Being aggrieved, the petitioner preferred an appeal with the First Appellate Authority. The appeal met the same fate. By an order dated 05.10.2010, the First Appellate Authority dismissed the petitioner?s appeal. The sum and substance of the rationale given in the order of the First Appellate Authority was that, since criminal prosecution was pending, information sought for by the petitioner could not be disclosed. The First Appellate Authority went on to observe in its order that, any disclosure of information prior to a final decision would be premature and injurious to the process of investigation. Accordingly, relying upon the provisions of

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Section 8(1)(h) of the RTI Act, it sustained the order of the CPIO.

6. The petitioner being aggrieved, with the order of the First Appellate Authority, preferred an appeal with the CIC. The CIC by virtue of the impugned order dated 18.07.2011, rejected the petitioner?s appeal. By a cryptic order, the CIC accepted the stand of the respondents that information sought for, could not be supplied to the petitioner as the case was pending in court and that disclosure of information would impede the process of prosecution.

7. The learned counsel for the petitioner has impugned the decision of the CIC and the authorities below on the following grounds :-

(i). The investigation is complete. The chargesheet qua the accused,

which includes the petitioner, has been filed in court. On failure of the respondents to demonstrate as to how the disclosure of information would impede prosecution of the petitioner, the said information ordinarily ought to have been supplied to the petitioner. The learned counsel for the petitioner says that disclosure of information is the rule, the denial of the same is an exception. He submits that the exception carved out in Sections 8 and 9 of the RTI Act have thus to be construed strictly.

8. In support of the submission, the learned counsel for the petitioner relies upon the judgment of a Single Judge of this Court in Bhagat Singh Vs. Chief Information Commissioner and ors., 146 (2008) DLT 385.

9. The contesting respondents i.e., respondent nos.2 and 3 are represented by Mr. Singh, who has largely relied upon the stand taken in the counter affidavit. Mr. Singh submits that since the prosecution of the petitioner is ensuing, any disclosure of information would compromise the

W.P.(C) 7048/2011 Page 3 of 8

case of the prosecution and hence, cannot be divulged. Recourse was taken to the provisions of Section 8(1)(h) to support the stand of the respondents.

9.1 Mr. Singh also relied upon a judgment of another learned Single Judge of this court, dated 10.11.2006, passed in WP(C) 16712/2006, titled Surinder Pal Singh Vs. Union of India and Others. Mr. Singh submits with all persuasive powers at his command that the facts in Surinder Pal?s case are identical to the present case and therefore having regard to the fact that the court sustained the stand of the official respondents in that case wherein information was denied by taking recourse to the provisions of Section 8(1)(h) of the RTI Act, similar result ought to follow in the present case.

10. I have heard the learned counsels for the parties and perused the record.

11. At the outset, as noticed above, a chargesheet against the petitioner has been filed and the trial has commenced. Therefore, the questions which falls for consideration is: whether the case of the petitioner would come within the ambit of the provisions of Section 8(1)(h) of the RTI Act. The said provision reads as follows :-

8. Exemption from disclosure of information ?

(i). Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen ?

(a). x x x x

(b). x x x x

(c). x x x x

(d). x x x x

(e). x x x x

(f). x x x x

(g). x x x x

W.P.(C) 7048/2011 Page 4 of 8

(h). Information which would impede the process of investigation or apprehension or prosecution of offenders..?

11.1 As rightly contended by the learned counsel for the petitioner, a learned Single Judge of this court in Bhagat Singh?s case has construed the said provision of the Act to mean that in order to claim exemption under the said provision, the authority withholding the information must disclose satisfactory reasons as to why the release of information would hamper investigation. The reasons disclosed should be germane to the formation of opinion that the process of investigation would be hampered. The said opinion should be reasonable and based on material facts. The learned Single Judge, I may note goes on to observe that sans this consideration, Section 8(1)(h) and other such provisions of the RTI Act would become a ?haven for dogging demands for information?.

11.2 In the light of the aforesaid observations of the learned Single Judge in Bhagat Singh?s case, one would have to see as to whether the affidavit filed on behalf of respondent nos.2 and 3 discloses the reasons as to how information sought, would hamper the prosecution of the petitioner. A perusal of the affidavit shows that no such averment is made in the counter affidavit filed by respondent nos.2 and 3. Undoubtedly, the petitioner here is seeking information with regard to the sanction accorded for his own prosecution. It cannot be disputed, as is noticed by my predecessor, in this very matter, in the order dated 14.10.2011, that the accused during the course of his prosecution can impugn the sanction accorded for his prosecution, on the basis of which the prosecution is launched. For this proposition, the learned Judge, in its order dated 14.10.2011, relies upon the

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following judgments :-

State Inspector of Police, Visakhapatmam Vs. Surya Sankaran Karri (2006) 7 SCC 172 and Romesh Lal Jain Vs. Naginder Singh Rana, (2006) 1 SCC 294

11.3 I have no reason to differ with the view taken either in Bhagat Singh case or with the prima facie view taken in the order passed by my predecessor in his order dated 14.10.2010. It is trite that an accused can challenge the order by which sanction is obtained to trigger a prosecution against the accused. If that be so, I do not see any good reason to withhold information which, in one sense, is the underlying material, which led to the final order according sanction for prosecution of the petitioner. As a matter of fact, the trial court is entitled to examine the underlying material on the basis of which sanction is accorded when a challenge is laid to it, to determine for itself as to whether the sanctioning authority had before it the requisite material to grant sanction in the matter. See observations in Gokulchand Dwarkadas Morarka vs The King AIR 1948 PC 82 and State of Karnataka vs Ameerjan (2007) 11 SCC 273. Therefore, the said underlying material would be crucial to the cause of the petitioner, who seeks to defend himself in criminal proceedings, which the State as the prosecutor cannot, in my opinion, withhold unless it can show that such information, would hamper prosecution.

12. As indicated above, no reasons are set out in the counter affidavit. The argument of Mr. Singh that a Single Judge of this court in Surinder Pal Singh?s case (supra) has taken a view in favour of the respondents, is not quite correct, for the reason that the learned Single Judge in the facts and

W.P.(C) 7048/2011 Page 6 of 8

circumstances of that case came to the conclusion that the apprehension of the respondent i.e., the State in that case, was ?not without any basis?.

12.1 It appears in that case the petitioner, who was being criminally prosecuted for having fraudulently reduced the quantum of excise duty to be paid by an assessee, while passing an adjudication order, had sought information with regard to: note sheets; correspondence obtaining qua the material in the file of the CBI; correspondence in the file of the CVC pertaining to the matter; and correspondence in the file of the Department of Vigilance, CBES.

12.2 A close perusal of the nature of information sought seems to suggests that much of it may have been material collected during the course of investigation, the disclosure of which could have perhaps hampered the prosecution of the petitioner.

13. Therefore, in my view, in such like cases when, the State takes a stand the information cannot be disclosed; while dilating on its stand in

that behalf, the State would necessarily have to, deal with the aspect as to how the information sought, is of such a nature, that it could impede prosecution. Much would thus depend, on the nature of information sought, in respect of which, a clear stand needs to be taken by the

State, while declining the information. The burden in this regard is on the State [see B.S. Mathur Vs. Public Information Officer of Delhi High Court, 180 (2011) DLT 303]

13.1 The facts obtaining in Surinder Pal case?s are distinguishable and hence, the ratio of that judgment would not apply to the facts obtaining in the present case.

13.2 It also be noted that the learned Single Judge?s view in Bhagat Singh

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case has been upheld by a reasoned order by the Division Bench in Directorate of Income Tax and Anr. Vs. Bhagat Singh, dated 17.12.2007 passed in LPA 1377/2007.

14. With the aforesaid observations in place, the writ petition is allowed. The order of the CIC is set aside. The respondents will supply the information sought for by the petitioner within three weeks from today, after redacting names of officers who wrote the notes or made entries in the concerned files.

Dasti.

RAJIV SHAKDHER, J

MARCH 05, 2013

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

\+ **W.P.(C) 3616/2012**

UNION OF INDIA ..... Petitioner

Through: Mr. Ruchir Mishra, Mr. Mukesh Tiwari and Ms. Ramneek Mishra, Advs.

versus

SH. O.P.NAHAR ..... Respondent

Through: Respondent in person.

\+ **W.P.(C) 405/2014**

UNION OF INDIA ..... Petitioner

Through: Mr. Ruchir Mishra, Mr. Mukesh Tiwari and Ms. Ramneek Mishra, Advs.

versus

O.P. NAHAR ..... Respondent

Through: Respondent in person.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% 22.04.2015

1. These are two writ petitions placed before me. The first writ petition; being W.P.(C) No.3616/2012, assails the order dated 5.12.2011, passed by the Central Information Commission (in short the CIC). In the second writ petition, being W.P. (C) No.405/2014, a challenge has been laid to order dated 26.6.2013, passed by the CIC.

2. There are two issues which, according to the learned counsels for the parties, arise for consideration of this court. These are as follows:-

(i) Whether, the respondent, is entitled to the information sought which, essentially, pertains to his own prosecution in a criminal case lodged by the Central Bureau of Investigation (in short the CBI)?

(ii) Whether, the notification dated 9.6.2011 whereby, the CBI has been included in the second schedule to the Right to Information Act, 2005 (in short the RTI Act), will impact the applications filed by the respondent prior to the said date, i.e., on 28.02.2011 and 5.5.2011?

3. Before I proceed further, I may only indicate that the respondent had filed a third application under the RTI Act, which is, dated 26.12.2011. The respondent, who appears in person, says that he does not wish to press the application dated 26.12.2011.

4. The matter has reached this court in the background of the following facts:

4.1 The respondent, who at one time, was serving as the Chairperson of the Appellate Tribunal for Foreign Exchange (in short the Tribunal), had a criminal case registered against him by the CBI. This case was registered by the CBI, in 2007. The investigation, in this case, was carried on and, admittedly, a charge sheet was filed by the CBI, in the competent court on 20.12.2010.

4.2 I am informed by the respondent that no charges have been framed to date.

4.3 Be that as it may, on 28.2.2011, the respondent filed an application before the Central Public Information Officer (in short the CPIO) of the CBI, seeking information with regard to certain aspects. Since, information was not furnished to the respondent, the respondent preferred an application with the First Appellate Authority (in short the FAA).

4.4 On 18.4.2011, some part of the information was supplied to the respondent. The CPIO, also filed, its reply to the appeal, on 3.5.2011, which was finally disposed of by the FAA on 5.5.2011. The petitioner on that very date, filed a second application under the RTI Act. This application is also dated 5.5.2011.

4.5 The respondent, being aggrieved by the order dated 5.5.2011, passed by the FAA, decided to prefer a second appeal with the CIC. This appeal was filed on 1.6.2011. Pertinently, while the appeal was pending before the CIC, on 9.6.2011, the Government of India issued a notification whereby, CBI was placed in the second schedule of the RTI Act, as indicated above. The effect of this notification and the inclusion of the CBI in the second schedule was that it could avail of the protective shield provided by Section 24 of the RTI Act. In other words, agencies which are included in the second schedule of the RTI Act, are exempted from the provisions of the RTI. The exception of course being, qua information pertaining to allegations of corruption and human rights violation.

4.6 The CIC, vide order dated 5.12.2011 partially allowed the appeal of the respondent. The operative directions contained in the order of the CIC are as under:

> "8. In any contingency, the Commission hereby directs that the information sought by the Appellant on Query Nos.3 & 6 of his RTI Application must be provided to him free of cost within 15 days of the receipt of this Order. Since the information sought by the Appellant under Query No.1 is not maintained in its official record by the Respondent Ministry, the Commission cannot direct the Respondent to create and provide the same. However, it shall be open for the Respondent Ministry to call for such information from the CBI, in case it decides

> to complete and maintain its own official file records and if so happens, then the Appellate will be entitled to get such information under the RTI Act."

4.7 To be noted, the directions contained in paragraph 8 were passed in the context of the queries set out in the respondent's application dated 28.2.2011. The queries, which the respondent made and in respect of which he had sought information are set out in paragraph 1 of the order dated 5.12.2011, passed by the CIC. The queries, as recorded in the order, are extracted hereinafter:

> "1. The date and nature of permission sought for by the CBI in 2007 to register a criminal case against Sh. O.P. Nahar, the then Chairman ATFE, and the documents filed in support of the request.
>
> 2. Whether sought for permission is granted or declined and on what date along with reasons for such decision.
>
> 3. The notings recorded by the CVO and the Law Secretary while taking decision on the request of the CBI. Also name the final authority who took decision on the above described request and the reasons thereof.
>
> 4. Any replies, if sought for from Sh. O.P. Nahar before taking the final decision then supply the comments received from him.
>
> 5. Provide details of procedure adopted with documents before taking final decision on the matter.
>
> 6. Did CBI request on second occasion in 2009 for the grant of permission, if yes, then supply the date and copy of the second request or otherwise the first decision is over-ruled suo moto on the same facts narrated in the CBI's request. Please supply the documents and the notings made by the CVO, the Law Secretary or any other authority functioning

in this regard.

7. Is it a fact firstly that the 2007 request by CBI was declined but later in 2009 same request is granted without any addition of fresh factual difference or fresh request, if so, then supply the reasons recorded for change of the old decision and name the authority with their notings on what they recorded this regard".

4.8 Since directions were issued by the CIC only with regard to query Nos.1, 3 & 6, the same are set out hereinbelow:

"1. The date and nature of permission sought for by the CBI in 2007 to register a criminal case against Shri O.P. Nahar, the then Chairman ATFE and the documents filed in support of the request..."

"3. The notings recorded by the CVO and the Law Secretary while taking decision on the request of the CBI. Also name the final authority who took decision on the above described request and the reasons thereof..."

"6. Did CBI request on second occasion in 2009 for the grant of permission, if yes, then supply the date and copy of the second request or otherwise the first decision is over-ruled suo moto on the same facts narrated in the CBI's request. Please supply the documents and the notings made by the CVO, the Law Secretary or any other authority functioning in this regard..."

4.9. Insofar as the second order of the CIC is concerned, which is dated 26.6.2013, the operative directions passed by the CIC are contained in paragraph 10 of the said order. For the sake of convenience, the same are extracted hereinbelow:

"10. Having considered the submissions of the parties

> and perused the relevant documents on the file, the Commission finds that the CBI has been exempted under the provisions of the RTI Act vide Notification dated 9.6.2011 whereas the appellant's RTI application is dated 5.5.2011, which is prior to the said Notification. Therefore, the CBI was not an exempted organisation at the time of filing of the RTI application. Moreover, it has not been explained by the respondent how the disclosure of the information in the present case can impede the process of investigation or apprehension or prosecution of offenders, which is admittedly over. The Commission hereby directs the Deputy Secretary/Vig. & CPIO to provide to the appellant the documents as requested by him at Para 9 above **within two weeks** of receipt of this order."

5. The issues, therefore, in these facts, which arise for consideration, have been set out hereinabove.

6. Mr. Mishra, who appears for the CBI, says that CBI is not obliged to provide any information of the kind that CIC has directed for the reason that it is an agency which falls within the ambit of the second schedule of the RTI Act.

6.1 This apart, it is Mr. Mishra's contention that the provisions of Section 8(1)(h) of the Act clearly provides that notwithstanding anything contained in the RTI Act, there would be no obligation on the holder of information to provide such information which would impede the process of investigation or apprehension or prosecution of the offenders.

6.2 This submission is made by Mr. Mishra in support of his contention that, even if, the respondent's stand was to be accepted, that a vested right enured in his favour, on 28.2.2011, and thereafter on 5.5.2011, the said information, can be denied if, the information would "impede" investigation

or apprehension or prosecution of the offender.

7. The respondent, who appears in person, says that the provision of the Act, in particular, Section 7 is indicative of the fact that the holder of the information, i.e. a public authority, is required to furnish the information within a period of 30 days. The respondent submits that the period of 30 days, in this case, was well and truly over, if one were to have regard to the date of the first application, which is, dated 28.2.2011.

8. Insofar as the second application is concerned, the period of 30 days also came to an end prior to the date of notification, which is, 9.6.2011.

9. I have heard the learned counsels for the parties. According to me, what is important is the events which occurred prior to the issuance of the notification dated 9.6.2011. Admittedly, two applications were filed by the respondent to seek information. The first application, as indicated above, is dated 28.2.2011. The second application is dated 5.5.2011.

10. I had asked Mr. Mishra as to what was the date of receipt of the application, which is dated 5.5.2011. Mr. Mishra was not able to furnish any information in that regard.

10.1 The moot point, which has been raised in the second petition, is whether notification dated 9.6.2011, will apply, to an application filed prior to that date. The said aspect should have, therefore, been adverted to by the petitioner in, at least, the second writ petition. Therefore, it will have to be presumed, at this juncture, that the application was received by the petitioner herein on 5.5.2011.

11. Having regard to the provisions of Section 7 of the RTI, it was incumbent upon the petitioner to furnish the information sought, if otherwise permissible, under the provisions of the RTI Act, within 30 days of the

receipt of the application. The information having not been supplied, a vested right accrued in favour of the respondent after the completion of the 30 days and, therefore, notification dated 9.6.2011 insofar as the respondent is concerned, in my view cannot come in his way. Therefore, this would be the position not only vis-a-vis the application dated 28.02.2011 but also qua application dated 05.05.2011.

12. This brings me to the other question, which is: whether the petitioner can take recourse to the provisions of Section 8(1)(h) of the Act to deny information to the respondent. The relevant provisions of Section 8(1)(h) of the RTI Act read as follows:-

> "8. **Exemption from disclosure of information**. — (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—
> ...
> (h) information which would **impede** the process of investigation or apprehension or prosecution of offenders;
> (emphasis is mine)

13. A careful reading of the provision would show that the holder of the information can only withhold the information if, it is able to demonstrate that the information would **"impede"** the process of investigation or apprehension or prosecution of the offenders.

14. In the present case, the facts, as set out hereinabove, clearly demonstrate that the investigation is over. The charge sheet in the case was filed, as far back as on 31.12.2010.

14.1 The question then is, would the information sought for by the respondent "***impede***" the respondent's apprehension or prosecution. The respondent is in court and he says that he has been granted bail by the

competent court. Therefore, *prima faice*, the view of the competent court, which is trying him, is that there is no impediment in apprehending the respondent, and that he would be available as and when required by the court. The petition makes no averments as to how the information sought for by the respondent would prevent his prosecution.

14.2 In that view of the matter, according to me the provisions of Section 8(1)(h) of the RTI Act will not help the cause of the petitioner. Accordingly, the information, as directed by the CIC, will have to be supplied to the respondent. It so ordered. In support of this proposition, I may only advert to the following judgments of this Court (See ***Bhagat Singh v. Chief Information Commissioner [2008 (100) DRJ 63]; B.S. Mathur v. Public Information Officer of Delhi High Court [180 (2011) DLT 303]; Adesh Kumar v. Union of India and Ors. [216 (2015) DLT 230]; Director of Income Tax (Investigation) and Anr. v. Bhagat Singh and Anr. [(2008) 168 TAXMAN 190 (Delhi)]; Sudhir Ranjan Senapati v. Addl. Commissioner of Income Tax,*** W.P.(C) 7048/2011 dated 5.3.2013***;*** and ***Pradeep Singh Jadon v. UOI,*** W.P.(C) 7863/2013 dated 2.2.2015, which have taken similar view on this issue.

15. The petitioner will comply with the order of the CIC.

16. The writ petitions are dismissed accordingly. Parties are, however, left to bear their own costs.

RAJIV SHAKDHER, J

APRIL 22, 2015
s.pal

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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**

Judgment reserved on: 27.04.2009
Judgment pronounced on: 01.07.2009

\+ W.P. (C) 803/2009

VIJAY PRAKASH ..... Petitioner
Through: Petitioner in person.

versus

UOI AND ORS. ..... Respondents
Through: Mr. S.K. Dubey with
Mr. K.B. Thakur and Mr. Deepak Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Hon'ble Mr. Justice S. Ravindra Bhat

1. The petitioner in this proceeding under Article 226 of the Constitution of India, challenges a decision of the Central Information Commission (CIC) dated 17.12.2008 (the impugned order] affirming the decision of the appellate authority under the Right to Information Act, 2005 [hereafter, "the Information Act"] not to allow disclosure of the information sought.

2. The facts necessary for deciding the case are that the petitioner is a former officer of the Indian Air Force. He apparently got married in 2001. According to the averments, he had sought resignation from the Indian Air Force, which was granted on 30.09.2001. His wife was inducted

in the Defence Research Development Organization (DRDO) on 31.03.2005 and was posted at 4, Air Force Selection Board ("AFSB"), Varanasi. Eventually, differences cropped up between the two, and his wife applied for divorce. The petitioner caused to be served, through his counsel, an application to the Station Commander, 4 AFSB, requesting for information in respect of his wife's service records pertaining to all leave application forms submitted by her; attested copies of nomination of DSOP and other official documents with financial implications, and the changes made to them; record of investments made and reflected in the service documents of his wife, along with nominations thereof.

3. The information application was declined by the Public Information Officer, i.e. the Wing Commander of the 4, AFSB by his letter dated 25.04.2007 on the ground that the particulars sought for related to personal information, exempted under Section 8(1)(j) of the Information Act; that disclosure of such information had no relation with any public activity or interest and that it would cause unwarranted invasion into the privacy of the individual. The petitioner felt aggrieved and preferred an appeal under Section 19 of the Information Act. The appeal was rejected by an order dated 25.01.2008 by the Air Vice Marshal, Senior Officer Incharge, Administration, of the Indian Air Force, who was the designated Appellate authority. Feeling aggrieved, the writ petitioner preferred a second appeal to the Central Information Commissioner.

4. By the impugned order, the CIC, after discussing the arguments and pleas advanced, rejected the appeal. The relevant part of the impugned order, upholding the determination of the authorities, including the appellate authority is as follows:-

> *"During the hearing, the Appellant submitted that the information sought was required for producing before the Competent Court where a dispute was pending between him and Dr. Sandhya Verma and the information was necessary for fair trial. The Respondents submitted that the information was necessary pertained to personal information concerning Dr. Sandhya Verma, a Third Party and had no relationship to any public interest or activity and, therefore, exempt from disclosure under Section 8(1)(j) of the Right to Information Act. The information which has been sought includes, attested copies of all the leave application forms submitted by Dr. S. Verma since she was posted to 4 AFSB, copies of nomination of DSOP/other official documents with financial implications and record of investment made and reflected thereon in service documents along with the nominations thereof, if explicitly made. The information sought is obviously personal information concerning Dr. Sandhya Verma, a Third Party. It is immaterial if Dr. Sandhya Verma happens to be the wife of the Appellant. The information sought does not seem to have any relationship to any public interest or public activity and has been expressly sought to be used as evidence in a dispute in a Court pending between the Appellant and Dr. Sandhya Verma. The decision of the CPIO, upheld by the Appellate Authority, in denying the information by invoking the exemption provision of Section 8(1)(j) of the Right to Information Act seem to be absolutely right and just. We find no reason to interfere with the decision of the Appellate Authority and, thus, reject the appeal."*

5. The writ petitioner, a self-represented litigant, argues that the approach of the authorities under the Information Act has been unduly narrow and technical. He emphasized that by virtue of Section 6, a right is vested in every person to claim information of all sorts which exists on the record. He relied upon Section 2 (i) and (j) to say that information under the Act has been defined in the widest possible manner and that the question of exceptions should be construed from the perspective of the right rather than the exemptions, which has been done in this case. Reliance was placed upon Division Bench ruling in *Surup Singh Hrya Naik v. State of Maharashtra* AIR 2007 Bom 121 to submit that ordinarily information sought for by person must be made available without disclosure by him about the reason why he seeks it. It is submitted further that a close reading of the decision would show that the public right to

information ordinarily prevails over the private interest of a third party, who may be affected. Particularly, it was emphasized that the Court should always keep in mind the object of the Act, which is to make public authorities accountable and open and the contention that the information might be misused is of no consequence. It was submitted lastly that even if there is a rule prohibiting disclosure of information, that would yield to the dictates of the Information Act, as the latter acquires supremacy.

6. It was consequently urged that in the context of this case, the information sought for was not really of a third party, but pertained to the petitioner's wife. Although they are facing each other in litigation, nevertheless, having regard to their relationship, the invocation of Section 8(1)(j) was not justified.

7. The petitioner contended further that the grounds urged, i.e. lack of public interest and unwarranted intrusion of privacy, were unavailable in this case. It was submitted in this regard that being a public official, the petitioner's wife was under a duty to make proper and truthful disclosure; the pleadings made by her in the divorce proceedings, contained untruthful averments. These could be effectively negatived by disclosure of information available with the respondents. Therefore, there was sufficient public interest in the disclosure of information.

8. The Indian Air Force (IAF), which has been impleaded as second respondent argues that the impugned decision is justified and in consonance with law. It argued that what constitutes "public interest" is defined in *Black's Law Dictionary (6th Edition)* at page 1229 as follows:

> *"Public Interest: Something in which the public, the community at large, has some pecuniary interest by which their legal rights or liabilities are affected. It*

does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question……"

9. It is urged that the Information Act was brought into force as a means of accessing information under the control of public authorities, to citizens with the object of promoting transparency and accountability. This regime, is however, subject to reasonable restrictions or exemptions. Particular reliance is placed upon the non-obstante clause contained in Section 8, which lists out the various exemptions. It was submitted that if the disclosure of personal information has no relation to any public activity or interest, the authorities under the Act within their rights in denying disclosure. The counsel contended in this regard that there is no element of public interest, in relation to the private matrimonial litigation pending before the Court between the petitioner and his wife. Similarly, the action of filing information in relation to one's assets and investments, with the public authority, *per se*, is not a public activity, and contents of such disclosure cannot be accessed. It was argued that in addition, the disclosure of such information (which is meant purely for the records and for the use of the employer), during inappropriate instances, is bound to cause unwarranted loss of privacy to the individual. Therefore, in the overall conspectus of the facts of this case, even though the parties were married to each other, as a policy matter, the IAF acted within the bounds of law in denying access to the information submitted by the petitioner's wife.

10. The relevant provisions of the Information Act, in the context of this case, are extracted below:

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

(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;

XXXXXX XXXXXX XXXXXX

(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;

XXXXXX XXXXXX XXXXXX

***8. Exemption from disclosure of information.**- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-*

XXXXXX XXXXXX XXXXXX

(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.

XXXXXX XXXXXX XXXXXX

***11. Third party information.**-(1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State*

Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

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

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under Section 6, if the third party has been given an opportunity to make representation under sub-section(2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision."

11. The precise question to be decided here is whether records relating to investments of, and financial disclosure made during the course of employment by the petitioner's wife were justifiably withheld on grounds of lack of public interest element and likelihood of invasion of privacy.

12. In the decision relied upon by the petitioner reported as *Surup Singh Hrya Naik v. State of Maharashtra (supra)*, the Bombay High Court had to deal with the question whether disclosure of medical records of a member of the Legislative Assembly, who had been

imprisoned for contempt of Court, for a month, was protected by the exemption under Section 8(1)(j). The Court dealt with the argument that in terms of regulations framed by the Indian Medical Council (IMC), such records were confidential. However, the argument that such confidentiality obliged the Government to deny the request, was turned-down on the ground that the regulations had to yield to provisions of the Act and that unless the third party made out a strong case for denial, such information could always be disclosed. In the course of its reasoning, the Division Bench emphasized that the proviso to Section 8(1)(j) clothes Parliament and State Legislatures with plenary powers, which in turn implied that all manner of information was capable of disclosure and could not, therefore, be withheld.

13. Under the scheme of the Information Act, the expressions "record", "information", "right to Information" have been given the widest possible amplitude. By virtue of Sections 3, 5, 6 and 7, every public authority requested to provide information is under a positive obligation to do so; the information seeker is under no obligation to disclose why he requests it. The information provider or the concerned agency is further, obliged to decide the application within prescribed time limits. A hierarchy of authorities is created with the CIC, at the apex to decide disputes pertaining to information disclosure. In this Scheme, the Parliament has in its wisdom, visualized certain exemptions. Section 8 lists those exemptions; it opens with a *non-obstante* clause, signifying the intention that irrespective of the rights of the information seeker, in regard to matters listed under that provision, the information providers can justifiably withhold access to the information seeker the record, information or queries sought for by him. This case concerns the applicability of Section 8(1)(j).

14. The right to access public information, that is, information in the possession of state agencies and governments, in democracies is an accountability measure empowering citizens to be aware of the actions taken by such state "actors". This transparency value, at the same time, has to be reconciled with the legal interests protected by law, such as other fundamental rights, particularly the fundamental right to privacy. This balancing or reconciliation becomes even more crucial if we take into account the effects of the technological challenges which arise on account of privacy. Certain conflicts may arise in particular cases of access to information and the protection of personal data, stemming from the fact that both rights cannot be exercised absolutely. The rights of all those affected must be respected, and no right can prevail over others, except in clear and express circumstances.

15. To achieve the above purpose, the Information Act outlines a clear list of the matters that cannot be made public. There are two types of information seen as exceptions to access; the first usually refers to those matters limited to the State in protection of the general public good, such as security of State, matters relating to investigation, sensitive cabinet deliberations, etc. In cases where state information is reserved, the relevant authorities must prove the damage that diffusion of information will effectively cause to the legal interests protected by law, so that the least amount of information possible is reserved to benefit the individual, thus facilitating governmental activities. The second class of information with state or its agencies, is personal data of both citizens and artificial or juristic entities, like corporations. Individuals' personal data is protected by the laws of access to confidentiality and by privacy rights.

16. Democratic societies undoubtedly have to guarantee the right of access to public information; it is also true that such societies' legal regimes must safeguard the individual's right to privacy. Both these rights are often found at the same "regulatory level". The Universal Declaration of Human Rights, through Article 19 articulates the right to information as follows:

> *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".*

Article 12 of the same Declaration provides that,

> *"no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".*

17. The scheme of the Information Act no doubt is premised on disclosure being the norm, and refusal, the exception. Apart from the classes of exceptions, they also appear to work at different levels or stages, in the enactment. Thus, for instance, several organizations –security, and intelligence agencies, are excluded from the *regime,* by virtue of Section 24, read with the Second Schedule to the Act. The second level of exception is enacted in Section 8, which lists 11 categories or classes (clauses (a) to (j)) that serve as guidelines for non-disclosure. Though by Section 22, the Act overrides other laws, the opening *non-obstante* clause in Section 8 ("notwithstanding anything contained in this Act") confers primacy to the exemptions, enacted under Section 8(1). Clause (j) embodies the exception of information in the possession of the public authority which relates to a third party. Simply put, this exception is that if the information concerns a third party (i.e. a party other than the information seeker and the information provider), unless a public interest in disclosure is shown, information would not be

given; information may also be refused on the ground that disclosure may result in unwarranted intrusion of privacy of the individual. Significantly, the enactment makes no distinction between a private individual third party and a public servant or public official third party.

18. It is interesting to note that paradoxically, the right to privacy, recognized as a fundamental right by our Supreme Court, has found articulation – by way of a safeguard, though limited, against information disclosure, under the Information Act. In India, there is no law relating to data protection, or privacy; privacy rights have evolved through the interpretive process. The right to privacy, characterized by Justice Brandeis in his memorable dissent, in *Olmstead* v. *United States*, 277 US 438 (1928) as *""right to be let alone… the most comprehensive of rights and the right most valued by civilised men"* has been recognized under our Constitution by the Supreme Court in four rulings - *Kharak Singh* v. *State of U.P.* (1964) 1 SCR 332; *Gobind v. State of M.P.,* (1975) 2 SCC 148; *R. Rajagopal v. State of T.N.,* (1994) 6 SCC 632; and *District Registrar and Collector v. Canara Bank,*(2005) 1 SCC 496. None of these judgments, however explored the intersect between the two values of information rights and privacy rights; *Rajagopal,* which is nearest in point, was concerned to an extent with publication of material that was part of court records.

19. It has been held by a Constitution Bench of the Supreme Court that an individual does not forfeit his fundamental rights, by becoming a public servant, in *O.K. Ghosh v. E.X. Joseph* AIR 1963 SC 812:

"...the fundamental rights guaranteed by Art. 19 can be claimed by Government servants. Art. 33 which confers power on the parliament to modify the rights in their application to the Armed Forces, clearly brings out the fact that all citizens, including Government servants, are entitled to claim the rights guaranteed by Art. 19."

Earlier, in *Kameshwar Prasad v. State of Bihar* AIR 1962 1166, an argument that public servants do not possess certain fundamental rights, was repelled, by another Constitution Bench, categorically, in these terms:

"It was said that a Government servant who was posted to a particular place could obviously not exercise the freedom to move throughout the territory of India and similarly, his right to reside and settle in any part of India could be said to be violated by his being posted to any particular place. Similarly, so long as he was in government service he would not be entitled to practice any profession or trade and it was therefore urged that to hold that these freedoms guaranteed under Art. 19 were applicable to government servants would render public service or administration impossible. This line of argument, however, does not take into account the limitations which might be imposed on the exercise of these rights by cls. (5) and (6) under which restrictions on the exercise of the rights conferred by sub-cls. (d) and (g) may be imposed if reasonable in the interest of the general public.

13. In this connection he laid stress on the fact that special provision had been made in regard to Service under the State in some of the Articles in Part III - such as for instance Arts. 15, 16, and 18(3) and (4) - and he desired us therefrom to draw the inference that the other Articles in which there was no specific reference to Government servants were inapplicable to them. He realised however, that the implication arising from Art. 33 would run counter to this line of argument but as regards this Article his submission was that it was concerned solely to save Army Regulations which permitted detention in a manner which would not be countenanced by Art. 22 of the Constitution. We find ourselves unable to accept the argument that the Constitution excludes Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III save in those cases where such persons were specifically named.

14. In our opinion, this argument even if otherwise possible, has to be repelled in view of the terms of Art. 33. That Article select two of the Services under the State-members of the armed forces charged with the maintenance of public order and saves the rules prescribing the conditions of service in regard to them -

from invalidity on the ground of violation of any of the fundamental rights guaranteed by Part III and also defines the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the Services members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, we consider that other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Art. 19(1)(e) and (g)."

(emphasis supplied)

20. A bare consideration of the right of individuals, including public servants, to privacy would seem to suggest that privacy rights, by virtue of Section 8(1)(j) whenever asserted, would have to prevail. However, that is not always the case, since the public interest element, seeps through that provision. Thus when a member of the public requests information about a public servant, a distinction must be made between "official" information inherent to the position and those that are not, and therefore affect only his/her private life. This balancing task appears to be easy; but is in practice, not so, having regard to the dynamics inherent in the conflict. Though it may be justifiably stated that protection of the public servant's private or personal details as an individual, is necessary, provided that such protection does not prevent due accountability, there is a powerful counter argument that public servants must effectively waive the right to privacy in favour of transparency. Thus, if public access to the personal details such as identity particulars of public servants, i.e. details such as their dates of birth, personal identification numbers, or other personal information furnished to public agencies, is requested, the

balancing exercise, necessarily dependant and evolving on case by case basis may take into account the following relevant considerations, i.e.

i) whether the information is deemed to comprise the individual's private details, unrelated to his position in the organization, and,

ii) whether the disclosure of the personal information is with the aim of providing knowledge of the proper performance of the duties and tasks assigned to the public servant in any specific case;

iii) whether the disclosure will furnish any information required to establish accountability or transparency in the use of public resources.

21. An important and perhaps vital consideration, aside from privacy is the public interest element, mentioned previously. Section 8(1)(j)'s explicit mention of that concept has to be viewed in the context. In the context of the right to privacy, Lord Denning in his *What next in Law,* presciently said that:

> *"English law should recognise a right to privacy. Any infringement of it should give a cause of action for damages or an injunction as the case may require. It should also recognise a right of confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the Courts. As each case is decided, it will form a precedent for others. So a body of case-law will be established."*

22. A private individual's right to privacy is undoubtedly of the same order as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of the two differ. Yet, inherent in the situation of the latter is the premise that he acts for the public good, in the discharge of his duties, and is accountable for them. The character of protection,

therefore, which is afforded to the two classes – public servants and private individuals, has to be viewed from this perspective. The nature of restriction on the right to privacy is therefore of a different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. Therefore, if an important value in public disclosure of personal information is demonstrated, in the particular facts of a case, the protection afforded by Section 8(1)(j) may not be available; in such case, the information officer can proceed to the next step of issuing notice to the concerned public official, as a "third party" and consider his views on why there should be no disclosure. The onus of showing that disclosure should be made, is upon the individual asserting it; he cannot merely say that as the information relates to a public official, there is a public interest element. Adopting such a simplistic argument would defeat the object of Section 8(1)(j); the legislative intention in carving out an exception from the normal rule requiring no "locus" by virtue of Section 6, in the case of exemptions, is explicit through the *non-obstante* clause. The court is also unpersuaded by the reasoning of the Bombay High Court, which appears to have given undue, even overwhelming deference to Parliamentary privilege (termed "plenary" by that court) in seeking information, by virtue of the proviso to Section 8(1)(j). Were that the true position, the enactment of Section 8(1)(j) itself is rendered meaningless, and the basic safeguard bereft of content. The proviso has to be only as confined to what it enacts, to the *class* of information that Parliament can ordinarily seek; if it were held that all information relating to all public servants, even private information, can be accessed by Parliament, Section 8(1)(j) would be devoid of any substance, because the provision makes no

distinction between public and private information. Moreover there is no law which enables Parliament to demand all such information; it has to be necessarily in the context of some matter, or investigation. If the reasoning of the Bombay High Court were to be accepted, there would be nothing left of the right to privacy, elevated to the status of a fundamental right, by several judgments of the Supreme Court.

23. As discussed earlier, the "public interest" argument of the Petitioner is premised on the plea that his wife is a public servant; he is in litigation with her, and requires information, - in the course of a private dispute – to establish the truth of his allegations. The CIC has held that there is no public interest element in the disclosure of such personal information, in the possession of the information provider, i.e. the Indian Air Force. This court concurs with the view, on an application of the principles discussed. The petitioner has, not been able to justify how such disclosure would be in "public interest" : the litigation is, pure and simple, a private one. The basic protection afforded by virtue of the exemption (from disclosure) enacted under Section 8(1)(j) cannot be lifted or disturbed.

24. In view of the above discussion, the writ petition fails, and is dismissed. In the circumstances of the case, there shall be no order on costs.

S. RAVINDRA BHAT, J

JULY 01, 2009
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IN THE HIGH COURT OF DELHI AT NEW DELHI

#37

W.P. (C) 747 of 2011 & CM APPL 1568/2011

INDIAN INSTITUTE OF TECHNOLOGY, DELHI ..... Petitioner
Through: Mr. Arjun Mitra, Advocate

versus

NAVIN TALWAR ..... Respondent
Through: None.

And

#39

W.P. (C) 751 of 2011 & CM APPL 1598/2011

INDIAN INSTITUTE OF TECHNOLOGY, DELHI ..... Petitioner
Through: Mr. Arjun Mitra, Advocate

versus

SUSHIL KOHLI ..... Respondent
Through: None.

CORAM: JUSTICE S.MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

O R D E R
07.02.2011

1. The Petitioner Indian Institute of Technology ('IIT'), Delhi is aggrieved by orders dated 23rd November 2010 and 23rd December 2010 passed by the Central Information Commission ('CIC') in the complaints of Mr. Navin Talwar [the Respondent in Writ Petition (Civil) No. 747 of 2011) and Mr. Sushil Kohli [the Respondent in Writ Petition (Civil) No. 751 of 2011),

respectively.

2. The issue involved in both these petitions is more or less similar. Mr. Navin Talwar sat for the Joint Entrance Examination 2010 ('JEE 2010'). Mr. Sushil Kohli's daughter, Ms. Sakshi Kohli, sat for the Graduate Aptitude Test in Engineering 2010 ('GATE 2010'). The scheme of the examination is that the candidates are given two question papers, containing multiple choices for the correct answers, the correct answers are to be darkened by a pencil in the Optical Response Sheet ('ORS') which is supplied to the candidates. The candidate has to darken the bubbles corresponding to the correct answer in an ORS against the relevant question number.

3. The JEE 2010 was conducted on 11th April 2010 in 1026 centres across India and 4.72 lakh candidates appeared. The answer key was placed on the internet website of the IIT on 3rd June 2010 while the individual marks of the candidates were posted on 5th June 2010. Counseling of the successful candidates took place from 9th to 12th June 2010. The GATE 2010 was conducted on 14th February 2010 and the results were announced on 15th March 2010.

4. In the information brochure, for the JEE, one of the terms and conditions reads as under:

> **"X. Results of JEE-2010**
>
> **1. Performance in JEE-2010**
>
> The answer paper of JEE-2010 is a machine-gradable Optical Response Sheet (ORS). These sheets are scrutinized and graded

with extreme care after the examination. There is no provision for re-grading and re-totalling. No photocopies of the machine-gradable sheets will be made available. No correspondence in this regard will be entertained.

Candidates will get to know their All India Ranks ('AIR')/Category ranks through our website/SMS/VRS on May 26, 2010.

Candidates can view their performance in JEE-2010 from JEE websites from June 3, 2010."

A similar clause is contained in Clause 3.5.1 (d) of the brochure for GATE.

5. It is stated that despite the above condition, Mr. Navin Talwar [the Respondent in W.P. (Civil) No. 747 of 2011] and Mr. Sushil Kohli (father) [the Respondent in W.P. (Civil) No. 751 of 2011] filed applications under the Right to Information Act, 2005 ('RTI Act') with the Public Information Officer ('PIO'), IIT seeking the photocopies of the respective ORSs and for the subject-wise marks of each of the candidates.

6. The PIO of IIT responded by stating that the marks obtained by the candidates were available on the internet and there was no provision for providing a photocopy of the ORS. Thereafter, the Respondents filed appeals before the CIC. After perusing the response of the PIO, IIT, the CIC passed the following order in the appeal filed by Mr. Navin Talwar:

"3. Upon perusal of the documents of the case, the Commission finds that the response of the Public Authority is not found acceptable by the Complainant. Hence, despite the information provided by the letter dated 15th June 2010, the Complainant approached this Commission. The Commission

> suggests the Complainant to seek inspection of the relevant records and directs Indian Institute of Technology, Delhi to cooperate with the Complainant in the inspection of the file/s. It is also directed that the Respondent shall submit a duly notarised affidavit on a Non-judicial stamp paper stating the inability to furnish the copy of ORS. The Complainant is at liberty to approach the appropriate Grievance Redressal Forum or seek legal remedy."

7. As regards the case of Mr. Sushil Kohli the Commission found that the defence of the IIT was that "the information sought is exempted under Section 8 (1) (e) since GATE Committee shares fiduciary relationship with its evaluators and maintains confidentiality of both the manner and method of evaluation." It was further contended before the CIC that "the evaluation of the ORS is carried out by a computerized process using scanning machines." The decision rendered on 23rd December 2010 in the appeal filed by Mr. Sushil Kohli reads as under:

> "2. During the hearing, the Respondent stated that they have to inform the NCB, MHRD before handing over the marks to the Appellant and that the process would take more than a month. The Commission in consultation with the Appellant agreed to give additional time to the PIO for providing the information and accordingly directs the PIO to provide the marks sheet to the Appellant within 45 days from the date of hearing to the Appellant."

8. This Court has heard the submissions of Mr. Arjun Mitra, learned counsel appearing for the Petitioner IIT. It is first submitted that as regards Mr. Navin Talwar's case, severe prejudice has been caused to the Petitioner because the decision of the CIC has been rendered without affording the IIT an opportunity of being heard.

9. This Court is not impressed with the above submission. The defence the Petitioner may have had, if a notice had been issued to it by the CIC, has been considered by this Court in the present proceedings. This Court finds, for the reasons explained hereinafter, that there is no legal justification for the Petitioner's refusal to provide each of the Respondents a photocopy of the concerned ORS.

10. It is next submitted that under Section 8 (1) (e) of the RTI Act, there is a fiduciary relationship that the Petitioner shares with the evaluators and therefore a photocopy of the ORS cannot be disclosed. Reliance is placed on the decision by the Full Bench of the CIC rendered on 23rd April 2007 in ***Rakesh Kumar Singh v. Harish Chander.***

11. In the first place given the fact that admittedly the evaluation of the ORS is carried out through a computerized process and not manually, the question of there being a fiduciary relationship between the IIT and the evaluators does not arise. Secondly, a perusal of the decision of the CIC in ***Rakesh Kumar Singh v. Harish Chander*** shows that a distinction was drawn by the CIC between the OMR sheets and conventional answer sheets. The evaluation of the ORS is done by a computerized process. The non-ORS answer sheets are evaluated by physical marking. It was observed in para 41 that where OMR (or ORS) sheets are used, as in the present cases, the disclosure of evaluated answer sheets was "unlikely to render the system unworkable and as such the evaluated answer sheets in such cases will be disclosed and made available under the Right to Information Act unless the

providing of such answer sheets would involve an infringement of copyright as provided for under Section 9 of the Right to Information Act."

12. Irrespective of the decision dated 23rd April 2007 of the CIC in ***Rakesh Kumar Singh v. Harish Chander,*** which in any event is not binding on this Court, it is obvious that the evaluation of the ORS/ORM sheets is through a computerized process and no prejudice can be caused to the IIT by providing a candidate a photocopy of the concerned ORS. This is not information being sought by a third party but by the candidate himself or herself. The disclosure of such photocopy of the ORS will not compromise the identity of the evaluator, since the evaluation is done through a computerized process. There is no question of defence under Section 8 (1) (e) of the RTI Act being invoked by the IIT to deny copy of such OMR sheets/ORS to the candidate.

13. It is then urged by Mr. Mitra that if the impugned orders of the CIC are sustained it would open a "floodgate" of such applications by other candidates as a result of which the entire JEE and GATE system would "collapse". The above apprehension is exaggerated. If IIT is confident that both the JEE and GATE are fool proof, it should have no difficulty providing a candidate a copy of his or her ORS. It enhances transparency. It appears unlikely that the each and every candidate would want photocopies of the ORS.

14. It is then submitted that evaluation done of the ORS by the Petitioner is final and no request can be entertained for re-evaluation of marks. Reliance is placed on the order dated 2nd July 2010 passed by the learned Single Judge

of this Court in Writ Petition (Civil) No. 3807 of 2010 ***[Adha Srujana v. Union of India]***. This Court finds that the question as far as the present case is concerned is not about the request of the Respondents for re-evaluation or re-totalling of the marks obtained by them in the JEE 2010 or GATE 2010. Notwithstanding the disclosure of the ORS to the Respondent, IIT would be within its rights to decline a request from either of them for re-evaluation or re-totalling in terms of the conditions already set out in the information brochure. The decision dated 2nd July 2010 by this Court in W.P. (C) No. 3807 of 2010 has no application to the present case.

15. The right of a candidate, sitting for JEE or GATE, to obtain information under the RTI Act is a statutory one. It cannot be said to have been waived by such candidate only because of a clause in the information brochure for the JEE or GATE. In other words, a candidate does not lose his or her right under the RTI Act only because he or she has agreed to sit for JEE or GATE. The condition in the brochure that no photocopy of the ORS sheet will be provided, is subject to the RTI Act. It cannot override the RTI Act.

16. For the above reasons, this Court finds no reason to interfere with the impugned orders dated 23rd November 2010 and 23rd December 2010 passed by the CIC.

17. The writ petitions and the pending applications are dismissed.

S. MURALIDHAR, J

FEBRUARY 07, 2011
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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 concerned 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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REPORTABLE

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

+ WRIT PETITION (CIVIL) No. 8524 OF 2009

Reserved on : 23rd July, 2009.

% **Date of Decision** : 4th November , 2009.

RAJINDER JAINA ..... Petitioner.
Through Mr.Rajesh Garg, Advocate.

VERSUS

CENTRAL INFORMATION COMMISSION
& OTHERS. ..... Respondents
Through Mr. Anjum Javed, Advocate.

CORAM :
HON'BLE MR. JUSTICE SANJIV KHANNA

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

SANJIV KHANNA, J.:

1. Mr. Rajinder Jaina-petitioner seeks issue of Writ of Certiorari for quashing of Order dated 2nd March, 2009 passed by the Central Information Commission (hereinafter referred to as CIC, for short) directing disclosure of the following information :-

> "1. List of all complaints filed against Mr.Rajinder Jaina alias Rajender Jain alias Mr.Rajender Jaina S/o.T.C. Jain r/o. Flat 'P', Sagar Apartments, G. Tilak Marg, New Delhi-

110001, office at N-52A, Connaught Circus, New Delhi-110001.

2. All FIR's filed against the above named person along with ATR and current status.

3. All arrest warrants and non-traceable reports issued in the name of Mr.T.C.Jaina, father of Mr.Rajender Jaina.

4. List of all complaints filed against M/s.Rajendra's and M/lord Builders Pvt. Ltd.

Period for which information asked for : From 1980 till date."

3. Learned counsel for the petitioner submitted that disclosure of information mentioned above is an unwarranted invasion on the right to privacy of the petitioner and is contrary to Section 8(1)(j) of the Right to Information Act, 2005 (hereinafter referred to as Act, for short).

4. Right to privacy has been a subject matter and reiterated in the ***State of Andhra Pradesh and District Registrar and Collector, Hyderabad and another versus Canara Bank and others*** (2005) 1 SCC 496***.*** However, the said right is not an absolute right. Right to information is a part of Right to Freedom of Speech and Expression. Section 8(1)(j) of the Act balances right to privacy and right to information. It recognizes that both rights are important and require protection and in case of conflict between the two rights, the test of over-riding public interest is applied to decide whether information should be withheld or disclosed.

5. Section 8(i)(j) of the Act, stands interpreted by Ravindra Bhat, J. in ***The CPIO, Supreme Court of India, Tilak Marg, New Delhi versus Subhash Chandra Agarwal & another*** (Writ Petition No. 288/2009) decided on 2nd September, 2009. It has been held as under:-

> "66. It could arguably be said that that privacy rights, by virtue of Section 8(1)(j) whenever asserted, would prevail. However, that is not always the case, since the public interest element, seeps through that provision. Thus when a member of the public requests personal information about a public servant, - such as asset declarations made by him- a distinction must be made between the personal data inherent to the position and those that are not, and therefore affect only his/her private life. This balancing task appears to be easy; but is in practice, not so, having regard to the dynamics inherent in the conflict. If public access to the personal data containing details, like photographs of public servants, personal particulars such as their dates of birth, personal identification numbers, or other personal information furnished to public agencies, is requested, the balancing exercise, necessarily dependant and evolving on a case by case basis, would take into account of many factors which would require examination, having regard to circumstances of each case. These may include:
>
> i) whether the disclosure of the personal information is with the aim of providing knowledge of the proper performance of the duties and tasks assigned to the public servant in any specific case;
>
> ii)whether the information is deemed to comprise the individual 's private details, unrelated to his position in the organization, and,

iii) whether the disclosure will furnish any information required to establish accountability or transparency in the use of public resources.

Section 8(1)(j)'s explicit mention of privacy,therefore,has to be viewed in the context. Lord Denning in his "*What next in Law ",*presciently emphasized the need to suitably balance the competing values, as follows:

> *"English law should recognise a right to privacy. Any infringement of it should give a cause of action for damages or an injunction as the case may require. It should also recognise a right of confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the Courts. As each case is decided, it will form a precedent for others. So a body of case-law will be established."*

67. A private citizen 's privacy right is undoubtedly of the same nature and character as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of the two differ. Yet, inherent in the situation of the latter is the premise that he acts for the public good, in the discharge of his duties, and is accountable for them. The character of protection, therefore, afforded to the two classes – public servants and private individuals, is to be viewed from this perspective. The nature of restriction on the right to privacy is therefore of a different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at

> stake. Therefore, if an important value in public disclosure of personal information is demonstrated, in the particular facts of a case, by way of objective material or evidence, furnished by the information seeker, the protection afforded by Section 8(1)(j) may not be available; in such case, the information officer can proceed to the next step of issuing notice to the concerned public official,as a "third party "and consider his views on why there should be no disclosure. The onus of showing that disclosure should be made, is upon the individual asserting it; he cannot merely say that as the information relates to a public official, there is a public interest element. Adopting such a simplistic argument would defeat the objective of Section 8(1)(j); Parliamentary intention in carving out an exception from the normal rule requiring no "locus " by virtue of Section 6,in the case of exemptions, is explicit through the *non-obstante* clause."

6. In the present case, the CIC has applied the same "test of public interest" to determine and decide whether the information sought should be disclosed or disclosure will amount to unwarranted invasion of right to privacy.

7. It may be noted here that the information sought for by respondent no.2 relates to criminal complaints filed against the petitioner, FIRs registered against him, their current status and whether warrants were issued against some persons, police reports on execution of warrants and their current status. The aforesaid information is already as observed by the CIC, part of public records including court records. It is obvious and admitted

that complaints are pending and FIRs have been registered and the same have been filed with the criminal court. Issue of arrest warrants and submissions of reports thereon also form part of the court records. It may be relevant to state here that the petitioner himself has admitted that he has disputes with various parties and litigations are pending. He has also given details of some of the FIRs registered against him in the Writ Petition itself. It may be appropriate here to reproduce the ratio as expounded by the Supreme Court in ***Raj Gopal versus State of Andhra Pradesh*** (1994) 6 SCC 632 which reads as under:

> "(1) A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters.
>
> (2) None can publish anything concerning the above matters without his consent – whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned. But a publication concerning the above aspects becomes unobjectionable, if such publication is based upon public records including court records. Once something becomes a matter of public record, the right of privacy no longer exists. The only exception to this could be in the interest of decency.
>
> (3) In the case of public officials, it is obvious that right of privacy or for that matter, remedy of action for damages is simply not available with respect to their acts and conducts relevant to the discharge of their official duties. This is so even where the publication is based upon the acts and statements that are not true unless the official establishes that

the publication was made with reckless disregard for truth.

(4) So far as the Government, local authority or other organization and institution exercising governmental power are concerned, they cannot maintain suit for damages for defaming them."

(emphasis supplied)

In view of the aforesaid, I do not find any merit in the present Writ Petition and the same is dismissed.

(SANJIV KHANNA)
JUDGE

NOVEMBER 4th , 2009.
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement pronounced on:16.09.2013

\+ W.P.(C) 5959 of 2013

DIRECTORATE GENERAL
OF SECURITY AND ANR ..... Petitioners
Through: Mr. Ruchir Mishra & Mr. Sanjiv Saxena, Advs.

versus

HARENDER ..... Respondent
Through: Mr. Shanmuga Patro, Adv. with Respondent in person.

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

V.K. JAIN, J.

The respondent before this Court is working with Aviation Research Centre, which is part of the Cabinet Secretariat. The respondent applied to the CPIO of the Cabinet Secretariat seeking photocopies of the proceedings and minutes of the DCPs held from 2000 to 2009 including of the file notings and correspondence led to the above-referred DPCs. The CPIO of the Cabinet Secretariat responded by claiming that the Right to Information Act, 2005 (for short 'RTI Act') did not apply to the Cabinet Secretariat. EA-II Section, since it was included in the Second Schedule appended to the RTI Act. The view taken by the CPIO was also maintained by the first appellate authority. Being aggrieved the respondent approached the Central Information Commission (for short 'CIC') by way of a second appeal. Allowing the appeal the CIC *inter alia* held as under:

> "4. During the hearing, the Respondents reiterated the same arguments. It is a fact that the public authority from which the information has been sought has been included in the second schedule. Ordinarily, the provisions of the Right to Information (RTI) Act would apply to it. However, in terms of first proviso to Section 24 (1) of the RTI Act, all information relating to the allegations of corruption and human rights violation will be provided. In this case, the Appellant, a member of the Schedule Caste alleged that the public authority has been extremely unfair to him in respect of his promotion and that it denied him promotion for a long period of time without explaining him the reasons thereby violating his human right. In the special circumstances, of this case wherein the information seeker is a member of the SC community alleging to have been deprived of his rights in a matter of promotion in the job place, we are inclined to treat this case as covered by the proviso to Section 24 (1) of the RTI Act and allow the information to be disposed. We, therefore, direct the CPIO to provide to the Appellant the desired information within 10 working days from the receipt of this order."

2. Being aggrieved from the order of the CIC, Directorate General of Security, Office of Director, Aviation Research Centre and CPIO of the Cabinet Secretariat are before this Court by way of this writ petition.

3. Section 24 of the RTI Act to the extent it is relevant reads as under:

> "**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:"

4. A perusal of the Second Schedule which enumerates the intelligence and security organisations established by the Central Government which are in Section 24 of the Act would show that Aviation Research Centre is

included in the said list at serial No.7. Admittedly the respondent was working in the Aviation Research Centre only. Therefore, the provisions of the RTI Act would not apply to the aforesaid organisation except in the matters relating to allegations of corruption and human rights violation. The information sought by the petitioner pertained to various DPCs held from 2000 to 2009 and such information is neither an information related to allegations of corruption nor to human rights violation. No violation of human rights is involved in service matters, such as promotion, disciplinary actions, pay increments, retiral benefits, pension, gratuity, etc. The Commission, therefore, was clearly wrong in directing supply of said information to the respondent.

5. For the reasons stated hereinabove the impugned order dated 29.3.2011 of the CIC is quashed. However, it is made clear that quashing of the aforesaid order will not come in the way of the respondent availing of such remedy as are open to him under the service law applicable to him or any other law, for the time being in force, for ventilation of his grievance.

The writ petition stands disposed of.

SEPTEMBER 16, 2013 V.K. JAIN, J.

b'nesh

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

% Judgment reserved on: .07.10.2013
Date of Decision: .10.10.2013

\+ W.P.(C) 4079/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
versus

G.S. SANDHU ..... Respondent
Through: Mr Subhiksh Vasudev, Adv.

\+ W.P.(C) 2/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
Versus

SHATMANYU SHARMA ..... Respondent

Through: Counsel for the respondent.

\+ W.P.(C) 8/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
versus

SH. SAHADEVA SINGH ..... Respondent
Through: Mr Praveen Singh, Adv with respondent in person.

\+ W.P.(C) 5630/2013

UNION PUBLIC SERVICE COMMISSION..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
versus

K.L. MANHAS ..... Respondent
Through: Counsel for the respondent.

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

JUDGMENT

V.K.JAIN, J.

The issue involved in these petitions as to whether the copies of office notings recorded on the file of UPSC and the correspondence exchanged between UPSC and the Department seeking its advice can be accessed, by the person to whom such advice relates, in RTI Act or not.

The respondent in W.P(C) No.4079/2013 sought information from the CPIO of the petitioner – Union Public Service Commission (hereinafter referred to as "UPSC"), with respect to the advice given by the petitioner – UPSC to the Government of Maharashtra in respect of departmental proceedings against him. The CPIO having declined the information sought by the respondent, an appeal was preferred by him before the First Appellate Authority. Since the appeal filed by him was dismissed, the respondent approached the Central Information Commission (hereinafter referred to as "the Commission") by way of a second appeal. Vide impugned order dated 1.5.2013, the Commission rejected the contention of the petitioner – UPSC that the said information was exempt from disclosure under Section 8(1) (e), (g) & (j) of the Right to Information Act (the Act) and directed the petitioner to disclose the file notings relating to the matter in hand to the respondent, with liberty to the petitioner –UPSC to obliterate the name and designation of the officer who made the said notings. Being aggrieved, the petitioner – UPSC is before this Court by way of this writ petition.

2. The respondent in W.P(C) No.2/2013 sought the information from the petitioner – UPSC with respect to the advice given by it in respect of the disciplinary proceedings initiated against the said respondent. The said information having been denied by the CPIO as well as the First Appellate Authority, the respondent approached the Commission by way of a second appeal. The Commission vide the impugned order dated 26.9.2012 directed the petitioner to provide, to the respondent, the photocopies of the relevant file after masking the signatures of the officers including other identity marks. Being aggrieved, the petitioner – UPSC is before this Court seeking quashing of the aforesaid order passed by the Commission.

3. In W.P(C) No. 5603/2013, the respondent before this Court sought information with respect to the advice given by UPSC to the State of Haryana with respect to the disciplinary proceedings instituted against him. The said information having been refused by the CPIO and the First Appellate Authority, he also approached the Commission by way of a second appeal. The Commission rejected the objections raised by the petitioner and directed disclosure of the file notings and the correspondence relating to the charge-sheet against the respondent. The petitioner being aggrieved from the said order is before this Court by way of this petition.

4. In W.P(C) No.8/2013, the respondent before this Court sought information with respect to the advice given by UPSC in a case of disciplinary proceedings instituted against him. The said information, however, was denied by the CPIO of UPSC. Feeling aggrieved, the respondent preferred an appeal before the First Appellate Authority. The

appeal, however, came to be dismissed. The respondent thereupon approached the Commission by way of a second appeal. The Commission vide the impugned order dated 26.9.2012 directed disclosure of the information to the respondent. The petitioner – UPSC is aggrieved from the aforesaid order passed by the Commission.

5. The learned counsel for the petitioner – UPSC Mr. Naresh Kaushik has assailed the order passed by the Commission on the following grounds (i) there is a fiduciary relationship between UPSC and the department which seeks its advice and the information provided by the Department is held by UPSC in trust for it. The said information, therefore, is exempted from disclosure under Section 8(1)(e) of the Act (ii) the file notings and the correspondences exchanged between UPSC and the department seeking its advice may contain information relating not only to the information seeker but also to other persons and departments and institutions, which, being personal information, is exempt from disclosure under Section 8(1)(j) of the Act (iii) the officers who record the notings on the file of UPSC are mainly drawn on deputation from various departments. If their identity is disclosed, they may be subjected to violence, intimidation and harassment by the persons against whom an adverse note is recorded and if the said officer of UPSC, on repatriation to his parent department, happens to be posted under the person against whom an adverse noting was recorded by him, such an officer may be targeted and harassed by the person against whom the note was recorded. Such an information, therefore, is exempt from disclosure under Section 8(1)(g) of the Act and (iv) the notings recorded by UPSC officer on the file are only inputs given to the Commission to enable it to render an appropriate advice to the

concerned department and are not binding upon the Commission. Therefore, such information is not really necessary for the employee who is facing departmental inquiry, since he is concerned only with the advice ultimately rendered by UPSC to his department and not that the noting meant for consideration of the Commission.

6. Section 8(1) (e)(g) and (j) of the Act reads as under:

> **"Section 8(1)(e) in The Right To Information Act, 2005**
>
> Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-
>
> xxx
>
> (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
> xxx
>
> (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;;
>
> xxx
>
> (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

7. Fiduciary Relationship:

The question which arises for consideration is as to whether UPSC is placed in a fiduciary relationship vis-à-vis the department which seeks its advice and the information provided by the department is held by UPSC in trust for the said department or not. The expression 'fiduciary relationship' came to be considered by the Hon'ble Supreme Court in *Central Board of Secondary Education and Another* versus *Aditya Bandopadhyay & Ors.* [Civil Appeal No.6454 of 2011] and the following view was taken:

> 21. The term `fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term `fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and expected not to disclose the thing or information to any third party. There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-`-vis another partner and an employer vis-`-vis employee. An

employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer.

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

The aforesaid expression also came up for consideration of the Apex Court in *Bihar Public Service Commission* versus *Saiyed Hussain Abbas Rizwi & Anr.* [Civil Appeal No.9052 of 2012] and the following view was taken by the Apex Court:

> "22....The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person places complete confidence in another person in regard to his affairs, business or transactions. This aspect has been discussed in some detail in the judgment of this Court in the case of Central Board of Secondary Education (supra).
> xxx
> 24...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..."

8. The advice from UPSC is taken by the Disciplinary Authority, as a statutory requirement under the service rules applicable to an employee and wherever the Disciplinary Authority takes such an advice into consideration while recording its findings in the matter. The concerned employee is entitled to supply of such advice to him, as a matter of right. There is no relationship of master and agent or a client and advocate between the UPSC and the department which seeks its advice. The information which the department provides to UPSC for the purpose of obtaining its advice normally would be the information pertaining to the employee against whom disciplinary proceedings have been initiated. Ordinarily such information would already be available

with the concerned employee having been supplied to him while seeking his explanation, along with the charge-sheet or during the course of the inquiry. The UPSC, while giving its advice, cannot take into consideration any material, which is not available or is not to be made available to the concerned employee. Therefore, the notings of the officials of UPSC, would contain nothing, except the information which is already made available or is required to be made available to the concerned employee. Sometimes, such information can be a third party information, which qualifies to be personal information, within the meaning of clause (j), but, such information, can always be excluded, while responding to an application made to UPSC, under RTI Act. Therefore, when such information is sought by none other than the employee against whom disciplinary proceedings are sought to be initiated or are held, it would be difficult to accept the contention that there is a fiduciary relationship between UPSC and the department seeking its advice or that the information pertaining to such an employee is held by UPSC in trust. Such a plea, in my view, can be taken only when the information is sought by someone other than the employee to whom the information pertains.

9. The learned counsel for the petitioner has referred to the decision of this Court in *Ravinder Kumar* versus *CIC* [LPA No.418/2008 3.5.2011. The aforesaid LPA arose out of a decision of the learned Single Judge of this Court in W.P(C) No.2269/2011 decided on 5.4.2011, upholding the directions of the Commission to UPSC to provide photocopies of the relevant file notings concerning of two disciplinary cases involving the respondent to him, after deleting the name and other reference to the individual officer/ authority. As noted

by a learned Single Judge of this Court in *UPSC* versus *R.K. Jain* [W.P(C) No.1243/2011 dated 13.7.2012, the order passed by the Division Bench was an order dismissing the application for restoration of the LPA and was not an order on merit and, therefore, it was not a decision on any legal proposition rendered by the Court on merit. It was further held that mere prima facie observation of the Division Bench does not constitute a binding precedent. Therefore, reliance upon the aforesaid order in LPA No.418/2010 is wholly misplaced.

10. As regards the applicability of clause (g), it would be seen that the said clause exempts information of two kinds from disclosure – the first being the information disclosure of which would endanger the life or physical safety of any person and second being the information which would identify the source of information or assistance given in confidence for law enforcement or security purposes. The two parts of the clause are independent of each other – meaning thereby that exemption from disclosure on account of danger to the life or physical safety of any person can be ground of exemption irrespective of who had given the information, who was the person, to whom the information was given, what was the purpose of giving information and what were the terms – expressed or implied subject to which the information was provided. The aforesaid clause came up for consideration before the Hon'ble Supreme Court in *Bihar Public Service Commission*(supra) and the following view was taken:

> "28...The legislature, in its wisdom, has used two distinct expressions. They cannot be read or construed as being synonymous. Every expression used by the Legislature must be given its intended meaning and, in fact, a purposeful interpretation. The expression 'life' has to be construed liberally. 'Physical safety' is a

> restricted term while life is a term of wide connotation. 'Life' includes reputation of an individual as well as the right to live with freedom. The expression ' life' also appears in Article 21 of the Constitution and has been provided a wide meaning so as to inter alia include within its ambit the right to live with dignity, right to shelter, right to basic needs and even the right to reputation. The expression life under section 8(1(g) the Act, thus, has to be understood in somewhat similar dimensions. The term 'endanger' or 'endangerment' means the act or an instance of putting someone or something in danger; exposure to peril or such situation which would hurt the concept of life as understood in its wider sense [refer Black's Law Dictionary (Eighth Edition)]. Of course, physical safety would mean the likelihood of assault to physical existence of a person. If in the opinion of the concerned authority there is danger to life or possibility of danger to physical safety, the State Information Commission would be entitled to bring such case within the exemption of Section 8(1)(g) of the Act. The disclosure of information which would endanger the life or physical safety of any person is one category and identification of the source of information or assistance given in confidence for law enforcement or security purposes is another category. The expression 'for law enforcement or security purposes' is to be read *ejusdem generis* only to the expression 'assistance given in confidence' and not to any other clause of the section. On the plain reading of Section 8(1)(g), it becomes clear that the said clause is complete in itself. It cannot be said to have any reference to the expression 'assistance given in confidence for law enforcement or security purposes'. Neither the language of the Section nor the object of the Section requires such interpretation."

11. In my view, the apprehension of the petitioner that if the identity of the author of the file notings is revealed by his name, designation or in any other manner, there is a possibility of such an employee being targeted, harassed and even intimidated by the persons against whom an

adverse noting is recorded by him on the file of UPSC, is fully justified. Though, ultimately it is for the members of the UPSC who are to accept or reject such notings, this can hardly be disputed that the notings do play a vital role in the advice which UPSC ultimately renders to the concerned department. Therefore, the person against whom an adverse advice is given may hold the employee of UPSC recording a note adverse to him on the file, responsible for an adverse advice given by UPSC against him and may, therefore, harass and sometime even harm such an employee/officer of UPSC, directly or indirectly. To this extent, the officers of UPSC need to be protected. However, the purpose can be fully achieved by blocking the name, designation or any other indication which would disclose or tend to disclose the identity of the author of the noting. Denying the notings altogether would not be justified when the intended objective can be fully achieved by adopting such safeguards.

12. Personal Information

As regards clause (j), it would be difficult to dispute that the exemption cannot be claimed when the information is sought by none other than the person to whom the personal information relates. It is only when the information is sought by a third party that such an exemption can be claimed by UPSC. If, the notings recorded on the file and/or the correspondence exchanged between UPSC and the concerned department do contain any such information which pertains to a person other than the information seeker and constitutes personal information within the meaning of section 8(1)(j), the UPSC was certainly be entitled to refuse such information on the ground that it is exempted from disclosure under clause 8(1)(j) of the Act.

13. As regards the contention that the notings recorded by the employees of UPSC are not necessary for the information seeker since he is concerned with the ultimate opinion rendered by UPSC to his department and not with various notings which are recorded by the officer of the Commission, I find the same to be devoid of any merit. While seeking information under the Right to Information Act, the application is not required to disclose the purpose for which the information is sought nor is it necessary for him to satisfy the CPIO that the information sought by him was necessary for his personal purposes or for public purpose. Therefore, the question whether information seeker really needs the information is not relevant in the Scheme of the Act. The learned counsel for the petitioner drew my attention to the following observations made by the Apex Court in *Central Board of Secondary Education and Another* versus *Aditya Bandopadhyay & Ors.* (supra):

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

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

However, when the file noting is sought by a person in respect of whom advice is rendered by UPSC cannot be said to be indiscriminate or all and sundry information, which would affect the functioning of UPSC. Such notings are available in the file in which advice is recorded by UPSC and, therefore, it would not at all be difficult to provide the same to the information seeker.

For the reasons stated hereinabove, the writ petitions are disposed of with the following directions:-

(i) the copies of office notings recorded in the file of UPSC as well as the copies of the correspondence exchanged between UPSC and the Department by which its advice was sought, to the extent it was sought, shall be provided to the respondent after removing from the notings and correspondence, (a) the date of the noting and the letter, as the case may be; (b) the name and designation of the person recording the noting and writing the letter and; (c) any other indication in the noting and/or correspondence which may reveal or tend to reveal the identity of author of the noting/letter, as the case may be;

(ii) if the notings and/or correspondence referred in (i) above contains personal information relating to a third party, such information will be excluded while providing the information sought by the respondent;

(iii) the information in terms of this order shall be provided within four weeks from today.

No order as to costs.

OCTOBER 10, 2013 V.K. JAIN, J.

RD/BG

IN THE HIGH COURT OF DELHI AT NEW DELHI

17

W.P.(C) 120/2010 and CM APPL 233/2010

UNION OF INDIA ..... Petitioner
Through Mr. Abhinav Rao, Advocate for Mr. S.K. Dubey, Advocate

versus

BALENDRA KUMAR ..... Respondent
Through Mr. Prashant Bhushan with Mr. Pranav Sachdeva, Advocate

CORAM: JUSTICE S.MURALIDHAR

O R D E R
29.09.2010

1. The challenge in this petition is to an order dated 14th September 2009 passed by the Central Information Commission (?CIC?) allowing the appeal filed by the Respondent and directing the information sought by the Respondent to be provided to him by the Petitioner by 5th October 2009 by using the severance clause 10 (1) of the Right to Information Act, 2005 (?RTI Act?).

2. The Respondent filed an application with the Ministry of External Affairs (?MEA?) on 16th September 2008 about the action taken report (?ATR?) on a complaint made to the Central Vigilance Commission (?CVC?) on 13th April 2007. Apparently the said complaint was forwarded by the CVC to the Central Vigilance Officer (?CVO?), MEA. The CVO submitted the ATR to the CVC on 24th July 2007. In this connection, the Respondent requested certified copies of the following documents:

?(a) copies of all departmental notings including recorded by CVO/Inquiry Officer/Cadre Controlling Authority/Disciplinary Authority/any other official(s), if any.

(b) copies of all correspondences between Department and alleged officer(s)/other officer(s) pertaining to the matter but excluding copies of complaint.

(c) copies of all notes recorded upon oral inquiry.?

3. On 11th November 2008 the Central Public Information Officer (?CPIO?), MEA wrote to the Respondent declining the information under Section 8(i)(j) of the RTI Act. The first appeal filed by the Respondent was rejected by the Appellate Authority of the MEA on 5th October 2008, concurring with the reasoning of the CPIO. The Respondent then filed a second appeal before the CIC.

4. Before the CIC the Respondent explained that the complaint was about certain incidents of alleged misuse of government money in the Embassy of India, Ankara, Turkey in March 2007. The Respondent had come to know that in the ATR submitted, the CPIO had held that most of the allegations were baseless and that some procedural error might have occurred but without any financial loss to the Government. The CPIO accordingly opined that the matter should be closed by the CVC. On the basis of the ATR, the CVC decided not to further proceed with the matter. The Respondent urged that it was a right of a citizen to know the action the concerned public authority had taken on the complaint made to it.

5. At the hearing on 18th May 2009, the CIC held that there was no merit in the CPIO?s denial of information as ?personal information? by invoking Section 8 (1)(j) of the RTI Act since ?the public interest in this case far outweighs any harm done to protected interests.? Accordingly, the CPIO was directed to provide all the information sought by the Respondent in his RTI application by 15th June 2009 under intimation to the Commission.

6. Thereafter, the CIC received a letter dated 15th June 2009 from the CPIO, MEA seeking review of its order 18th May 2009 in view of the objection raised by the ?Third Party? i.e. the Ambassador of India at Turkey during the relevant time. The MEA invoked the provisions of Section 11 of the RTI Act. Notice was sent to the Ambassador for the hearing on 17th August 2009. On that hearing the CVO file containing the enquiry report and other relevant documents were brought in a sealed cover to the office of the CIC. These were inspected by the Commissioner and returned to the representative of the MEA. The Ambassador was heard by the CIC on 28th August 2009. She also produced a few documents before the CIC clarifying the complaint against her and about the outcome of the investigation.

7. It was contended before the CIC by the representative of the MEA that since the information sought related to a case which had been closed after completion of the enquiry, the disclosure of the information sought would indicate ?lack of confidence in the investigations conducted by the MEA and the CVC.? The CIC rejected this contention on the ground that ?neither the RTI Act 2005 nor any other law in force in India states that information pertaining to a closed case cannot be disclosed.?

8. Thereafter, the CIC in the impugned order has set out the observations upon the inspection of the enquiry report and the notings from the file of the CVO. Most of the allegations have been found to be baseless and therefore, with the approval of the Foreign Secretary, and in view of the categorical report from the CVO, the CVC concurred in not pursuing the matter further. According to the

enquiry report, there were administrative procedural lapses, which however had not led to any loss to the government. Nevertheless, the same had been noted by the concerned officials for rectification and future compliance.

9. The impugned order of the CIC also notes that the CVO file was once again perused by the CIC on 28th August 2009. The observations of the CIC on the further examination are as under:
?The contents of the CVO file inspected by the Commission clearly indicate that the information therein are not by any stretch of imagination ?personal information? pertaining to the Ambassador. The allegations cast as well as the inquiry/investigation conducted were related to the Ambassador in her ?official capacity? and dealt with alleged complaints about misappropriation of government money. The transactions with respect to government money is anyway liable for a government audit, which has been noted even during the investigation by various officials, so there can be no confidentiality and/or secrecy in divulging such information since the expenditure of government money by a government official in the official capacity as office expenses cannot be termed/categorized as ?personal information?.

10. An apprehension was expressed by the MEA before the CIC that:

?the disclosure of such classified information could adversely impact the morale of the members of the Ministry. The Respondent expressed his apprehension that the distortion and/or improper reporting of the order declaring such disclosure of information, by the media, in order to make the same sensational, may damage the image and reputation of such a senior official as well as the Ministry. Hence the Ministry, the Commission from disclosure of the information categorizing the said information as ?personal information?.

11. The CIC negatived this apprehension by observing that :

?In the instant case the disclosure of information relating to alleged charges of corruption and misappropriation of government money, wherein after a detailed investigation/ inquiry, the name and reputation of the public official concerned, had been declared unblemished, is actually crucial in strengthening the public faith in the functioning of the Ministry and the CVC. Since the allegation and/or complaint, vigilance enquiry and the enquiry reports were in respect of the Ambassador in her official capacity and related to her office and acts/omissions therein and also because all the information sought by the Appellant exists in official records already, hence the information cannot be classified as personal nor exemption be sought on that ground.?

12. As far as the distortion of the CIC orders in the hands of the media is concerned, it was held that it could not be a ground for not disclosing the information. The CIC specifically dealt with the aspect of public interest in ordering disclosure of information pertaining to a third party under Section 11 of the RTI Act. The CIC observed as under:

?In this contention it is important to remember that the public interest has to be established in case the information sought otherwise merits non-disclosure, falling within one of the exempted categories and not vice versa. It has amply been discussed in the foregoing paragraphs that since the information sought relates to allegations of misappropriation of government money, public money being at stake, the information cannot be considered as personal information and hence the information does not fall under provisions of Section 8 (1) (j) of the RTI Act 2005.?

13. Consequently, the CIC directed that:

?the information as sought by the Appellant be provided by 5th October 2009, while using the severance clause 10 (1) of the RTI Act, if required, to severe parts exempted from disclosure in the enquiry report, under intimation to the Commission.?

14. The submissions of Mr. Abhinav Rao, learned counsel appearing for the Petitioner and Mr. Prashant Bhushan, learned counsel for the Respondent have been heard.

15. Placing reliance upon the judgment of this Court in Arvind Kejriwal v. Central Information Commission 2010 VI AD (Delhi) 669 it was submitted by Mr. Rao that the defence of privacy in a case like the present one cannot be lightly brushed aside and that in the present case the rights of the Ambassador against whom the complaint was made outweighed the public interest in ordering disclosure.

16. This Court is unable to accept the above submission. The judgment in Arvind Kejriwal was in the context of the information seeker wanting copy of the ACRs of Government officers from the level of Joint Secretary and above. The CIC in this context directed disclosure without even considering the applicability of Section 11 of the RTI Act. It was in the above context that this Court observed that where the information sought related to a third party the procedure under Section 11 (1) of the RTI Act could not be dispensed with. Consequently, the appeals filed by Mr. Kejriwal were restored to the file of the CIC for compliance with the procedure outlined under Section 11 (1) of the RTI Act.

17. In the present case, as has been noticed hereinbefore, on a request of the MEA to review its order on the basis of Section 11 (1) of the RTI Act, the matter was heard on 25th August 2009 and 28th August 2009 and notice was issued to the Ambassador for personal hearing on 28h August 2009. The Ambassador was heard by the CIC. It was after carrying out this exercise under Section 11 (1) of the RTI Act that the CIC came to the conclusion that the public interest in disclosure of the information sought outweighed any right to privacy claimed by the Ambassador. Therefore, the decision in Arvind Kejriwal is of no assistance to the Petitioner.

18. It was then submitted that once on perusal of the records, the CIC itself came to the conclusion that most of the allegations made in the complaint were

found to be baseless, there was no justification in directing disclosure of such report.

19. This Court would like to observe that where, upon enquiry, it has been found that the allegations made in the complaint were baseless and that the matter did not require to be enquired any further, such a report can hardly be said to be a document the disclosure of which would violate any privacy right of the person complained against. This Court concurs with the observations of the CIC that in the circumstances the information sought was not personal to the Ambassador. The complaint itself is about matters relating to her in an official capacity. The information on the expenditure of government money by a government official in an official capacity cannot be termed as ?personal information?.

20. This Court is satisfied that after a detailed examination of the report of the CVO and notings on the file, the CIC has come to the correct conclusion that the public interest in ordering disclosure outweighed any claim to the contrary with reference to Section 11 (1) read with Section 8 (1)(j) of the RTI Act. This Court notices that the CIC has also exercised a degree of caution in permitting the MEA to use Section 10 (1) of the RTI Act and if so required, severe those parts which might compromise the sources of the MEA. The procedure followed by the CIC with reference to Section 11 (1) of the RTI Act and its reasoning cannot be faulted. The apprehension expressed before the CIC about the possible misuse of the information by the Respondent was also expressed before this Court. No authority can proceed on the assumption that an information ordered to be disclosed will be misused. The mere expression of an apprehension of possible misuse of information cannot justify non-disclosure of information.

21. This Court finds no ground having made out for interference with the impugned order of the CIC.

22. The writ petition and the pending application are dismissed.

S. MURALIDHAR,
J
SEPTEMBER 29, 2010
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WP (Civil) No. 120/2010 Page 1 of 8

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

% Judgment reserved on : 23.10.2013
Judgment pronounced on : 25.10.2013

\+ W.P.(C) 2794/2012
TELECOM REGULATOORY AUTHORITY OF INDIA
…… Petitioner
Through: Mr Saket Singh, Adv.

versus

YASH PAL ..... Respondent
Through: Respondent in person.

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

V.K. JAIN, J.

The respondent Yashpal applied to the CPIO of the petitioner-Telecom Regulatory Authority of India (TRAI), seeking the following information:-

> "1. Certified copy of the call details of the following numbers. Call details should include incoming as well as outgoing details. Registration details of the following numbers (name, address, date of activation, etc).
>
> a) 9210023535 (From April 2006- till date).
> b) 9716682799 (From April 2009- till date).
> c) 011-26215249 (From April 2005- till date)
>
> 2. Certified copy of the SMS details (send and

received) of the following numbers:-

a) 9210023535 (From April 2006- till date).
b) 9716682799 (From April 2009- till date)."

The CPIO having refused to provided the information on the ground that he was seeking a third party information, the respondent preferred an appeal which came to be dismissed by the First Appellate Authority. Being aggrieved, the respondent preferred the Second Appeal before the Central information Commissioner (hereinafter referred to as 'the Commission'). Vide impugned order dated 29.12.2011, the Commission directed the petitioner to write to the Service Provider concerned in exercise of its power under Section 12(1) of the TRAI Act, 1997, call for the requisite information subject to its availability with the Service Provider and pass on the same to the respondent. Being aggrieved from the aforesaid direction, the petitioner is before this Court by way of this writ petition.

2. Two issues primarily arise for consideration in this petition; the first being as to whether the information sought by the respondent, if available with the Service Provider can be accessed by the petitioner in exercise of the powers conferred upon it by Section 12(1) of TRAI Act

and secondly whether the information sought by the respondent is exempt from disclosure under Section 8(1)(j) of the Right to Information Act.

3. Section 2(f) of the Right to Information Act defines 'Information' to mean, inter alia, any information relating to any private body which can be accessed by Public Authority under any law for the time being in force. Section 12(1) of the TRAI Act, 1997 empowers the said Authority, if considered expedient by it to do so, inter alia, to call upon any Service Provider to furnish in writing such information or explanation relating to its affairs as the Authority may require. The functions of the Authority are prescribed in Section 11 of the aforesaid Act. I find merit in the contention of the learned counsel for the petitioner that the power to call for information or explanation from the Service Provider can be exercised by the Authority only if such information or explanation is required for discharge of the functions assigned to it. The aforesaid power, in my view, cannot be exercised for the purposes which are alien to the functions of the Authority specified in Section 11 of the Act. Taking a contrary view will lead to the Authority assuming unbridled power to call for information from a Service Provider irrespective of whether such information is necessary for an efficient discharge of the functions

assigned to the Authority or not. To provide information in respect of the subscribers of mobile telephones such as their names and addresses, their call details and copies of the SMSs sent by them certainly are not amongst the functions assigned to the Authority under Section 11 of the Act. The Authority was established primarily for the purpose of regulating the telecommunication services, adjudicating disputes, protecting the interests of service providers and consumers of telecom sectors and to promote and ensure orderly growth of the said sector. Providing information of the above-referred nature is not one of the purposes for which Authority was constituted. Moreover, the information under Section 12(1) can be sought only in relation to the affairs of the Service Provider and not the affairs of a subscriber to telecom services. The call details of the subscriber and the SMSs sent by him is an information relating to the affairs of the subscriber and to the affairs of the Authority. If I take the view that an information of this nature can be requisitioned by TRAI, that would result in a situation where the Authority is able to violate with impunity the fundamental right of a citizen to his privacy by knowing with whom he has been communicating as well as the contents of the messages sent by him.

Therefore, in my view, the information which the respondent had sought from the CPIO of the petitioner cannot be accessed by the petitioner in exercise of the powers conferred upon it by Section 12(1) of the TRAI Act, 1997.

4. Even if I proceed on the assumption that the information which the respondent had sought from the petitioner can be obtained by TRAI from the Service Provider in exercise of the power conferred upon it by Section 12(1) of the Act, being personal information of the subscriber, who is a third party, and its disclosure having no relationship to any public activity or interest of the subscriber and also because its disclosure would cause unwarranted invasion of the privacy of the subscriber, it is exempt from disclosure under Section 8(1)(j) of the Right to Information Act.

5. The question as to what constitutes 'personal information' under Section 8(1) (j) and to what extent it is protected, if it relates to a third party came up for consideration before this Court in *W.P.(C) No. 3444/2012,* ***Union of India vs. Hardev Singh*** decided on 23.8.2013 and the following view was taken:-

> "It would thus be seen that if the information sought by the applicant is a personal information relating to a third party, it cannot be disclosed, unless the information relates to any public activity

of a third party who has provided the said information or it is in public interest to disclose the information desired by the applicant. It further shows that a personal information cannot at all be disclosed if its disclosure would cause unwarranted invasion of the privacy of the third party which has provided the said information, unless the larger public interest justifies such disclosure.

In ***UPSC versus R.K. Jain*** [W.P(C) No.1243/2011] decided on 13.7.2012 the following view was taken by this Court:

> "19. Therefore, "personal information" under the Act, would be information, as set forth above, that pertains to a person. As such it takes into its fold possibly every kind of information relating to the person. Now, such personal information of the person may, or may not, have relation to any public activity, or to public interest. At the same time, such personal information may, or may not, be private to the person.
>
> xxxx
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> 24. "Public activity" qua a person are those activities which are performed by the person in discharge of a public duty, i.e. in the public domain. There is an inherent public interest involved in the discharge of such activities, as all public duties are expected to be discharged in public interest. Consequently, information of a person which is related to, or has a bearing on his public activities, is not exempt from disclosure under the scheme and provisions of the Act, whose primary object is to ensure an informed citizenry and transparency of information and also to contain corruption. For example, take the case of a surgeon employed in a Government Hospital who performs surgeries on his patients who are coming to the government hospital. His personal information, relating to discharge of his public duty, i.e. his public activity, is not exempt from disclosure under the Act.
>
> 27.... whenever the querist applicant wishes to seek information, the disclosure of which can be made only

> upon existence of certain special circumstances, for example- the existence of public interest, the querist should in the application (moved under Section 6 of the Act) disclose/ plead the special circumstance, so that the PIO concerned can apply his mind to it, and, in case he decides to issue notice to the concerned third party under Section 11 of the Act, the third party is able to effectively deal with the same. Only then the PIO/appellate authority/CIC would be able to come to an informed decision whether, or not, the special circumstances exist in a given case.
>
> 28. I may also observe that public interest does not mean that which is interesting as gratifying curiosity or love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their rights or liabilities are affected...
>
> xxx
>
> 34. It follows that the „privacy" of a person, or in other words his "private information", encompasses the personal intimacies of the home, the family, marriage, motherhood, procreation, child rearing and of the like nature. "Personal information", on the other hand, as aforesaid, would be information, in any form, that pertains to an individual. Therefore, „private information" is a part of "personal information". All that is private is personal, but all that is personal may not be private."

6. With whom a subscriber communicates and what messages he sends or receives are the personal affairs of a subscriber, disclosure of which is bound to impinge on his privacy. The information sought by the respondent, therefore, was personal information of a third party, exempt from disclosure under Section 8 (1) (j) of the RTI Act.

7. During the course of hearing the respondent, who appeared in person, expressed a grievance that he is being harassed by his daughter-in-law and the information sought by him was required in connection

with various cases instituted by her against him. If that be so, the appropriate remedy available to the respondent would be either to approach the concerned investigating agency, which is looking into the complaint made against him or to apply to the concerned Court at an appropriate stage, for summoning the record of the Service Provider. The respondent expressed an apprehension that by the time his matter reaches the Court, the information required by him may no more be available with the Service Provider since such information is preserved for a limited period. If that be so, the respondent can avail such remedy as is open to him in law for a suitable direction to the Service Provider in this regard, but, seeking such an information under the provisions of Right to Information Act is certainly not an appropriate relief.

8. For the reasons stated hereinabove, the impugned order dated 29.12.2011 passed by the Commission cannot be sustained and the same is hereby set aside. The writ petition stands disposed of. No order as to costs.

V.K.JAIN, J

OCTOBER 25, 2013
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 903/2013

THDC INDIA LTD ..... Petitioner
Through: Mr. Neeraj Malhotra with Mr. Prithu Garg, Advs.

versus

R.K.RATURI ..... Respondent
Through: Mr. R.K. Saini, Adv.

% Date of Decision : 08th July, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present writ petition has been filed challenging the order dated 04th January, 2013 passed by the Central Information Commission (for short 'CIC') whereby the petitioner has been directed to provide photocopies of the DPC proceedings including the comparative grading statement pertaining to the recommended candidates as well as ACRs of the appellant himself for the period mentioned by him in his RTI application.

2. The relevant portion of the impugned order is reproduced hereinbelow:-

> *"4. We have carefully considered the contents of the RTI application and the response of the CPIO. The objective of the Right to Information (RTI) Act is to bring about*

transparency in the functioning of the public authorities. All decision making in the government and all its undertakings must be objective and transparent. It is only by placing the details of all decision making in the public domain that such objectivity and transparency can be ensured. Therefore, we do not see any reason why the DPC proceedings, specially, the comparative gradings of those recommended for promotion should not be disclosed. It is not at all correct to claim that such information is held in a fiduciary capacity. After all, the DPC operates as a part of the administrative decision making process in any organisation. The material that it considers is also generated within the organisation. Therefore, it is not correct to say that the DPC proceedings including the recommendations made by it can be said to be held by the public authority in a fiduciary capacity. About the ACRs of the Appellant, the Supreme Court of India has already held that the civilian employees must be allowed access to their confidential rolls, specially when these are held out against them in the matter of their career promotion. Following the Supreme Court order, the Department of Personnel and Training, we understand, has already issued a circular for disclosure of ACR."

3. Mr. Neeraj Malhotra, learned counsel for the petitioner submits that the impact of the impugned order passed by CIC is that the petitioner would be required to give information pertaining to DPC proceedings including the comparative grading statement pertaining to the recommended candidates, which information is excluded under the provisions of Sections 8(1)(e) and 8(1)(j) of the RTI Act. He emphasizes that the information directed to be released pertaining to other employees of the petitioner is being held by the petitioner in fiduciary capacity and would amount to disclosure of personal information.

4. Sections 8(1)(e) and 8(1)(j) of the RTI Act are reproduced hereinbelow:-

> *"8. Exemption from disclosure of information. —(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*
>
> *xxx xxx xxx*
>
> *(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;*
>
> *xxx xxx xxx*
>
> *(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*
>
> *Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."*

5. Mr. Malhotra also submits that as some of the information sought for pertains to third party, provisions of Sections 11(1) and 19(4) of the RTI Act would be applicable. Sections 11(1) and 19(4) of the RTI Act are reproduced hereinbelow:-

> *"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.

xxx xxx xxx

19. Appeal.-

xxx xxx xxx

(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."

6. On the other hand, Mr. Saini, learned counsel for the respondent submits that it is difficult to comprehend that any public interest would be served by denying information to the respondent with regard to DPC proceedings including the comparative grading statements pertaining to the

recommended candidates as also photocopy of respondent's ACR containing the remarks of the reporting and the reviewing officers as well as accepting authority.

7. Mr. Saini points out that the respondent himself is a Government servant working in the same corporation and was considered by the selection committee for promotion in the said DPC proceedings. Hence, according to him, the respondent has a right to seek information regarding DPC proceedings including the comparative grading statements pertaining to the recommended candidates.

8. In support of his submission, Mr. Saini relies upon a judgment of the Supreme Court in ***Dev Dutt v. Union of India and Others (2008) 8 SCC 725*** wherein it has been held as under:-

> *"36. 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."*

9. Mr. Saini lastly submits that there is no question of compliance of pre-condition and pre-requisite of Section 11(1) read with Section 19(4) of

the RTI Act.

10. Having heard learned counsel for the parties, this Court finds that in the case of ***Arvind Kejriwal v. Central Public Information Officer AIR 2010 Delhi 216***, a Coordinate Bench of this Court has held that service record of a Government employee contained in the DPC minutes/ACR is "personal" to such officer and that such information can be provided to a third party only after giving a finding as regards the larger pubic interest involved. It was also held in the said judgement that thereafter third party procedure mentioned in Section 11(1) of the RTI Act would have to be followed. The relevant portion of the judgment in ***Arvind Kejriwal*** is reproduced hereinbelow:-

> *"21. This Court has considered the above submissions. It requires to be noticed that under the RTI Act information that is totally exempt from disclosure has been listed out in Section 8. The concept of privacy is incorporated in Section 8(1)(j) of the RTI Act. This provision would be a defense available to a person about whom information is being sought. Such defence could be taken by a third party in a proceeding under Section 11(1) when upon being issued notice such third party might want to resist disclosure on the grounds of privacy. This is a valuable right of a third party that encapsulates the principle of natural justice inasmuch as the statute mandates that there cannot be a disclosure of information pertaining to or which „relates to" such third party without affording such third party an opportunity of being heard on whether such disclosure should be ordered. This is a procedural safeguard that has been inserted in the RTI Act to balance the rights of privacy and the public interest involved in disclosure of such information. Whether one should trump the other is ultimately for the information officer to decide in the facts of a given case.*

xxx xxx xxx

> *25. The logic of the Section 11(1) RTI Act is plain. Once the information seeker is provided information relating to a third party, it is no longer in the private domain. Such information seeker can then disclose in turn such information to the whole world. There may be an officer who may not want the whole world to know why he or she was overlooked for promotion. The defence of privacy in such a case cannot be lightly brushed aside saying that since the officer is a public servant he or she cannot possibly fight shy of such disclosure. There may be yet another situation where the officer may have no qualms about such disclosure. And there may be a third category where the credentials of the officer appointed may be thought of as being in public interest to be disclosed. The importance of the post held may also be a factor that might weigh with the information officer. This exercise of weighing the competing interests can possibly be undertaken only after hearing all interested parties. Therefore the procedure under Section 11(1) RTI Act."*

11. This Court is also of the opinion that the finding of public interest warranting disclosure of the said information under Sections 8(1)(e) and 8(1)(j) of the RTI Act and the procedure contemplated under Sections 11(1) and 19(4) of the RTI Act are mandatory in nature and cannot be waived. In the present case, CIC has directed the petitioner to provide DPC minutes to the respondent without considering the defence of the petitioner under Section 8(1)(e) of the RTI Act and without following the procedure specified under Sections 11(1) and 19(4) of the RTI Act. It is pertinent to mention that Sections 11(1) and 19(4) of the RTI Act incorporate the principles of natural justice. Further, in the present case no finding has been given by CIC as to whether public interest warranted such a disclosure.

12. However, this Court is of the view that the respondent is entitled to the contents of his own ACR after redaction of the names of the reviewing, reporting and accepting officers. In fact, another coordinate Bench of this Court in ***THDC India Ltd. v. T. Chandra Biswas 199(2013) DLT 284*** has held as under:-

> *"9. While the learned counsel for the respondent has contended before me that the respondent ought to have been supplied with the ACRs for the period 2004 to 2007, the respondent has not assailed that part of the order of the CIC. In my view, while the contention of the respondent has merit, which is that she cannot be denied information with regard to her own ACRs and that information cannot fall in the realm of any of the exclusionary provisions cited before me by the learned counsel for the petitioner i.e. Section 8(1)(d), (e) and (j), there is a procedural impediment, in as much as, there is no petition filed to assail that part of the order passed by the CIC.*
>
> *9.1. In my view, the right to obtain her own ACRs inheres in the respondent which cannot be denied to the respondent under the provisions of Section 8(1)(d), (e) and (j) of the RTI Act. The ACRs are meant to inform an employee as to the manner in which he has performed in the given period and the areas which require his attention, so that he may improve his performance qua his work.*
>
> *9.2 That every entry in the ACR of an employee requires to be disclosed whether or not an executive instruction is issued in that behalf – is based on the premise that disclosure of the contents of ACR results in fairness in action and transparency in public administration. See Dev Dutt vs Union of India (2008) 8 SCC 725 at page 732, paragraph 13; page 733, paragraph 17; and at page 737, paragraphs 36, 37 and 38.*

9.3 Mr Malhotra sought to argue that, in Dev Dutt's case, the emphasis was in providing information with regard to gradings and not the narrative. Thus a submission cannot be accepted for more than one reason.

9.4 First, providing to an employee gradings without the narrative is like giving a conclusion in judicial/quasi-judicial or even an administrative order without providing the reasons which led to the conclusion. If the purpose of providing ACRs is to enable the employee to assess his performance and to judge for himself whether the person writing his ACR has made an objective assessment of his work, the access to the narrative which led to the grading is a must. [See State of U.P. Vs. Yamuna Shankar Misra and Anr., (1997) 4 SCC 7]. The narrative would fashion the decision of the employee as to whether he ought to challenge the grading set out in the ACR.

9.5 Second, the fact that provision of ACRs is a necessary concomitant of a transparent, fair and efficient administration is now recognized by the DOPT in its OM dated 14.05.2009. The fact that the OM is prospective would not, in my view, impinge upon the underlying principle the OM seeks to establish. The only caveat one would have to enter, is that, while providing the contents of the ACR the names of the Reviewing, Reporting and the Accepting Officer will have to be redacted."

13. Consequently, this Court is of the view that ACR grading/ratings as also the marks given to the candidates based on the said ACR grading/ratings and their interview marks contained in the DPC proceedings can be disclosed only to the concerned employee and not to any other employee as that would constitute third party information. This Court is also of the opinion that third party information can only be disclosed if a

finding of a larger public interest being involved is given by CIC and further if third party procedure as prescribed under Sections 11(1) and 19(4) of the RTI Act is followed.

14. Accordingly, the present writ petition is allowed and the matter is remanded back to CIC for consideration of petitioner's defences under Sections 8(1)(e) and Section 8(1)(j) of the RTI Act and if the CIC is of the view that larger public interest is involved, it shall thereafter follow the third party procedure as prescribed under Sections 11(1) and 19(4) of the RTI Act.

15. With the aforesaid observations and directions, the present writ petition is disposed of.

MANMOHAN,J

JULY 08, 2014
NG

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 27.08.2014

+ W.P.(C) 5478/2014

REKHA CHOPRA ..... Petitioner

versus

STATE BANK OF BIKANER & JAIPUR ..... Respondent

Advocates who appeared in this case:
For the Petitioner : Mr Rajesh Yadav and Mr Ruchira.
For the Respondent : Mr Rajiv Aggarwal and Mr S. Sethi.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

CM No.10876/2014

Allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 5478/2014

1. The present petition has been filed by the petitioner impugning an order dated 13.06.2014 passed by the Central Information Commissioner (hereinafter referred to as 'CIC'), whereby the appeal preferred by the petitioner against an order dated 03.04.2013 passed by the First Appellate Authority had been rejected. The order dated 03.04.2013 had in turn rejected the petitioner's appeal against an order dated 11.02.2013 passed by respondent bank's Central Public Information Officer (hereinafter referred as 'CPIO'). By the said order, the CPIO of respondent bank refused to

provide the information sought by the petitioner in respect of its customer *inter alia* on the ground that the same was held by the bank in a fiduciary capacity and was exempted under Section 8 of the Right to Information Act, 2005 (hereinafter referred to as the 'RTI Act').

2. Briefly stated, the facts are that on 18.01.2013, the petitioner applied under the RTI Act to the CPIO of the respondent bank seeking the following information with respect to Manraj Charitable Trust - a society registered under the Societies Registration Act, 1860:-

> "a) Entire record pertaining to opening of the Bank Account by MCT including the a/c opening form.
>
> b) All subsequent documents, resolutions, authority letters, submitted with the Bank.
>
> c) The actual date of submission/receipt of letter dated 14/8/99 in and by the bank."

3. Thereafter, the petitioner sent another application on 22.01.2013 seeking further information. By its order dated 11.02.2013, the CPIO of the respondent bank declined to provide the said information on the ground that information pertaining to its customers was exempt from the provisions of the RTI Act by virtue of clauses (d), (e) and (j) of Section 8(1) of the RTI Act. Aggrieved by the denial of the said information, the petitioner preferred an appeal before the First Appellate Authority, which was also dismissed by an order dated 03.04.2013. The decision of the First Appellate Authority was carried in appeal before the CIC.

4. By the impugned order, the CIC accepted the submissions of the respondent bank that the information in respect of its customers was

exempt form the RTI Act as the same was held by the bank in a fiduciary capacity and, accordingly, rejected the appeal of the petitioner.

5. The learned counsel for the petitioner contended that the petitioner was the secretary of Manraj Charitable Trust and as an office bearer was entitled to information relating to the said Trust. It was further submitted that Manraj Charitable Trust was a charitable institution and, therefore, larger public interest would warrant disclosure of information by the respondent bank. The learned counsel for the petitioner relied on the decision of the Supreme Court in ***Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*: (2012) 13 SCC 61** to contend that even information held in fiduciary capacity can be disclosed by a Competent Authority if a larger public interest so warrants.

6. The respondent bank claimed that as per its records, the petitioner was neither reflected as a Secretary of the Trust nor was authorised to operate the bank accounts. It was further stated that there were disputes pending between the petitioner and her relatives. And, the information sought by the petitioner was not for any larger public interest but, apparently, to assist her in the litigation pending between the petitioner and her family members.

7. The controversy raised in the present petition is whether a bank is obliged to disclose information pertaining to its customers in response to an application made under the RTI Act.

8. The Bank, while dealing with its customers, acts in various capacities. Undisputedly, the relationship between a customer and a banker requires trust, good faith, honesty and confidence. Black's law dictionary

defines fiduciary relationship as "one founded on trust or confidence reposed by one person in the integrity and fidelity of another." Fiduciary relationship in law is ordinarily a confidential relationship; one which is founded on the trust and confidence. In this view, a banker would undoubtedly, stand in a fiduciary capacity in respect of transactions and information provided by its customers.

9. The Supreme Court in ***Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*****: (2012) 13 SCC** 61 examined the term "fiduciary relationship" in context of Section 8 of the RTI Act and held as under:-

> "The term "fiduciary relationship" is used to describe a situation or transaction where one person places complete confidence in another person in regard to his affairs, business or transactions. This aspect has been discussed in some detail in the judgment of this Court in the case of Central Board of Secondary Education. Section 8(1)(e), therefore, carves out a protection in favour of a person who possesses information in his fiduciary relationship. This protection can be negated by the competent authority where larger public interest warrants the disclosure of such information, in which case, the authority is expected to record reasons for its satisfaction. Another very significant provision of the Act is 8(1)(j). In terms of this provision, information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest."

10. The records of the bank do not indicate the petitioner to be a secretary of the said Trust or its authorized officer. Thus, the bank has treated the petitioner as a stranger, and in my view, rightly so. The respondent bank is thus not obliged to provide any information to the petitioner in respect of the account of the said trust.

11. Admittedly, the petitioner has certain pending disputes with regard to the affairs of Manraj Charitable Trust and a suit (being CS(OS) No.3203/2012) is stated to have been filed by the petitioner in this Court in her capacity as Secretary of the Trust in question. In this view, the submission of the petitioner that the respondent bank is liable to disclose the information sought in larger public interest, also cannot be accepted.

12. The present petition is, accordingly, without merit and is dismissed.

VIBHU BAKHRU, J

AUGUST 27, 2014
MK

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

\+ LPA 34/2015 & C.M.No.1287/2015

Reserved on: 09.04.2015
Pronounced on: 17.04.2015

SUBHASH CHANDRA AGARWAL ..... Petitioner
Through: Mr. Prashant Bhushan with Mr. Syed Musaib & Mr. Pranav Sachdeva, Advs.

Versus

THE REGISTRAR, SUPREME COURT OF INDIA & ORS ..... Respondents
Through: Mr. Sidharth Luthra, Sr. Adv. with Mr. Jasmeet Singh, CGSC, Mr. Simon Benjamin, Mr. Satyam Thareja & Mr. Vasundara Nagrath, Advs. for R-1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE DEEPA SHARMA

Ms.G.ROHINI, CJ

1. This appeal is preferred against the order dated 19.12.2014 whereunder the learned Single Judge allowed W.P.(C) No.1842/2012 filed by the respondent herein and set aside the order dated 01.02.2012 passed by the Central Information Commissioner (CIC) under the Right to Information Act, 2005 (for short 'RTI Act').

2. The facts in brief are as under:-

3. The appellant herein filed an application under the RTI Act with the Central Public Information Officer, Department of Justice, Government of India seeking the information relating to the details of the

medical facilities availed by the individual judges and their family members of the Supreme Court in last three years including the information relating to expenses on private treatment in India or abroad. The CPIO, to whom the said application was transferred under Section 6(3) of the Act rejected the same by order dated 02.02.2011 on the ground that it is an exempted information under Section 8(1)(j) of the Act. The appeal preferred by the appellant herein was dismissed by the First Appellate Authority by order dated 07.03.2011. However, the further appeal to the CIC was allowed and by order dated 03.08.2011, the CIC directed the CPIO to provide the total amount of medical expenses of individual judges reimbursed by the Supreme Court during the last three years both in India and abroad wherever applicable. There was also a direction that the CPIO shall bring to the notice of the competent authority in the Supreme Court and ensure that arrangements are made in future for maintaining the information as expected in Section 4(1)(a) of the RTI Act. In pursuance thereof, by letter dated 30.08.2011, the CPIO while furnishing the actual total expenditure for the years 2007-08, 2008-09 and 2009-10, informed the appellant herein that the judge-wise information regarding actual total medical expenditure is not required to be maintained and is not maintained. Contending that the information furnished by CPIO is not in compliance with the order dated 03.08.2011, the appellant herein had again approached the CIC and thereupon by order dated 01.02.2012 the CIC reiterated its directions dated 03.08.2011.

4. Aggrieved by the said order, the appellant herein filed W.P.(C) No.1842/2012. By the order under appeal, the learned Single Judge allowed the writ petition holding that the order passed by CIC

purportedly in exercise of power under Section 19(8)(a)(iv) of the Act is erroneous. While taking note of the fact that the information sought by the respondent/appellant herein was with regard to expenses incurred on medical facilities of judges retired as well as serving and that the said information is personal information which is exempted from disclosure under Section 8(1)(j) of the RTI Act and that the medical bills would indicate the treatment and/or medicines required by individuals and the same would clearly be an invasion of the privacy, the learned Single Judge held that the question of issuing any directions under Section 19(8)(a)(iv) of the Act to facilitate access to such information does not arise.

5. Assailing the said order, Sh.Prashant Bhushan the learned Counsel appearing for the appellant vehemently contended that the information pertaining to expenditure of public money on a public servant is not exempted under Section 8(1)(j) of the RTI Act. It is submitted by the learned counsel that only the information which relates to personal information which has no relation to any public activity or interest or which would cause unwarranted invasion of privacy of the individual is exempt from disclosure under Section 8(1)(j) and that the same is not attracted to the case on hand since the medical bills of the judges are reimbursed from the public money. Placing reliance upon the decisions in ***State of UP Vs. Raj Narain,*** **AIR 1975 SC 865**, ***S.P.Gupta Vs. President of India & Ors.,*** **AIR 1982 SC 149** and ***Union of India Vs. Association for Democratic Reforms,*** **AIR 2002 SC 2112** it is further contended by the learned counsel that the object and purpose of the RTI Act being promoting transparency and accountability in spending the

public money to strengthen the core constitutional values of a democratic republic, the information sought by the appellant relating to reimbursement of medical bills of the individual judges, under no circumstances, can be termed as exempted information under Section 8(1)(j) of the Act.

6. On the other hand, it is submitted by Sh.Siddharth Luthra, the learned Senior Advocate appearing for the respondents No.1 & 2 that the information sought by the appellant would cause unwarranted invasion of privacy of the individual judges and, therefore, the learned Single Jude has rightly held that Section 8(1)(j) is attracted. To substantiate his submission, the learned Senior Counsel relied upon ***Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors.*** **2011 (8) SCC 497** and ***Girish Ramchandra Deshpande Vs. Central Information Commissioner & Ors***. **(2013) 1 SCC 212**.

7. We have given our thoughtful consideration to the rival submissions made by the parties. It is no doubt true that the RTI Act, 2005 is aimed at providing access to the citizens to information under the control of public authorities in order to promote transparency and accountability in the working of the every public authority. However, as held in the case of ***Aditya Bandopadhyay & Ors. (Supra)*** the RTI Act contains certain safeguards by providing exemption from disclosure of certain information including the information which would cause unwarranted invasion of the privacy of the individual except where the larger public interest justifies the disclosure of such information.

8. In the case on hand, the CPIO by his letter dated 30.08.2011 has admittedly furnished the amount that has been reimbursed on medical

treatment from the budget grant of each year for the period from 2007 to 2010 making it clear that during the said period no reimbursement for medical treatment abroad was made. It was also specifically mentioned by the CPIO that the judge-wise information was not maintained as the same was not required to be maintained.

9. It is no doubt true that Section 19(8)(a)(iv) empowers the appellate authority to require the public authority to make necessary changes to its practices in relation to the maintenance, management and destruction of record for the purpose of securing compliance with the provisions of the RTI Act. However, as rightly held by the learned Single Judge the said power cannot be invoked to direct creation of information but the same can be only with regard to the existing information.

10. The information sought by the appellant includes the details of the medical facilities availed by the individual judges. The same being personal information, we are of the view that providing such information would undoubtedly amount to invasion of the privacy. We have also taken note of the fact that it was conceded before the learned Single Judge by the learned counsel for the appellant herein that no larger public interest is involved in seeking the details of the medical facilities availed by the individual judges. It may also be mentioned that the total expenditure incurred for the medical treatment of the judges for the period in question was already furnished by the CPIO by his letter dated 30.08.2011 and it is not the case of the appellant that the said expenditure is excessive or exorbitant. That being so, we are unable to understand how the public interest requires disclosure of the details of the medical facilities availed by the individual judges. In the absence of any such

larger public interest, no direction whatsoever can be issued under Section 19(8)(a)(iv) of the Act by the appellate authorities. Therefore on that ground also the order passed by the CIC dated 01.02.2012 is unsustainable and the same has rightly been set aside by the learned Single Judge.

11. For the aforesaid reasons, the appeal is devoid of any merits and the same is accordingly dismissed. No order as to costs.

CHIEF JUSTICE

DEEPA SHARMA, J

APRIL 17, 2015
'anb'

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6086/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner

Through : Mr. Naresh Kaushik, Adv. With

Mr.Vardhman Kaushik, Adv.

versus

HAWA SINGH ..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

21.11.2014

1. The petitioner impugns an order dated 18.06.2013 passed by the Central Information Commission (hereinafter referred to as ?CIC?) whereby the petitioner was directed to disclose certain information relating to other candidates who were subject to the selection process undertaken by the petitioner.

2. The question to be adressed is whether the petitioner was obliged to disclose information relating to other candidates i.e. the third party information under the Right to Information Act, 2005 (hereinafter referred to as the ?Act?).

3. The brief facts of the present case are that the respondent was working as a Senior Administrative Officer (Legal) in the office of Controller and Auditor General of India (hereafter ?CAG?) and had appeared before the Departmental Promotion Committee (hereinafter ?DPC?) for the selection to the post of Deputy Director (Legal) in the office of CAG. The respondent had filed an application dated 05.11.2012 under the Act inter alia seeking certain information relating to the said selection process which included the Bio Data as well as other information relating to other candidates.

4. While most of the information was supplied by the petitioner, the

information relating to other candidates and certain other information was declined by the petitoner. This led the respondent to file an appeal before the first appellate authority, which was rejected by an order dated 07.01.2013. Aggrieved by the same, the respondent preferred an appeal before CIC. The CIC considered the appeal and directed the petitioner to supply the following information:-

?i. The biodata of the candidates recommended by the Selection Committee for deputation;

ii. the marks awarded to both the selected candidates as well as to the Appellant during the selection process;

iii the copy of the pro forma and comparative statement of eligibility placed before the Selection Committee, if any:

iv. a statement showing the period for which the ACRs/APARs of various candidates had been considered by the Selection Committee including the grading of the selected candidates as well as that of the Appellant and

v. The copy of the reserve list prepared by the Selection Committee provided the selected candidate has already joined her duty.?

5. Aggrieved by the direction of CIC to provide the Bio Data of the candidates recommended by the Selection Committee for deputation, the petitioner has preferred this petition.

6. Learned counsel for the petitioner submits that the information sought by the respondent is a third party information and thus cannot be disclosed except in public interest and after following the due procedure under Section 11 and Section 19(4) of the Right to Information Act, 2005. The learned counsel referred to a decision of the Supreme Court in Union Public Service Commission v. Gouhari Kamila: Civil Appeal No. 6362/2013, decided on 06.08.2013 whereby the Supreme Court following its earlier decision rendered in CBSE v. Aditya Bandopadhyay: (2011) 8 SCC 497 held as under:-

?12. By applying the ratio of the aforesaid judgment, we hold that the CIC committed a serious illegality by directing the Commission to disclose the information sought by the Respondent, at point Nos. 4 and 5 and the High Court committed an error by approving his order.

13. We may add that neither the CIC nor the High Court came to the conclusion that disclosure of the information relating to other candidates was necessary in larger public interest. Therefore, the present case is not covered by the exception carved out in Section?8(1)(e)?of the Act.?

7. In view of the above, the submission of the learned counsel for the

petitioner that the present case is covered by the decision of the Supreme Court in Gouhari Kamila (supra) is well founded. Clearly, the Bio Data of the other selected candidates is a third party information and is exempt from disclosure under Section 8(1)(e) and under Section 8(1)(j) of the RTI Act.

8. The impugned order does not indicate that disclosure of this information was vital in larger public interest. Further, it does not appear that the CIC had issued any notice under Section 19(4) of the RTI Act to other candidates before directing the disclosure of the information.

9. Accordingly, the petition is allowed and the impugned order, in so far as it relates to disclosure of ?Bio Data of candidates recommended by the Selection Committee for deputation? is concerned, is set aside. No order as to costs.

VIBHU BAKHRU, J

NOVEMBER 21, 2014/j

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

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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 delivered on: 24.08.2017

\+ **W.P.(C) 13219/2009 & CM 14393/2009**

MUNICIPAL CORPORATION DELHI ..... Petitioner

Versus

RAJBIR ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms Biji Rajesh and Ms Eshita Baruah, Advocate for Gaurang Kanth.

For the Respondent : Mr V.K. Sharma.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner (hereafter 'MCD') has filed the present petition, *inter alia*, impugning an order dated 06.10.2009 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC'). By the impugned order, the CIC has allowed respondent's appeal and has directed MCD to disclose the information sought by him. The MCD claims that the information which it is called upon to disclose is exempt from such disclosure under Section 8(1)(j) of the Right to Information Act, 2005 (hereafter 'the Act').

2. Briefly stated, the relevant facts necessary to address the controversy in this petition are as under:-

2.1 On 18.02.2009, respondent filed an application under the Act seeking information relating to one Dr Ashok Rawat (one of the employees of MCD). The contents of the said application indicating the information sought by respondent are set out below:-

> "Kindly provide the Assets and Liabilities of D.H.O. Shahdara North Zone Mr Ashok Rawat Ji.
>
> 1. Monthly salary
> 2. Details of his children with age; how many are school going; their monthly school fee and other expenditure; name of school
> 3. Whether any transportation is availed of by the children; if yes, give details
> 4. Whether he is in possession of his own house or in Govt. Accommodation; if it is on private rent the details of the rent agreement be supplied.
> 5. Whether he has any immovable property in his name, his wife's name or in the name of his children.'
> 6. Whether any immovable property was purchased after entering into service in MCD in Delhi.
> 7. Details of property which was disclosed by him at the time of joining.
> 8. Details of anything more than Rs.10,000/- which was purchased by him during his service, with date when the appropriate disclosure was made to the department and the same was duly assessed in his assessment of the financial year.
> 9. Whether the Government vehicle was being utilised for personal use or not."

2.2 Initially, by a letter dated 17.03.2009, the Public Information officer (PIO) of MCD declined to provide any information, *inter alia,* stating that

the information as sought by respondent was not 'information' as defined under Section 2(f) of the Act.

2.3 The respondent's application was transferred to the concerned PIO by a letter dated 25.05.2009. Thereafter, the concerned PIO of MCD sent a letter dated 18.06.2009 declining to provide information sought at serial nos.5, 6 and 7 in the RTI application, for the following reasons:-

> "The information sought for by the applicant through this point, being secret documents/information which cannot be disclosed in the absence of a general or special order, under provisions of GIO (S.O.114) under sub-rule (1) of Rule 18 of CCS (Conduct) rules. 964 Clause 110 of the "Manual of Office Procedure", Rule 11 of CCS (Conduct) Rules, 1964 as the information sought for herein covers under section 8(j) of the RTI Act, 2005."

2.4 Aggrieved by the same, respondent preferred an appeal before the First Appellate Authority (hereafter 'the FAA') impugning the action of the PIO in denying the information sought. The FAA partially allowed the appeal by an order dated 20.05.2009 directing disclosure of information sought at serial nos.2 and 3 in the RTI application.

2.5 Aggrieved by the non-disclosure of the complete information as sought, respondent preferred a second appeal under Section 19(3) of the Act.

2.6 The said appeal was allowed by the impugned order and the CIC has directed disclosure of all information pertaining to queries at serial nos.1 and 4 to 9. The CIC rejected MCD's contention that the information as sought for by respondent was exempt from disclosure under Section 8(1)(j) of the Act. The CIC was of the view that disclosure of information

pertaining to assets of public servants which is collected by a public authority cannot be construed as invasion of the privacy of an individual.

3. Ms Biji Rajesh, learned counsel for the MCD contended that information regarding the personal assets of its employees is required to be treated as confidential and merely because employees of MCD are required to disclose their assets to MCD, the same would not exclude such information from the scope of Section 8(1)(j) of the Act. She referred to the decision of a Coordinate Bench of this Court in ***Allahabad Bank v. Nitesh Kumar Tripathi*: *2013 SCC OnLine Del 2491*** in support of her contention. She also referred to the decisions of the Supreme Court in ***Girish Ramchandra Deshpande v. Central Information Commission &Ors.*: *2013 (1) SCC 212*** and ***R. K. Jain v. Union of India & Anr.*: *(2013) 14 SCC 794***.

4. Mr V K Sharma, the learned counsel for the respondent stated that he was no longer pressing for disclosure of the information as initially sought by the respondent and had limited his request to information sought at serial nos.5, 6 and 7 in his RTI application. The said information being (a) whether Dr Ashok Rawat held any immovable property in his name; (b) whether any immovable property was purchased by him after entering service with MCD in India including Delhi; and (c) the details of his properties at the time of joining of service with MCD. Mr Sharma further stated that although at serial no.5, respondent had sought information as to the immovable property in the name of Dr Ashok Rawat's wife and children as well; he was no longer seeking that information.

5. In view of the above, the only question required to be addressed is whether MCD is obliged to disclose details of the immovable properties

held by its employees or whether such information is exempt from disclosure under Section 8(1)(j) of the Act.

6. Before proceeding further, it would be relevant to refer to Section 8 (1)(j) 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
>
> (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."

7. It is apparent from a plain reading of Clause (j) of Section 8(1) of the Act that personal information which has no relationship to any public activity or interest would be exempt from disclosure. However, such information can be disclosed provided that the PIO or the Appellate Authority under the Act is satisfied that larger public interest justifies such disclosure. In the present case there is no reason to believe that disclosure of information sought by respondent is for some larger public interest. Respondent has not provided any credible justification for seeking information regarding the personal assets of the MCD employee in question. Although, it has been contended that disclosure of assets of public servants and their families would serve to stem corruption, however, in the present case, no particular facts have been disclosed by respondent which will indicate that the information sought would serve a larger public purpose. In view of the above, the only question that needs to be answered is whether the information sought by respondent qualifies to be "personal

information", the disclosure of which has no relationship with any public activity or interest.

8. In ***Girish Ramchandra Deshpande*** (*supra*), the Supreme Court had examined the question whether the CIC was correct in denying information pertaining to service career, details of assets and liabilities and movable and immovable properties of the respondent therein (who was employed as an enforcement officer) on the ground that the information sought, fell within the scope of 'personal information'. Answering the aforementioned question in the affirmative, the Supreme Court held that the said details sought for, which were denied by the CIC, qualified to be personal information as defined in Clause (j) of Section 8(1) of the Act.

9. In ***Secretary General, Supreme Court of India v. Subhash Chandra Agarwal: AIR 2010 Del 159***, a full Bench of this Court observed that the objective of freedom of information and objective of protecting personal privacy would often conflict when an applicant seeks access to personal information of a third party. The Court held that the Act had recognized the aforesaid conflict and had exempted personal information from disclosure under Section 8(1)(j) of the Act. However, such bar preventing disclosure of personal information could be lifted if sufficient public interest was shown. The relevant extract of the said decision is reproduced below:-

> "114. There is an inherent tension between the objective of freedom of information and the objective of protecting personal privacy. These objectives will often conflict when an applicant seeks access for personal information about a third party. The conflict poses two related challenges for law makers; first, to determine where the balance should be struck between these aims; and, secondly, to determine the mechanisms for dealing with requests for such information. The conflict between the right to personal privacy and the public interest in the disclosure of personal information was recognized by the legislature by

exempting purely personal information under Section 8(1)(j) of the Act. Section 8(1)(j) says that disclosure may be refused if the request pertains to "personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual." Thus, personal information including tax returns, medical records etc. cannot be disclosed in view of Section 8(1)(j) of the Act. If, however, the applicant can show sufficient public interest in disclosure, the bar (preventing disclosure) is lifted and after duly notifying the third party (i.e. the individual concerned with the information or whose records are sought) and after considering his views, the authority can disclose it. The nature of restriction on the right of privacy, however, as pointed out by the learned single Judge, is of a different order; in the case of private individuals, the degree of protection afforded to be greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. This is so because a public servant is expected to act for the public good in the discharge of his duties and is accountable for them.

115. The Act makes no distinction between an ordinary individual and a public servant or public official. As pointed out by the learned single Judge "----- an individual's or citizen's fundamental rights, which include right to privacy - are not subsumed or extinguished if he accepts or holds public office." Section 8(1)(j) ensures that all information furnished to public authorities – including personal information [such as asset disclosures] are not given blanket access. When a member of the public requests personal information about a public servant, - such as asset declarations made by him – a distinction must be made between personal data inherent to the person and those that are not, and, therefore, affect his/her private life. To quote the words of the learned single Judge "if public servants ---- are obliged to furnish asset declarations, the mere fact that they have to furnish such declaration would not mean that it is part of public activity, or "interest". ----- That the public servant has to make disclosures is a part of the system's endeavour to appraise itself of potential asset acquisitions which may have to be explained properly. However, such acquisitions can be made legitimately; no law bars public servants from acquiring properties or investing their income. The obligation to disclose

> these investments and assets is to check the propensity to abuse a public office, for a private gain." Such personal information regarding asset disclosures need not be made public, unless public interest considerations dictates it, under Section 8(1)(j). This safeguard is made in public interest in favour of all public officials and public servants."

10. There can be no doubt that the information sought by respondent is personal information concerning an employee of MCD. Such information could be disclosed only if respondent could establish that disclosure of such information was justified by larger public interest. Even if the PIO was satisfied that disclosure of such information was justified, the PIO was required to follow the procedure given under Section 11 of the Act; that is, the PIO was required to give a notice to the concerned employee stating that he intends to disclose the information and invite the employee to make submissions on the question whether such information ought to be disclosed.

11. In view of the above, the impugned order directing the disclosure of personal information relating to the employee of MCD cannot be sustained. The impugned order is, accordingly, set aside.

12. MCD has already paid cost of ₹5000/- and this Court does not consider it apposite to direct refund of the same.

13. The petition along with the pending application is disposed of.

VIBHU BAKHRU, J

AUGUST 24, 2017
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 09.07.2013**

\+ **W.P.(C) 906/2012 and CM No.2025/2012**

ALLAHABAD BANK ..... Petitioner

Through:Mr.Rajesh Kumar, Advocate

versus

NITESH KUMAR TRIPATHI ..... Respondent

Through: None

AND

\+ **W.P.(C) 1191/2012 and CM No.2578/2012**

ALLAHABAD BANK ..... Petitioner

Through:Mr.Rajesh Kumar, Advocate

versus

GYANENDER KUMAR SHUKLA ..... Respondent

Through: None

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

JUDGMENT

V.K.JAIN, J. (ORAL)

In WP(C) No.906/2012, the respondent before this Court filed an application seeking certain information, including details of the assets declared by all officers above Scale-III of the petitioner bank. The said application was responded by the CPIO of the petitioner bank on 12th August, 2011. However, even before receipt of

the reply from the CPIO, the respondent had already preferred an appeal before the first Appellate Authority. Vide order dated 26th August, 2011, the First Appellate Authority noticing that the appeal had been preferred even before disposal of the application by CPIO, directed that a copy of the reply of the CPIO be sent to the appellant before him. In compliance of the said order, the petitioner bank provided a copy of its earlier decision to the respondent vide its letter dated 5th September, 2011. The respondent before this Court preferred a Second Appeal before the Central Information Commission and also made a complaint to it under Section 18 of the RTI Act. Vide impugned order dated 1st February, 2012, the Commission, inter alia, directed as under:-

> "….. Therefore we can state that disclosure of information such as assets of a Public servant, which is routinely collected by the Public authority and routinely provided by the Public servants, - cannot be construed as an invasion on the privacy of an individual. There will only be a few exceptions to this rule which might relate to information which is obtained by a Public authority while using extraordinary powers such as in the case of a raid or phone-tapping. Any other exceptions would have to be specifically justified. Besides the Supreme Court has clearly ruled that even people who aspire to be public servants by getting elected have to declare their property details. If people who aspire to be public servants must declare their property details it is only

> logical that the details of assets of those who are public servants must be considered to be diclosable. Hence the exemption under Section 8(i)(j) cannot be applied in the instant case."

Being aggrieved from the order passed by the Commission, the petitioner is before this Court by way of this petition.

2. In WP(C) No.1191/2012, the respondent before this Court preferred an appeal under Section 19 of the RTI Act before the First Appellate Authority alleging therein that no information had been supplied to him pursuant to his application dated 18/19 May, 2011, though the statutory period of 30 days had already expired. The First Appellate Authority, vide its letter dated 19th August, 2011 informed the respondent that no such application had actually been received by their PIO. Thereupon, the respondent made a complaint dated 18th August, 2011 to the Central Information Commission alleging therein that no information had been provided to him pursuant to his application dated 18th May, 2011 addressed to the CPIO of the petitioner bank. A copy of the said complaint was forwarded to the petitioner by the Under Secretary of the Commission for giving its explanation in the matter. On receipt of the copy of the complaint of the respondent, the CPIO of the petitioner responded by its communication dated 1st October, 2011. However, the information with respect to assets and liabilities of the officers in Gramin Bank, Triveni, Gramin Bank, Head Office Orrai and

Allahabad UP Gramin Bank, Head Office Banda was not supplied to the respondent. The said complaint was disposed of by the Commission, vide its order dated 10th February, 2012. During the course of hearing of the complaint, the Commission noted the contention of the petitioner that it had supplied the required information except the information with respect to the assets and liabilities of the employees and details of the TA Bills. The Commission, vide impugned order dated 10th February, 2012 directed the PIO of the petitioner bank to provide information as about assets to the complainant.

3. Thus, the only question involved in these petitions is whether the information with respect to the assets and liabilities which an employee furnishes to his employer can be directed to be disclosed under RTI Act.

Section 8(1) (j) of the 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."

It would, thus, be seen that an information which has no relationship to any public activity or interest of the employee concerned or which would cause some unwarranted invasion of the privacy of the individual cannot be directed to be disclosed unless the CPIO/PIO or the Appellate Authority is satisfied that larger public interest justifies the disclosure of such information.

4. The question whether information with respect to the assets and liabilities of an employee exempted under Section 8(1)(j) of the Act or not came up for consideration before the Apex Court in **Girish Ramchandra Deshpande Vs. Cen. Information Commr. and Ors. (2013) 1 SCC 212.** In the case before the Supreme Court, the Commission had denied details of the assets and liabilities, movable and immovable property of an employee on the ground that the information sought qualified to be 'personal information;, as defined in Clause (j) of Section 8 (1) of the Act. Aggrieved by the order passed by the Commission, the appellant before the Supreme Court, preferred a writ petition which came to be dismissed by the Single Judge. An appeal preferred by him was also dismissed by a Division Bench of the High Court. Being aggrieved form the order passed by the Division Bench, he approached the Apex Court by way of Special Leave. Dismissing the Special Leave Petition, the Apex Court, inter alia, held as under:-

> "…14.The details disclosed by a person in his income tax returns are "personal information" which stand exempted from

> disclosure under Clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information."

5. It would, thus, be seen that the information with respect to the assets and liabilities of an employee, which he discloses to his employer in compliance of the Service Rules applicable to him qualifies as personal information within the meaning of Section 8(1)(j) of the Act and such information cannot be directed to be disclosed unless the CPIO/PIO/Appellate Authority is satisfied that larger public interest justifies disclosure of such information. It goes without saying that such satisfaction needs to be recorded in writing before an order directing disclosure of the information can be passed. A perusal of the impugned orders would show that in neither of these cases, the Commission was satisfied that larger public interest justified disclosure of the information sought by the applicant/respondent. Without being satisfied that larger public interest justified disclosure of the information sought in this regard, the Commission could not have passed an order directing disclosure of information of this nature. The orders passed by Central Information Commission are, therefore, liable to be set aside on this ground alone. The impugned orders are accordingly set aside.

The writ petition stands disposed of. There shall be no orders as to costs.

6. The petitioner had deposited Rs.5000/- each which could be incurred by the respondent. Since the respondent has not put in appearance despite service, there will be no justification for paying the said amount to him. It is, therefore, directed that the aforesaid amount shall be deposited by the Registry with Delhi High Court Legal Services Committee.

V.K. JAIN, J

JULY 09 , 2013
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