REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9052 OF 2012
(Arising out of SLP (C) No.20217 of 2011)

Bihar Public Service Commission ... Appellant

Versus

Saiyed Hussain Abbas Rizwi & Anr. ... Respondents

J U D G M E N T

Swatanter Kumar, J.

1. Leave granted.

2. The Bihar Public Service Commission (for short, 'the Commission) published advertisement No.6 of 2000 dated 10th May, 2000 in the local papers of the State of Bihar declaring its intention to fill up the posts of 'State Examiner of Questioned Documents', in Police Laboratory in Crime Investigation Department, Government of Bihar, Patna. The advertisement,

inter alia, stated that written examination would be held if adequate number of applications were received. As very limited number of applications were received, the Commission, in terms of the advertisement, decided against the holding of written examination. It exercised the option to select the candidates for appointment to the said post on the basis of *viva voce* test alone. The Commission completed the process of selection and recommended the panel of selected candidates to the State of Bihar.

3. One Saiyed Hussain Abbas Rizwi, respondent No.1 herein, claiming to be a public spirited citizen, filed an application before the Commission (appellant herein) under the Right to Information Act, 2005 (for short "the Act") on 16th December, 2008 seeking information in relation to eight queries. These queries concerned the interview which was held on 30th September, 2002 and 1st October, 2002 by the Commission with regard to the above advertisement. These queries, *inter alia*, related to providing the names, designation and addresses of the subject experts present in the Interview Board, names and addresses of the candidates who appeared, the interview statement with certified photocopies of the marks of all the

candidates, criteria for selection of the candidates, tabulated statement containing average marks allotted to the candidates from matriculation to M.Sc. during the selection process with the signatures of the members/officers and certified copy of the merit list. This application remained pending with the Public Information Officer of the Commission for a considerable time that led to filing of an appeal by respondent No.1 before the State Information Commission. When the appeal came up for hearing, the State Information Commission vide its order dated 30th April, 2009 had directed the Public Information Officer-cum-Officer on Special Duty of the Commission that the information sought for be made available and the case was fixed for 27th August, 2009 when the following order was passed :

> "The applicant is present. A letter dated 12.08.2009 of the Public Information Officer, Bihar Public Service Commission, Patna has been received whereby the required paragraph-wise information which could be supplied, has been given to the applicant. Since the information which could be supplied has been given to the applicant, the proceedings of the case are closed."

4. At this stage, we may also notice that the Commission, vide its letter dated 12th August, 2009, had furnished the

information nearly to all the queries of respondent No.1. It also stated that no written test had been conducted and that the name, designation and addresses of the members of the Interview Board could not be furnished as they were not required to be supplied in accordance with the provisions of Section 8(1)(g) of the Act.

5. Aggrieved from the said order of the Information Commission dated 27th August, 2009, respondent No.1 challenged the same by filing a writ before the High Court of Judicature at Patna. The matter came up for hearing before a learned Judge of that Court, who, vide judgment dated 27th November, 2009 made the following observations and dismissed the writ petition :

> "If information with regard to them is disclosed, the secrecy and the authenticity of the process itself may be jeopardized apart from that information would be an unwarranted invasion into privacy of the individual. Restricting giving this information has a larger public purpose behind it. It is to maintain purity of the process of selection. Thus, in view of specific provision in Section 8(1)(j), in my view, the information could not be demanded as matter of right. The designated authority in that organization also did not consider it right to divulge the

information in larger public interest, as provided in the said provision."

6. Feeling aggrieved, respondent No.1 challenged the judgment of the learned Single Judge before the Division Bench of that Court by filing a letters patent appeal being LPA No.102 of 2010. The Division Bench, amongst others, noticed the following contentions :

(i) that third party interest was involved in providing the information asked for and, therefore, could properly be denied in terms of Section 2(n) read with Sections 8(1)(j) and 11 of the Act.

(ii) that respondent No.1 (the applicant) was a mere busybody and not a candidate himself and was attempting to meddle with the affairs of the Commission needlessly.

7. The Division Bench took the view that the provisions of Section 8(1)(j) were not attracted in the facts of the case in hand inasmuch as this provision had application in respect of law enforcement agency and for security purposes. Since no such consideration arose with respect to the affairs of the Commission and its function was in public domain, reliance on

the said provision for denying the information sought for was not tenable in law. Thus, the Court in its order dated 20th January, 2011 accepted the appeal, set aside the order of the learned Single Judge and directed the Commission to communicate the information sought for to respondent No.1. The Court directed the Commission to provide the names of the members of the Interview Board, while denying the disclosure of and providing photocopies of the papers containing the signatures and addresses of the members of the Interview Board.

8. The Commission challenging the legality and correctness of the said judgment has filed the present appeal by way of special leave.

9. The question that arises for consideration in the present case is as to whether the Commission was duty bound to disclose the names of the members of the Interview Board to any person including the examinee. Further, when the Commission could take up the plea of exemption from disclosure of information as contemplated under Section 8 of the Act in this regard.

10. Firstly, we must examine the purpose and scheme of this Act. For this purpose, suffice would it be to refer to the judgment of this Court in the case of *Namit Sharma* v. *Union of India* [2012 (8) SCALE 593], wherein this Court has held as under :

> "27. In terms of the Statement of Objects and Reasons of the Act of 2002, it was stated that this law was enacted in order to make the government more transparent and accountable to the public. It was felt that in the present democratic framework, free flow of information for citizens and non-Government institutions suffers from several bottlenecks including the existing legal framework, lack of infrastructure at the grass root level and an attitude of secrecy within the Civil Services as a result of the old framework of rules. The Act was to deal with all such aspects. The purpose and object was to make the government more transparent and accountable to the public and to provide freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto."

11. The scheme of the Act contemplates for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in

order to promote transparency and accountability in the working of every public authority. It was aimed at providing free access to information with the object of making governance more transparent and accountable. Another right of a citizen protected under the Constitution is the right to privacy. This right is enshrined within the spirit of Article 21 of the Constitution. Thus, the right to information has to be balanced with the right to privacy within the framework of law.

12. Where Section 3 of the Act grants right to citizens to have access to information, there Section 4 places an obligation upon the public authorities to maintain records and provide the prescribed information. Once an application seeking information is made, the same has to be dealt with as per Sections 6 and 7 of the Act. The request for information is to be disposed of within the time postulated under the provisions of Section 7 of the Act. Section 8 is one of the most important provisions of the Act as it is an exception to the general rule of obligation to furnish information. It gives the category of cases where the public authority is exempted from providing the information. To such exemptions, there are inbuilt exceptions under some of the provisions, where despite exemption, the

Commission may call upon the authority to furnish the information in the larger public interest. This shows the wide scope of these provisions as intended by the framers of law. In such cases, the Information Commission has to apply its mind whether it is a case of exemption within the provisions of the said section.

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

14. Now, we have to examine whether the Commission is a public authority within the meaning of the Act. The expression 'public authority' has been given an exhaustive definition under

section 2(h) of the Act as the Legislature has used the word 'means' which is an expression of wide connotation. Thus, 'public authority' is defined as any authority or body or institution of the Government, established or constituted by the Government which falls in any of the stated categories under Section 2(h) of the Act. In terms of Section 2(h)(a), a body or an institution which is established or constituted by or under the Constitution would be a public authority. Public Service Commission is established under Article 315 of the Constitution of India and as such there cannot be any escape from the conclusion that the Commission shall be a public authority within the scope of this section.

15. Section 2(f) again is exhaustive in nature. The Legislature has given meaning to the expression 'information' and has stated that it shall mean any material in any form including papers, samples, data material held in electronic form, etc. Right to information under Section 2(j) means the 'right to information' accessible under this Act which is held by or under the control of any public authority and includes the right to inspection of work, documents, records, taking notes, extracts, taking certified sample of materials, obtaining information in

the form of diskettes, floppies and video cassettes, etc. The right sought to be exercised and information asked for should fall within the scope of 'information' and 'right to information' as defined under the Act.

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

17. Before the High Court, reliance had been placed upon Section 8(1)(j) and Section 11 of the Act. On facts, the controversy in the present case falls within a very narrow compass. Most of the details asked for by the applicant have already been furnished. The dispute between the parties

related only to the first query of the applicant, that is, with regard to disclosure of the names and addresses of the members of the Interview Board.

18. On behalf of the Commission, reliance was placed upon Section 8(1)(j) and Section 11 of the Act to contend that disclosure of the names would endanger the life of the members of the interview board and such disclosure would also cause unwarranted invasion of the privacy of the interviewers. Further, it was contended that this information related to third party interest. The expression 'third party' has been defined in Section 2(n) of the Act to mean a person other than the citizen making a request for information and includes a public authority. For these reasons, they were entitled to the exemption contemplated under Section 8(1)(j) and were not liable to disclose the required information. It is also contended on behalf of the Commission that the Commission was entitled to exemption under Sections 8(1)(e) and 8(1)(g) read together.

19. On the contrary, the submission on behalf of the applicant was that it is an information which the applicant is entitled to receive. The Commission was not entitled to any exemption

under any of the provisions of Section 8, and therefore, was obliged to disclose the said information to the applicant.

20. In the present case, we are not concerned with the correctness or otherwise of the method adopted for selection of the candidates. Thus, the fact that no written examination was held and the selections were made purely on the basis of *viva voce*, one of the options given in the advertisement itself, does not arise for our consideration. We have to deal only with the plea as to whether the information asked for by the applicant should be directed to be disclosed by the Commission or whether the Commission is entitled to the exemption under the stated provisions of Section 8 of the Act.

21. Section 8 opens with the *non obstante* language and is an exception to the furnishing of information as is required under the relevant provisions of the Act. During the course of the hearing, it was not pressed before us that the Commission is entitled to the exemption in terms of Section 8(1)(j) of the Act. In view of this, we do not propose to discuss this issue any further nor would we deal with the correctness or otherwise of the impugned judgment of the High Court in that behalf.

22. Section 8(1)(e) provides an exemption from furnishing of information, if the information available to a person is in his fiduciary relationship unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. In terms of Section 8(1)(g), the public authority is not obliged to furnish any such information the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement and security purposes. If the concerned public authority holds the information in fiduciary relationship, then the obligation to furnish information is obliterated. But if the competent authority is still satisfied that in the larger public interest, despite such objection, the information should be furnished, it may so direct the public authority. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person places complete confidence in another person in regard to his affairs, business or transactions.

This aspect has been discussed in some detail in the judgment of this Court in the case of *Central Board of Secondary Education (supra)*. Section 8(1)(e), therefore, carves out a protection in favour of a person who possesses information in his fiduciary relationship. This protection can be negated by the competent authority where larger public interest warrants the disclosure of such information, in which case, the authority is expected to record reasons for its satisfaction. Another very significant provision of the Act is 8(1)(j). In terms of this provision, information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest. It will not be in consonance with the spirit of these provisions, if in a mechanical manner, directions

are passed by the appropriate authority to disclose information which may be protected in terms of the above provisions. All information which has come to the notice of or on record of a person holding fiduciary relationship with another and but for such capacity, such information would not have been provided to that authority, would normally need to be protected and would not be open to disclosure keeping the higher standards of integrity and confidentiality of such relationship. Such exemption would be available to such authority or department.

23. The expression 'public interest' has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression 'public interest' must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression 'public interest', like 'public purpose', is not capable of any precise definition . It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. [*State of Bihar* v. *Kameshwar Singh* (AIR 1952 SC 252)]. It also means the general welfare of the public that warrants recommendation and protection;

something in which the public as a whole has a stake [Black's Law Dictionary (Eighth Edition)].

24. The satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity. Similarly, there may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given their due implementation as they spring from statutory exemptions. It is not a decision simpliciter between private interest and public interest. It is a matter where a

constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional values under the Constitution of India.

25. First of all, the Court has to decide whether in the facts of the present case, the Commission holds any fiduciary relationship with the examinee or the interviewers. Discussion on this question need not detain us any further as it stands fully answered by a judgment of this Court in the case of *Central Board of Secondary Education & Anr.* v. *Aditya Bandopadhyay & Ors.* [(2011) 8 SCC 497] wherein the Court held as under :

> "**40.** There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-à-vis another partner and an employer vis-à-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others.

Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer.

41. In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words "information available to a person in his fiduciary relationship" are used in Section 8(1)(*e*) of the RTI Act in its normal and well-recognised sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary—a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically infirm/ mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a Director of a company with reference to a shareholder, an executor with reference to a legatee, a Receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with

reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body.

42. The duty of examining bodies is to subject the candidates who have completed a course of study or a period of training in accordance with its curricula, to a process of verification/examination/testing of their knowledge, ability or skill, or to ascertain whether they can be said to have successfully completed or passed the course of study or training. Other specialised examining bodies may simply subject the candidates to a process of verification by an examination, to find out whether such person is suitable for a particular post, job or assignment. An examining body, if it is a public authority entrusted with public functions, is required to act fairly, reasonably, uniformly and consistently for public good and in public interest.

43. This Court has explained the role of an examining body in regard to the process of holding examination in the context of examining whether it amounts to "service" to a consumer, in *Bihar School Examination Board* v. *Suresh Prasad Sinha* in the following manner: (SCC p. 487, paras 11-13)

> "*11*. ... The process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide

this function as partly statutory and partly administrative.

12. When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its 'services' to any candidate. Nor does a student who participates in the examination conducted by the Board, hire or avail of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education; and if so, determine his position or rank or competence vis-à-vis other examinees. The process is not, therefore, availment of a service by a student, but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service, but the charge paid for the privilege of participation in the examination.

13. ... The fact that in the course of conduct of the examination, or evaluation of answer scripts, or furnishing of marksheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a

> service provider for a consideration, nor convert the examinee into a consumer....”
>
> It cannot therefore be said that the examining body is in a fiduciary relationship either with reference to the examinee who participates in the examination and whose answer books are evaluated by the examining body.
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> XXX XXX XXX
>
> **49.** The examining body entrusts the answer books to an examiner for evaluation and pays the examiner for his expert service. The work of evaluation and marking the answer book is an assignment given by the examining body to the examiner which he discharges for a consideration. Sometimes, an examiner may assess answer books, in the course of his employment, as a part of his duties without any specific or special remuneration. In other words, the examining body is the “principal” and the examiner is the “agent” entrusted with the work, that is, the evaluation of answer books. Therefore, the examining body is not in the position of a fiduciary with reference to the examiner.”
>
> (emphasis supplied)

26. We, with respect, would follow the above reasoning of the Bench and, thus, would have no hesitation in holding that in the present case, the examining body (the Commission), is in no fiduciary relationship with the examinee (interviewers) or the candidate interviewed. Once the fiduciary relationship is not

established, the obvious consequence is that the Commission cannot claim exemption as contemplated under Section 8(1)(e) of the Act. The question of directing disclosure for a larger public interest, therefore, would not arise at all.

27. In *CBSE case* (supra), this Court had clearly stated the view that an examiner who examines the answer sheets holds the relationship of principal and agent with the examining body. Applying the same principle, it has to be held that the interviewers hold the position of an 'agent' vis-a-vis the examining body which is the 'principal'. This relationship *per se* is not relatable to any of the exemption clauses but there are some clauses of exemption, the foundation of which is not a particular relationship like fiduciary relationship. Clause 8(1)(g) can come into play with any kind of relationship. It requires that where the disclosure of information would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes, the information need not be provided. The High Court has rejected the application of Section 8(1)(g) on the ground that it applies only with regard to law enforcement or security purposes and does not have

general application. This reasoning of the High Court is contrary to the very language of Section 8(1)(g). Section 8(1)(g) has various clauses in itself.

28. Now, let us examine the provisions of Section 8(1)(g) with greater emphasis on the expressions that are relevant to the present case. This section concerns with the cases where no obligation is cast upon the public authority to furnish information, the disclosure of which would endanger (a) the life (b) physical safety of any person. The legislature, in its wisdom, has used two distinct expressions. They cannot be read or construed as being synonymous. Every expression used by the Legislature must be given its intended meaning and, in fact, a purposeful interpretation. The expression 'life' has to be construed liberally. 'Physical safety' is a restricted term while life is a term of wide connotation. 'Life' includes reputation of an individual as well as the right to live with freedom. The expression ' life' also appears in Article 21 of the Constitution and has been provided a wide meaning so as to *inter alia* include within its ambit the right to live with dignity, right to shelter, right to basic needs and even the right to reputation. The expression life under section 8(1(g) the Act, thus, has to be

understood in somewhat similar dimensions. The term 'endanger' or 'endangerment' means the act or an instance of putting someone or something in danger; exposure to peril or such situation which would hurt the concept of life as understood in its wider sense [refer Black's Law Dictionary (Eighth Edition)]. Of course, physical safety would mean the likelihood of assault to physical existence of a person. If in the opinion of the concerned authority there is danger to life or possibility of danger to physical safety, the State Information Commission would be entitled to bring such case within the exemption of Section 8(1)(g) of the Act. The disclosure of information which would endanger the life or physical safety of any person is one category and identification of the source of information or assistance given in confidence for law enforcement or security purposes is another category. The expression 'for law enforcement or security purposes' is to be read *ejusdem generis* only to the expression 'assistance given in confidence' and not to any other clause of the section. On the plain reading of Section 8(1)(g), it becomes clear that the said clause is complete in itself. It cannot be said to have any reference to the expression 'assistance given in confidence for

law enforcement or security purposes'. Neither the language of the Section nor the object of the Section requires such interpretation. It would not further the cause of this section. Section 8 attempts to provide exemptions and once the language of the Section is unambiguous and squarely deals with every situation, there is no occasion for the Court to frustrate the very object of the Section. It will amount to misconstruing the provisions of the Act. The High Court though has referred to Section 8(1)(j) but has, in fact, dealt with the language of Section 8(1)(g). The reasoning of the High Court, therefore, is neither clear in reference to provision of the Section nor in terms of the language thereof.

29. Now, the ancillary question that arises is as to the consequences that the interviewers or the members of the interview board would be exposed to in the event their names and addresses or individual marks given by them are directed to be disclosed. Firstly, the members of the Board are likely to be exposed to danger to their lives or physical safety. Secondly, it will hamper effective performance and discharge of their duties as examiners. This is the information available with the examining body in confidence with the interviewers.

Declaration of collective marks to the candidate is one thing and that, in fact, has been permitted by the authorities as well as the High Court. We see no error of jurisdiction or reasoning in this regard. But direction to furnish the names and addresses of the interviewers would certainly be opposed to the very spirit of Section 8(1)(g) of the Act. *CBSE case* (supra) has given sufficient reasoning in this regard and at this stage, we may refer to paragraphs 52 and 53 of the said judgment which read as under :

> "**52.** When an examining body engages the services of an examiner to evaluate the answer books, the examining body expects the examiner not to disclose the information regarding evaluation to anyone other than the examining body. Similarly the examiner also expects that his name and particulars would not be disclosed to the candidates whose answer books are evaluated by him. In the event of such information being made known, a disgruntled examinee who is not satisfied with the evaluation of the answer books, may act to the prejudice of the examiner by attempting to endanger his physical safety. Further, any apprehension on the part of the examiner that there may be danger to his physical safety, if his identity becomes known to the examinees, may come in the way of effective discharge of his duties. The above applies not only to the examiner, but also to the scrutiniser, co-ordinator and

head examiner who deal with the answer book.

53. The answer book usually contains not only the signature and code number of the examiner, but also the signatures and code number of the scrutiniser/co-ordinator/head examiner. The information as to the names or particulars of the examiners/co-ordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8(1)(*g*) of the RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Therefore, if the examinees are to be given access to evaluated answer books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer book which does not contain any information or signature of the examiners/co-ordinators/scrutinisers/head examiners, exempted from disclosure under Section 8(1)(*g*) of the RTI Act. Those portions of the answer books which contain information regarding the examiners/co-ordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered, or otherwise severed from the non-exempted part of the answer books, under Section 10 of the RTI Act."

30. The above reasoning of the Bench squarely applies to the present case as well**.** The disclosure of names and addresses of the members of the Interview Board would *ex facie* endanger their lives or physical safety. The possibility of a failed

candidate attempting to take revenge from such persons cannot be ruled out. On the one hand, it is likely to expose the members of the Interview Board to harm and, on the other, such disclosure would serve no fruitful much less any public purpose. Furthermore, the view of the High Court in the judgment under appeal that element of bias can be traced and would be crystallized only if the names and addresses of the examiners/interviewers are furnished is without any substance. The element of bias can hardly be co-related with the disclosure of the names and addresses of the interviewers. Bias is not a ground which can be considered for or against a party making an application to which exemption under Section 8 is pleaded as a defence. We are unable to accept this reasoning of the High Court. Suffice it to note that the reasoning of the High Court is not in conformity with the principles stated by this Court in the *CBSE case* (supra). The transparency that is expected to be maintained in such process would not take within its ambit the disclosure of the information called for under query No.1 of the application. Transparency in such cases is relatable to the process where selection is based on collective wisdom and collective marking. Marks are required

to be disclosed but disclosure of individual names would hardly hold relevancy either to the concept of transparency or for proper exercise of the right to information within the limitation of the Act.

31. For the reasons afore-stated, we accept the present appeal, set aside the judgment of the High Court and hold that the Commission is not bound to disclose the information asked for by the applicant under Query No.1 of the application.

.....J.
(Swatanter Kumar)

.....J.
(Sudhansu Jyoti Mukhopadhaya)

New Delhi,
December 13, 2012

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELALTE JURISDICTION

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

Central Board of Secondary Education & Anr. … Appellants

Vs.

Aditya Bandopadhyay & Ors. … Respondents

With

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

J U D G M E N T

R.V.RAVEENDRAN, J.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

xxxx

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

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

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

xxxx

62. Maintenance of Answer Books

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

(emphasis supplied)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Relevant Legal Provisions

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

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

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

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

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

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

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

(f) information received in confidence from foreign Government;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) any document, manuscript and file;

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

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

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

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

(i) inspection of work, documents, records;

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

(iii) taking certified samples of material;

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

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

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

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

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

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

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

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

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

Re : Question (i)

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

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

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

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

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

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

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

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

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

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

Re : Question (ii)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Re : Question (iii)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Re : Question (iv)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ix) a directory of its officers and employees;

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

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

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

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

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

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

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

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

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

(emphasis supplied)

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

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

New Delhi;
August 9, 2011.

ITEM NO.56 COURT NO.11 SECTION XIV

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

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

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

DIRECTORATE OF ENFORCEMENT
Petitioner(s)

VERSUS

ARUN KUMAR AGRAWAL & ORS.
Respondent(s)

(With prayer for interim relief and office report)

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

CORAM :

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

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

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

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

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

O R D E R

UPON hearing counsel the Court made the following

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

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

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

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

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

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

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

The Institute of Chartered Accountants of India … Appellant

Vs.

Shaunak H.Satya & Ors. … Respondents

J U D G M E N T

R.V.RAVEENDRAN,J.

Leave granted.

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

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

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

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

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

(emphasis supplied)

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

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

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

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

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

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

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

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

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

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

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

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

* This figure may contain some pass candidates also.

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

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

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

* This figure may contain some pass candidates also.

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

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

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

(emphasis supplied)

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

"Re: Query No.3.

Decision:

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

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

Re : Query No.5.

Decision**:**

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

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

Re : Query No.13.

Decision**:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Re: Question (i)

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

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

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

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

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

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

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

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

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

Re : Question (ii)

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

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

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

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

Re : Question (iii)

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

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

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

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

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

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

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

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

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

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

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

Re : Question (iv)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

General submissions of ICAI

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

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

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

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

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

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

……J.
(R V Raveendran)

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

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.34868 OF 2009

Khanapuram Gandaiah … Petitioner

Vs.

Administrative Officer & Ors. … Respondents

O R D E R

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

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

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

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

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

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

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

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

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

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

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

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

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

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

…….CJI.
(K.G. BALAKRISHNAN)

…….J.
(Dr. B.S. CHAUHAN)

New Delhi,
January 4, 2010

EVENT CONTRACT FORM
RADISSON BLU HOTEL RANCHI

NAME OF THE GUEST: MR. O.P KHORWAL / MR. T.K KONAR

COMPANY: NTPC LIMITED

ADDRESS: NTPC Limited (A Government of India Enterprises), Ranchi Commercial Office
F-51, Sector-III, HEC Township, Dhurwa, Ranchi-834004 (Jharkhand)

E MAIL: okhorwal@yahoo.com / opkhorwal@ntpc.co.in / tkkonar@ntpc.co.in

LAND LINES: - 0651-2444196 **MOBILE NO.** +91 9650990241 / +91 9431701911
FAX: - 0651-2442533

DATE OF FUNCTION: 1ST, 2ND & 3RD DEC.2011 **DAY:** THURSDAY, FRIDAY, And SATURDAY

OCCASION: RESIDENTIAL CONFERENCE **VENUE:** AS SUITABLE

START TIME: 09:00 AM **END TIME:** 05:00 PM

LOBBY SIGNAGE:

PAN NUMBER (PHOTO COPY TO BE ATTACHED) OR FORM 60

PAYMENT MODE: -

ADVANCE PAID: - **M.R. NUMBER: -** **DATE:-**

BILLING INSTRUCTION FOR REST PAYMENT:

RATE PER PERSON + TAX & SERVICE CHARGE EXTRA:

BUFFET LUNCH ON 1ST, 2ND AND 3RD OF DECEMBER, 2011
INR 650+ TAXES. (INCLUSIVE OF 2 ROUNDS OF TEA/COFFEE WITH COOKIES DURING CONFERENCE HOURS.)

BANQUET SALES DATE GUEST SIGNATURE

SETUP DETAILS

U- SETUP FOR-

HEAD TABLE FOR-

THEATRE STYLE SET UP FOR – 70 PEOPLE ON 2ND AND 3RD DEC, 2011

CLASS ROOM SET UP FOR –

INFORMAL SET UP FOR -

ROUND TABLE SET UP FOR - 70 PEOPLE ON 1ST DEC, 2011

COLOUR OF LINEN:

COLOUR OF CHAIRS COVERS

CHAIR BOWS

MINIMUM GUARANTEED PEOPLE: 60

MAXIMUM ANTICIPATED PEOPLE: 70

RATE FOR AERATED SOFT DRINKS	: INR 165+TAXES (2 LITRE BOTTLE)
JUICE	: INR 175+TAXES (1 LITRE PACK)
MOCKTAILS	: INR 275+TAXES
SODA	: INR 70+TAXES
MINERAL WATER	: INR 70+TAXES (1 LITRE BOTTLE)

TAX & SERVICE CHARGE EXTRA AS APPLICABLE

BANQUET SALES DATE GUEST SIGNATURE

REQUIREMENT OF HARD DRINKS BAR WILL BE CLOSED BY 2300 HRS	
	1. **2.** **3.** **4.** **5.** **6.** **7.** **8.** **9.** **10.**

CORKAGE CHARGE: N/A

TIMINGS FOR SNACKS **ONLY FOR 90 MINUTES**

TIMINGS FOR MAIN COURSE SERVICE

(KITCHEN CLOSES AT 0000 HRS)

ENTERTAINMENT AND AUDIO VISUALS REQUIRED

SOUND SYSTEM, PIPE MUSIC, LIVE BAND

DANCE FLOOR, DJ SERVICES

1 L.C.D PROJECTOR WITH SCREEN	**: -**	INR 3500+TAXES/DAY
1 P.A.SYSTEMS	**: -**	INR 1000+TAXES/DAY
1 PODIUM WITH MIKE	**: -**	INR 800+TAXES/DAY
1 COLLAR MIKE	**: -**	INR 800+TAXES/DAY

(MUSIC ALLOWED TILL MAX 2300 HRS)

FLORAL DECORATION DETAILS: - TYPES OF ARRANGEMENTS

APART FROM THESE ANY OTHERS

BANQUET SALES DATE GUEST SIGNATURE

MENU SPECIFICATIONS

	BUFFET LUNCH
SOUP	1 VEG
SALADS	3 VARIETY
MAINCOURSE NON –VEGETARIAN	2 VARIETY
VEGETARIAN MAINCOURSE	3 VARIETY
LENTIL	1 VARIETY
RICE	1 VARIETY
YOGHURT OPTIONS	1 VARIETY
ASSORTMENT OF BREADS	2 VARIETY
DESSERTS	2 VARIETY

HI TEA: INR 350+TAXES (1 VEG & 1 NON VEG SNACKS AND 1 DESSERT)

BANQUETS:

EMILIA AND ASTOR REQUIRED WITH **ROUND TABLE** SET UP FOR 70 PEOPLE ON **1ST DEC, 2011**

CLUB LOUNGE & TGKF WITH **THEATRE STYLE** SET UP FOR 70 PEOPLE EACH ON **2ND DEC.2011**

CLUB LOUNGE WITH **THEATRE STYLE** SET UP FOR 70 PEOPLE ON **3RD DEC, 2011**

BANQUET TIMING: 09:00 AM TO 05:00 PM

STAGE SETUP: 10ft x12ft = INR.7200 (FOR 6 PEOPLE SITTING ARRANGEMENT)
10ft x18ft = INR.10800 (FOR 10 PEOPLE SITTING ARRANGEMENT)

ROOMS REQUIREMENT: 30 ROOMS

ROOM RATE (PER ROOM PER NIGHT):

ROOM CATEGORY	SPECIAL TARIFF SINGLE (CP)	SPECIAL TARIFF DOUBLE (CP)	SPECIAL TARIFF SINGLE (AP)	SPECIAL TARIFF DOUBLE (AP)
SUPERIOR ROOM	INR 4950	INR 5850	INR 5500	INR 6500
BUSINESS CLASS	INR 6750	INR 6750	INR 7000	INR 8000

(ABOVE RATES ARE EXCLUSIVE OF 12.5% LUXURY TAX AND 5.15% SERVICE TAX)

CP (CONTINENTAL PLAN): INCLUSIVE OF ACCOMODATION & BUFFET BREAKFAST.

AP (AMERICAN PLAN): INCLUSIVE OF ACCOMODATION, BUFFET BREAKFAST LUNCH AND DINNER.

CHECK IN DATE : 01.12.2011
CHECK OUT DATE : 04.12.2011

CHECK IN TIME : 12:00 NOON
CHECK OUT TIME : 12:00 NOON

PROPOSED COSTING
RATE WOULD BE INCLUDING TAXES

RATE OF CONFERENCE PACKAGE **RATE OF HI-TEA** **RATE OF LUNCH (SOCIAL)** **RATE OF COCKTAIL DINNER** **RATE OF DINNER (SOCIAL)** **BOARD ROOM RATE**		
EX-HIBITION OR EDUCATION FAIR (HALL RENTAL) **TIMIING**		
AUDIO VISUAL **LCD WITH SCREEN**		
P.A. SYSTEMS **ADDITIONAL MIKE**		
DJ WITH DANCE FLOOR **Or LIVE BAND**		
DJ WITH DANCE FLOOR **FROM KOLKATA**		
DANCE GROUP WITH DJ		
LIVE BAND		
INTERIOR DECORATION **STAGE**		
TOTAL APPROXIMATE COSTING		

BANQUET SALES DATE GUEST SIGNATURE

TERMS AND CONDITIONS

Advance Policy:

- **In Case the company is on the Hotels credit list, then a bill to company letter on the company letter head would be required 72 hrs before the function.**
- **In case the company or the individual holding the event in the hotel is not on the credit list then the following would be required.**
- **100% advance of the estimated billing is to be deposited prior to the Event date, on the basis of the following schedule:**
- **50% of the estimated billing at the time of confirmation.**
- **25% of the balance estimated billing at least 15 days prior.**
- **Balance 25% before 48 hours of the function**
- **Please note that hotel reserves the right to cancel the event in case of non-adherence to the above terms & conditions.**
- **The above deposit would be on non-refundable /non-adjustable basis.**
- **Kindly furnish a copy of your PAN card/passport photocopy for record at the time of confirmation as per Income Tax requirement**

At the time of final payment, in case of Tax Deducted at Source (TDS), the TDS certificate is to be provided within 30 days of the final settlement of bills. Our Permanent Account Number (PAN) is ----------.

Releasing Tentative Bookings

The RADISSON HOTEL RANCHI reserves the right to cancel any tentative booking, which is not confirmed within three working days of the reservation, being made. The hotel will inform the guest on the same, prior to releasing the date to other prospective guests.

Set-up related (Preventing Damage and Property Insurance Issues)

(i) **The Hotel does not permit:**

- Guest to use nails, scotch tape, pins to put up posters or banners on the panels, walls or doors of banquet rooms (No nails, staples or screws are to be driven into the walls, doors, pillars or other parts of the structure of the premises). The hanging of banners, posters or any other object by using nails, thumb tacs, tape or by any other means is not permitted. Freestanding framed banners shall be permitted.
- Locking / blocking of fire exit doors with equipment
- Sawing or painting
- Moving of heavy equipment in the function room without proper protection for the floors
- Tampering or removal of Hotel's electrical and power installation
- The use of flammable and explosive materials for visual display.
- Dumping of construction debris of any kind into our compactor or back service areas.
- Cutting and trimming hotel existing trees or plants are not allowed.

It is the responsibility of the client for the protection of all hotel surfaces. In case the vendor (Florist, Dj, Audio Visual, etc.) is hired by the guest, an undertaking have to be signed that in case of outside props or equipment brought into the hotel by them or their affiliates, damage to the hotel surfaces due to disregard of hotel policy in this matter, will be billed by the hotel as deemed fit to compensate the loss or damage to hotel property.

- All display material within the banquet area requires the approval of RADISSON HOTEL RANCHI management
- Welcome signage or banner display in the lobby / driveway or any other part of the hotel premises except inside the banquet venue
- Backdrop if any, should be self-supporting
- Location of any guests' signage must be confined within the function room premises
- For Exhibitions or big set-ups - Dimensional drawing / floor plans showing the layout of booths or stage / ramp, console, etc… must be submitted to the Hotel for approval before any work can be carried out
- The guest is responsible for directing their contractors to observe the Hotel's guidelines and such the guest is responsible for any damages incurred by them or the contractor to the Hotel premises
- The guest is liable for any damage caused to RADISSON HOTELS RANCHI property or equipment by the guests or the guest's attending the event.
- The people involved in the movement of the material and erecting the set-up for the event from the guests' end needs to maintain discipline in the Hotel premises. They need to be in neat and clean / proper uniforms. Also, they should be well disciplined and their movement should be confined to the premises of the function venue. There should be no noise created by them outside the function premises / in the corridors, etc. All set- ups will have to happen under the supervision of Hotel staff.
- The Hotel does not provide storage facilities and will not accept liability for the damage incurred to uncollected goods. All goods stored before the function will be at guests own risk
- The Hotel will not accept any responsibility for damage or loss of merchandise / guest's belongings left in the Hotel prior to, during or after the function. The organizers should organize their own insurance & / or security
- The Hotel will not be responsible for lost of valuable items displayed overnight, during the event and period when there are no guest on the premises
- All goods / display material have to be entered from the Hotel service gate under the supervision of security personnel.
- RADISSON HOTEL RANCHI reserves the right to reduce volume levels should these levels exceed the comfort level and cause inconvenience to other Hotel guests.
- All the detailing of the Banquet function, including menu, seating arrangement, floral arrangement and requirement of audio/visual equipments must be finalized at least 72 hours prior to the function. In the absence of the finalization of the menu 72 hours prior to the event, please note that the hotel will go ahead with the Chef's choice menu.
- The representative(s) at The RADISSON HOTEL RANCHI and the client will jointly count the number of guests and / or the quantity of food and beverages served at the function and the said number will be binding on the client for the purpose of bill settlement.
- For events wherein the electricity requirement is heavy or uninterrupted power supply is required, the hotel would require intimation on the same at least 72 hours prior to the event. The above would be charged @ Rs.5500/- plus taxes per hour.

Venue Allocation

Allocation of space is in accordance to the minimum numbers expected. Should the minimum expected numbers fall below the initially advised numbers less than 03 days prior to the event, the allocation of space would change in accordance to the capacity of each function room at the discretion of the hotel.

In event of utilization of hall beyond the timings on our agreement, the same would invite a rental charge of Rs.20, 000/- plus taxes per hour (in case of the venue is not sold to another party).

Please note that the Banquet area is non-smoking. Hence any guest attending an event and wanting to smoke will have to either step to the prescribed area. Any violation to this policy will not be acceptable by the Hotel management.

Food Beverage Excise Policy.

- There are no discounted rates for children.
- The hotel on behalf of the guest will obtain a temporary liquor license as per the Excise regulation and the fee of **Rs.---------** will be charge on your final bill.
- All beverages would be charged as per actual consumption
- The liquor service would close at 23**00hrs** as per Jharkhand Excise Regulations.
- All non-alcoholic and alcoholic beverages need to be purchased from the hotel. **We would be happy to offer you Special liquor packages and liquor bottle rates. Attached find a file with all information**
- **Embassy is allowed to get its liquor if all prior permission from MEA and EXCISE is taken. Attached please find rules to apply for permission.**
- **The Hotel would require a minimum guarantee of guest attending the function 72hrs prior to the event.**
- **We would provide service of food and beverage to 15 % above the minimum guarantee confirmed. In case of an increase thereafter, the hotel would levy a surcharge of 25% above the rate agreed on by the hotel and the guests.**

Government Approvals.

- In case of a Fashion Show/Exhibition/Live performance / Celebrity performance in any event, the following approvals are required at the hotel 72 hours prior to the function NOC [No objection certificate] from the Entertainment tax office, /Clearance from the DCP / DCP Licensing Ranchi / DCP Traffic, Ranchi.
- In case of a DJ performance, the NOC (No objection certificate) from the entertainment tax office, is required 72 hours prior to the function and also the DJ should carry a PPL License.

Billing

- The bills will be settled directly at the end of the function via demand draft/credit card/cash. All payments more than Rs 24,500/-, whether in cash or cheque will be received with a copy of PAN NUMBER of the company or individual.

Guest Conduct

(i) RADISSON HOTEL RANCHI reserves the right of admission and entry of persons entering the Hotel's facilities. In the unfortunate event that the guest's or their guests' behavior become unacceptable and causes embarrassment or discomfort to others (guest or Hotel staff), Management of the Hotel reserves the right to have the individual or individuals removed from the hotels premises.

(ii) If the Hotel has reason to believe that a function would affect the smooth running of the Hotel business, security or reputation it reserves the right to refuse or cancel the function without liability.

Cancellation Policy

i. **In case of a cancellation between 30 days and 15 days prior to the commencement of the function, the Hotel reserves the right to charge 25% of minimum guarantee as retention.**
ii. **In case of a cancellation between 15 days and 07 days prior to commencement of the function, Hotel reserves the right to charge 50% of the total estimated billing as retention.**
iii. **In case of a cancellation less than 07 days prior to commencement of the function, the Hotel reserves the right to charge 100% of the expected bill as retention**
iv. **In the event of postponement of the event to another date within 15 days of event date, it is to be treated as a cancellation; the above guidelines would still apply. .**

BANQUET SALES DATE GUEST SIGNATURE

Tax Structure

FOOD/SNACKS/HITEA -14 VAT % Service Tax -3.09 % service charge 10.00% & VAT on Service Charge, Service Tax on Service Charge, on the total food bill TOTAL ---- 27.09%.

ALCOHOLIC BEVERAGES are ---% DVAT + 10% Service charge+3.09% Service Tax. Total 13.09%.

NON ALCOHOLIC BEVERAGES are –14% VAT, 3.09% Service Tax, 10 % service charge & VAT on Service Charge, Service Tax on Service Charge; on the total bill TOTAL – 27.09%.

HALL RENTALS are ----- 10.3% Service Tax, 12.5 Luxury Tax on total bill TOTAL-22.80%.

AUDIO VISUAL/MISC. are 10.3 % Service Tax / 12.5 Luxury Tax = 22.8 %.

Should there be any additional taxes imposed by the Government of India or the liquor license fee is revised, they will be charged for on your bill accordingly.

Please note that all the above rates and discounts have been offered as a package, keeping in view your current requirement. Should there be a change in the program in terms of dates or number of rooms or number of events, the rates would vary accordingly.

PLEASE NOTE ALL DOCUMENTED ON THIS WILL BE PART OF AGREEMENT, NO VERBAL COMMITMENTS WILL BE HONORED.

I UNDERSTAND AND AGREE TO THE ABOVE TERMS AND CONDITIONS LISTED ABOVE

AGREE AND ACKNOWLEDGED BY:-

GUEST SIGNATURES : - _____

GUEST NAME : - _____

NAME OF THE COMPANY: - _____

BANQUET SALES DATE GUEST SIGNATURE

ITEM NO.24 COURT NO.3 SECTION IVB

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

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

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

P.C.WADHWA
Petitioner(s)

VERSUS

CENTRAL INFORMATION COMMN. & ORS.
Respondent(s)

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

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

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

For Respondent(s)

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

Special leave petition is dismissed.

(Ravi P. Verma)
Court Master

(Sneh Lata Sharma)
Court Master

Dear all,
Five days remain for sending comments and views on the Right to Information (Amendment) Bill, 2013 (the Bill) to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. While the powers that be might be inclined to do a rethink on the Ordinance intended to let convicted MPs and hold on to their seats, the effort to amend the RTI Act to keep political parties out of its ambit goes on without much soul-searching. Recent news reports about the Cabinet Note attached to the Bill (accessible on the Dept. of Personnel's website at: http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/1_13_2013-IR.pdf) have indicated that the Government intends to exclude all political parties from the *Right to Information Act, 2005* (RTI Act) and not just those six national parties which were declared as public authorities by the Central Information Commission in June this year. In fact the text of the RTI Amendment Bill itself makes this intention very clear. The Cabinet Note only provides the reasoning for this retrograde move of the Government.

Unfortunately, by claiming that political parties are private bodies, political leaders opposed to transparency have reduced the status and prestige of their parties to the level of ordinary associations and clubs which appear and disappear with time. I have explained below **three** not so well known arguments which you may use while sending your views as to why political parties must become transparent under the country's regime of transparency. They go far deeper than the argument of being "substantially financed" by the Government given under Section 2(h) of the RTI Act. A summary of these arguments is given below while the full text is given in the attachment.

1) Multi-party system is part of the basic structure of the Indian Constitution:
Since 1973 the Supreme Court of India has evolved the doctrine of "basic structure" comprising of "basic features" of the Constitution, to limit the power of Parliament to amend this fundamental law of the land beyond recognition. After describing this doctrine in *H.H. Kesavananda Bharati Sripadagalavaru vs State of Kerala* [1973 (4) SCC 225ff] the Supreme Court has identified and reiterated several basic features of the Constitution in later judgements. The most important and oft repeated of these basic features is "parliamentary democracy based on rule of law and free and fair elections". A brief description of the history and evolution of this doctrine is available at: http://www.humanrightsinitiative.org/publications/const/the_basic_structure_of_the_indian_constitution.pdf

There is a very strong connection between the basic structure of the Constitution and political parties even though they were not mentioned anywhere in the Constitution until the insertion of amendments pertaining to the Tenth Schedule in 1985. The Tenth Schedule contains provisions for disqualifying members of Parliament and State Legislatures who defect from or join a political party after being elected, subject to certain conditions.[1]

[1] Mr. Sunil Ahya, RTI activist from Maharashtra was perhaps the first to publicly raise the question whether the RTI Amendment Bill, if enacted, would violate the basic structure of the Indian Constitution, on the RTI e-discussion group: humjanenge@yahoogroups.com. Although he holds the view that the Apex Court can strike down a law that violates the basic structure of the Constitution as being *ultra vires*, a careful perusal of the multitude of judgements

Seven years ago a Constitution Bench of the Supreme Court unanimously held that "parliamentary democracy" and "**multi-party system**" are an inherent part of the basic structure of the Indian Constitution [*Kuldip Nayar vs Union of India and Ors.* (2006) 7 SCC1 para 195, accessible at: http://judis.nic.in/supremecourt/imgs1.aspx?filename=30905).

This position has been reiterated by a 3-member Bench of the Apex Court in its recent judgement on the issue of the right of the voter to reject all candidates contesting an election to Parliament or State Legislatures now becoming popular as the NOTA case ("None of the Above") [*PUCL Vs Union and Anr. vs Union of India and Anr.*, WP (C) No. 161 of 2004; judgement accessible at: http://judis.nic.in/supremecourt/imgs1.aspx?filename=40835].

A multi-party system derives its identity and meaning from its constituent components, namely, all 'political parties' that routinely put up candidates in every election to be chosen to represent people in Parliament and the State Legislatures. They form the government if they acquire a majority of seats in the Lok Sabha or the Vidhan Sabha or sit on the Opposition benches if they fail. So after *Kuldip Nayar*, political parties cannot justifiably claim to be private bodies like the hundreds of Rotary or Lions Clubs or other private associations of individuals in India. Political parties, whether in Government or in the Opposition, are undoubtedly bodies that exist and work for in the public interest. As components of the multi-party system they indisputably acquire a public character and are indispensable for the very existence of India's multi-party based parliamentary form of government. Further because of the fact that the term "original political party" is defined under paragraph 1(c) of the Tenth Schedule of the Constitution, they may also become bodies constituted under the Constitution – a criterion for determining public authorities mentioned under Section 2(h)(i) of the RTI Act. There is very little justifiable reason why political parties ought not to be brought under the country's regime of transparency just like all other organs of the State, namely, the Executive, the Judiciary and most importantly, the Legislature which is mostly filled up with their own members as observed by the Court.

2) Some categories of information about Parliament's working are held only by political parties:
It is rather unfortunate that one of the appellant's arguments based on the Tenth Schedule was weakly constructed before the CIC for declaring political parties as public authorities under the RTI Act.[2] An important arm of a political party is its legislature party or parliamentary party comprising of their members elected to the Lok Sabha and the Rajya Sabha.[3] The Minister for Parliamentary Affairs is the Chief whip for the ruling party/alliance in the Lok Sabha while the Minister of State

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of the Court pronouncing on the validity of laws indicates that this is not the correct position. In several judgements the Apex Court has ruled that the validity of laws can be challenged only on the basis of:

a) Absence of legislative competence of Parliament or the State Legislature which enacted the law; and

b) Violation of the fundamental rights guaranteed under Part III of the Indian Constitution.

[2] One of the appellants argued that these parties had the power to get an MP disqualified for defecting or joining another political party or for defying a party whip to act in a certain manner. The CIC accepted this argument without subjecting it to deeper scrutiny.

[3] Smaller groups of MPs belonging to a political party are called parliamentary groups.

for Parliamentary Affairs is their Chief Whip in the Rajya Sabha. The leaders and deputy leaders of other recognised legislature parties or groups are also known as 'chief whips'. They ensure that MPs belonging to their parties toe the party line on almost every issue. Under *The Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998*, they are entitled to office space, a telephone line and secretarial services, all free of cost (the text of this law is available on the website of the Ministry for Parliamentary Affairs at: http://mpa.nic.in/actwhip.htm). The offices of these leaders and deputy leaders of legislature parties hold the following categories of information in material form which are not accessible to the people anywhere else:

1) Criteria for selecting members of the legislature party/parliamentary group to represent the party/group on the various committees of Parliament;
2) Criteria for selecting members of the legislature party/parliamentary group to speak on any issue or Bill in either House;
3) Contents of the 'whip' or instruction issued to the members of the legislature party/ parliamentary group during a discussion on a 'motion of confidence' for or a 'motion of no confidence' against a government;
4) Contents of the 'whip' or instruction issued to the members of the legislature party/ parliamentary group on any matter raised on the floor of the House such as a discussion or voting on any Bill or other motion moved by Government or any member;
5) Contents of the 'whip' or instruction issued to the members of the legislature party/ parliamentary group during the election of the President or the Vice President of India; and
6) The minutes of the meetings of the legislature party/ parliamentary group on all matters relating to the business of Parliament;

These categories of information are not held by the Secretariats of the Lok Sabha and the Rajya Sabha which are covered by the RTI Act. Neither these Secretariats nor the Government nor the Election Commission of India can demand the production of these categories of information from these political parties under any law. In other words a whole range of information that relates entirely to the functioning of MPs in Parliament is simply not accessible to the citizen-taxpayer under any law even though he/she pays for the expenses incurred in creating and maintaining such information. This information is available only with the respective political parties. In the absence of a legal obligation to disclose information citizens who elected an MP will simply have no information about the working of the machinery that controls his/her behavior in Parliament. This is one of the reasons why citizens are unable to clearly understand the reasons behind the actions of political parties that stall progressive legislation such as the Women's Reservation Bill or the Lokpal and Lokayuktas Bill. Further, under paragraph 1(b) of the Tenth Schedule of the Constitution "legislature parties" are defined as a collective of all members of a House of Parliament belonging to a political party. So such legislature parties also may also become bodies constituted under the Constitution – a criterion for determining public authorities mentioned under Section 2(h)(i) of the RTI Act.

3) Central Government's decision on Rajya Sabha Committee's report on the Lokpal Bill:

By introducing the RTI Amendment Bill the Government has contradicted the principle behind one of its own decisions regarding the Lokpal and Lokayuktas Bill 2011 for a second time. After the Lok Sabha passed the Lokpal and Lokayuktas Bill in December 2011 it was introduced in the Rajya Sabha and referred to a Select Committee for detailed discussion. In November 2012 the Select Committee submitted a report recommending several major changes in the Bill. One of the recommendations was to exclude all bodies and institutions financed by donations received from the public. Readers will remember that a major ground for criticism of the CIC's order raised by political parties was that the amount of funds they collected by way of public donations was much more than the funding- direct or indirect received from the Government. In January this year the Union Cabinet took a decision on the recommendations made by the Select Committee. At para #2, the Government's press release disseminated by the Press Information Bureau states (accessible at: http://pib.nic.in/newsite/erelease.aspx?relid=91960):

"Government has decided to exempt only such bodies or authorities established, constituted or appointed by or under any Central or State or Provincial Act providing for administration of public religious or charitable trusts or endowments or societies for religious or charitable purposes registered under the Societies Registration Act. Other non governmental bodies receiving donation from the public would thus remain within the purview of Lokpal." [emphasis supplied]

This decision pertains to Clause 14(h) of the Lokpal Lokayuktas Bill which brings all non-governmental organizations including all associations of persons under the purview of the Lokayukta proposed to be set up for combating corruption. The office-bearers of all such bodies would be treated as public servants for the purpose of the *Prevention of Corruption Act, 1988*. Section 2(1)(f) of the *Representation of the People Act, 1951* defines a political party as:

"an association or body of individual citizens of India registered with the Election Commission of India as a political party under section 29A." [emphasis supplied]

By deciding to keep all NGOs and associations of persons other than religious and charitable institutions within the purview of the Lokpal and Lokayuktas Bill, the Government consented in principle to bring political parties and their office bearers within the ambit of that Bill. Political parties will have to provide any and all information sought by the Lokpal for the purpose of inquiry/investigation of allegations of corruption against their officers. Given this public stance of the Government it is important to ask the question:

"if this principle is good enough for the accountability of political parties why is not good enough for their transparency?"

DEFEND THE PEOPLE'S RIGHT TO KNOW! SEND SUBMISSIONS TO THE PARLIAMENTARY COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE.

Compiled and disseminated by Venkatesh Nayak, Access to Information Programme, Commonwealth Human Rights Initiative, New Delhi for the purpose of raising awareness and public education. October, 2013.

राज्य सूचना आयोग
चौथा तल्ला, सूचना भवन, बेली रोड, बिहार, पटना।
दूरभाष–2225713, 2235059, फैक्स–2235466

वाद सं.– 17662/08–09
श्री सैयद हुसैन अब्बास रिज्वी
बनाम
लोक सूचना पदाधिकारी सह विशेष कार्य पदाधिकारी, बिहार लोक सेवा आयोग, पटना।

उपरोक्त वाद में दिनांक **27.8.09** को माननीय राज्य सूचना आयुक्त मो0 शकील अहमद द्वारा पारित आदेश का उद्धरणः–

"आवेदक उपस्थित हैं। लोक सूचना पदाधिकारी, बिहार लोक सेवा आयोग, पटना का दिनांक 12.8.09 का पत्र प्राप्त है जिसके द्वारा कंडिकावार सूचना आवेदक को दे दी गयी है। चूंकि देय सूचना आवेदक को दे दी गयी है, अतः वाद की कार्रवाई समाप्त की जाती है। "

ह0/–
(मो0 शकील अहमद)
राज्य सूचना आयुक्त

ज्ञापांक–3640/रा.सू.आ. पटना, दिनांक–21.09.09

प्रतिलिपिः– लोक सूचना पदाधिकारी, बिहार लोक सेवा आयोग, पटना को सूचना एवं आवश्यक कार्यार्थ प्रेषित।

(उमेश कु0 सिंह)
विधि पदा0 सह निबंधक (न्यायिक)

o/c

प्रपत्र 'क'

सूचना प्राप्त करने के लिए आवेदन प्रपत्र

आई. डी. सं. ..... दिनांक.....

सेवा में,

श्री कु० उदय शंकर सिन्हा

लोक सूचना पदाधिकारी - सह - विशेष कार्य पदाधिकारी

(विभाग/कार्यालय) बिहार लोक सेवा आयोग,

केली रोड, पटना - 800023

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विषय: सूचना के अधिकार - 2005 के तहत सूचना प्राप्ति के लिए

महाशय,

सूचना के अधिकार-2005 के तहत मुझे निम्नलिखित सूचनाएँ बिन्दुवार प्रदान करें।

(1) बिहार लोक सेवा आयोग द्वारा विज्ञापित विज्ञापन संख्या 6/2000, जो पुलिस प्रयोगशाला, अपराध अनुसंधान विभाग के हस्तलिपि ब्यूरो में राजकीय संदिग्ध लेख्य परीक्षकों के पाँच पदों पर नियुक्ति से संबन्धित है, का साक्षात्कार दिनांक 30.09.2002 एवं दिनांक 01.10.2002 बिहार लोक सेवा आयोग के कार्यालय में हुआ था। साक्षात्कार के समय बिहार लोक सेवा आयोग के सदस्यों के नाम, पद-नाम और पता बतायें। (2) कंडिका (1) में वर्णित साक्षात्कार के समय उपस्थित संबन्धित विषयों के विशेषज्ञों के नाम, पद-नाम और पता बताएँ। (3) कंडिका (1) में वर्णित साक्षात्कार में उपस्थित कुल अभ्यर्थियों के नाम और पता बतायें। (4) कंडिका (1) में वर्णित साक्षात्कार में उपस्थित सभी अभ्यर्थियों को बिहार लोक सेवा आयोग के सभी सदस्यों एवं संबन्धित विषयों के सभी विशेषज्ञों के हस्ताक्षर-युक्त उन सबों सदस्यों/ विशेषज्ञों द्वारा दिये गये अंक (Number)/प्राप्तांक की अभिप्रमाणित छायाप्रति उपलब्ध कराएँ। (5) सफल उम्मीदवारों के चयन में अपनाएँ गये मानकों की सूचना दें। (6) कंडिका (1) में वर्णित साक्षात्कार से पहले या पश्चात् चयन प्रक्रिया के अन्तर्गत यदि अभ्यर्थियों से कोई लिखित-परीक्षा ली गयी हो, तो लिखित-परीक्षा की उत्तर पुस्तिकाओं पर प्राप्तांकों के साथ अभिप्रमाणित छायाप्रति उपलब्ध कराएँ। (7) कंडिका (1) में वर्णित साक्षात्कार में अभ्यर्थियों के चयन प्रक्रिया के अन्तर्गत उनलोगों के मैट्रिक से एम०एस०सी० तक विभिन्न परीक्षाओं में प्राप्तांक के औसत की तालिका बनाई गयी है; तो सदस्यों/अधिकारियों के हस्ताक्षर युक्त उस तालिका की प्रमाणित अभिप्रमाणित छायाप्रति उपलब्ध कराएँ। (8) कंडिका (1) में वर्णित साक्षात्कार में सम्मिलित सभी अभ्यर्थियों की मेधा-सूचि, बनाई गयी है, तो प्रमाणिक मेधा-सूचि क्रमांक, रौलनंबर, नाम, पता के साथ अधिकारियों के हस्ताक्षर युक्त अभिप्रमाणित छायाप्रति उपलब्ध करायें।

इस आवेदन के साथ 10/- रुपया का नकद राशि/बैंक ड्राफ्ट/ बैंकर चैक/पोस्टल आडर जिसकी भुगतान आदेश सं० 736.007023 दिनांक 06-12-2008 है, जमा की जा रही है। कृप्या पावती देने का कष्ट करे।

आवेदनकर्त्ता : सैयद हुसैन अब्बास रिज़वी हस्ताक्षर सैयद हुसैन अब्बास रिज़वी

पता : वरू - स्वर्गीय सैयद मोहम्मद अब्बास रिज़वी दिनांक 16/12/2008

नवाब कोठी परिसर (रमणा रोड के दक्षिण)

नयाटोला, पटना - 800004

LETTERS PATENT APPEAL No.102 OF 2010

****

Against the order dated 27.11.2009, passed by a learned Single Judge of this Court in C.W.J.C. No.14486 of 2009.

****

SAIYED HUSSAIN ABBAS RIZWI, son of Late Md. Saiyed Mohamad Rizwi, resident of Nawab Kothi, (South of Ramna Road), Naya Tola, P.S. Kadamkuan, District- Patna.

…… **Petitioner-Appellant**

Versus

1. THE STATE INFORMATION COMMISSION, through the Registrar (Judicial), 4th Floor, Information Building, Bailey Road, Patna.
2. The Bihar Public Service Commission, through its Secretary, Bailey Road, Patna.
3. The State Information Commission, 4th Floor, Information Building, Bailey Road, Patna.

…..**Respondents…Respondents.**

****

For the Appellant: Mr. Gyan Prakash Ojha, Advocate

For Respondent Nos.1 & 3: Mr. Lalit Kishore, A.A.G.1 with
Ms. Binita Singh, A.C. to A.A.G.-1

For Respondent No.2: Mr. Ratnesh Kumar Singh, Advocate.

****

P R E S E N T

THE HON'BLE MR. JUSTICE SUDHIR KUMAR KATRIAR

THE HON'BLE MR. JUSTICE SAMARENDRA PRATAP SINGH

****

S.K. Katriar, J. The petitioner of C.W.J.C. No.14486 of 2009 has preferred this appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna, and is aggrieved by the order dated 27.11.2009, whereby his writ petition has been dismissed by a learned Single Judge of this Court, wherein it has been held that the

informations sought for by him and required to be given have been supplied by respondent no.2 herein, and the remaining informations sought for have rightly been denied in view of the bar engrafted in section 8(1)(j) of the Right to Information Act 2005 (Act.22 of 2005) (hereinafter referred to as 'the Act'). The learned Single Judge has also dealt with the question relating to formation/constitution of Benches of the Tribunal.

2. A brief statement of facts essential for the disposal of this appeal may be indicated. Respondent no.2 had published advertisement no. 6/2000, inviting applications for appointment to the posts of "State Examiner of Questioned Documents", in Police Laboratory in C.I.D., Government of Bihar, Patna. The advertisement, inter alia, stated that written examination will be held if adequate number of applications are received. In view of the position that few applications were received, the Commission exercised the option as per the advertisement, and decided to select the candidates for appointment on the basis of viva voce test. Respondent no.2 concluded the selection process and made the recommendation(s) to the State of Bihar.

2.1) The appellant (writ petitioner) is a public-spirited citizen, and submitted application dated 16.12.2008, seeking informations with respect to eight queries relating to the interview which was held on 30.09.2002, and 1.10.2002. Respondent no.2 sat

over the matter. Its inaction led to the appeal in question before respondent no.3, which rejected the appeal on the ground that the informations which could be supplied have indeed been provided, and the remaining informations need not be given in view of the bar engrafted in section 8(1)(j) of the Act. The appellant challenged the same by preferring the present writ petition, which has been dismissed by the learned Single Judge by the impugned order. The appellant had also raised the issue before respondent no.3 that his appeal should not have been heard by a learned single-member Bench, and ought to have been heard by all the available members sitting together. This contention has also been rejected by the learned Single Judge.

3. While assailing the validity of the impugned action, learned counsel for the appellant submits that the traditional concept of Locus Standi has been completely abandoned under the provisions of the Act. He next submits that the information sought for by paragraph 4 of his communication dated 16.12.2008, is not hit by the bar engrafted in section 8(1) (j) of the Act. He lastly submits that the Commission comprises of all its members and, therefore, the order passed by the Commission by one learned Member is inappropriate and bad in law.

4. Learned counsel for respondent no.2 has supported the impugned action. He submits that the requisite foundational facts

have not been laid either before respondent no.3, or in the writ proceeding, or in the present appeal, that the appellant made queries because he had suspected bungling. He, therefore, cannot advance submissions, for which factual foundation has not been laid in his pleadings. He next submits that the principle of Locus Standi can never be abandoned, so long anglo-saxon legal system is followed in our country, otherwise it would lead to collapse of the administrative system, as well as the judicial system. Mere busy bodies would overwhelm the system. He next submits that respondent no.2 has evolved a fool-proof system to supply requisite informations to the information-seekers, which is time-tested and combines a happy blend of confidentiality of the functioning of respondent no.2 on the one hand, and the queries of information-seekers, on the other. He submits that respondent no.2 has taken guidance from the reported judgments of the Supreme Court on this issue. He relies on the following reported judgments:

(i) **Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupesh Kumar Sheth [(1984) 4 SCC 27], paragraphs 19, 20, 24, 26, and 28.**

(ii) **H.P. Public Service Commission V. Mukesh Thakur (2010 AIR SCW 3636), paragraphs 22 and 26 (**wherein the said judgment in **Maharashtra State Board of Secondary and Higher Secondary**

Education vs. Paritosh Bhupesh Kumar Sheth (supra), has been followed**.**

(iii) **Khanapuram Gandaiah vs. Administrative Officer & Ors. (2010 AIR SCW 363).**

4.1) He next submits that the informations not supplied by respondent no. 2 are with respect to third-party interest and can, therefore, be appropriately denied in terms of section 2(n), read with Sections 8(1) (j) and 11, of the Act. He further submits that the examiners have fiduciary relationship with respondent no.2, and such informations which may have an adverse effect on their fiduciary relationship, is hit by the bar engrafted in section 8(1) (j) of the Act. He next submits that constitution of Benches has been rationalized by respondent no.3. It is possible to categorise the kind of cases coming up before the Commission into different categories and, according to the importance of each category, and may be heard by Benches of appropriate strength.

5. Learned counsel for respondent nos.1 and 3 has supported the impugned action. He submits that section 3, read with section 22, of the Act are non-obstante clauses in the Act, and its provisions have over-riding effect over all other Acts. He submits in the same vein that anybody can seek information without the constraint of the principle of Locus Standi, and without the necessity of providing reasons for the same. He next submits that query no.4, the sole surviving grievance of the appellant, does not seem to be a

bona-fide query and seems to raise an issue, which is not meant to serve his purpose. For example, his insistence on having photo copy of the statements of the interviewers with their signatures or their residential addresses cannot serve any public purpose. He lastly submits that the Supreme Court, the High Courts, and the Central Administrative Tribunals, etc. have framed Rules for constitution of Benches according to the category of cases formulated by such Courts or Tribunals. He submits that respondent no. 3 has evolved the practice of assigning all matters to single-member Benches, subject to the statutory provision that it is open to such Benches to refer them to a larger Bench.

6. We have perused the materials on record and considered the submissions of learned counsel for the parties. Spirited argument has been advanced on behalf of respondent no.2 before us that the appellant is a mere busy-body, was himself not a candidate and, therefore, he is needlessly meddling with the affairs of respondent no.2. It appears to us that such a contention advanced on behalf of respondent no.2 has imperialistic over-tones, and cannot be upheld in our democratic set-up governed by the rule of laws. The principle of Locus Standi has been consistently on the wane in the Indian polity ever since promulgation of the Constitution of India. Public interest litigation is one of the most glorious examples of the Indian Judicature where the citizens are entitled to raise an issue, not

confined to himself and his personal interests, but on behalf of the community at large or a determinate body of persons. This has been given statutory recognition under the provisions of the Act. Section 6(1) of the Act provides that a person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi, or in the official language of the area in which the application is being made. Section 6(2) of the Act provides that an applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. On a perusal of section 6 of the Act, we see no trace of the principle of Locus Standi for any person seeking information under the Act. This has to be read with section 3 of the Act which is headed "Right to information", and provides that subject to the provisions of this Act, all citizens shall have the right to information. This has to be read harmoniously with some of the other provisions of the Act, particularly section 8 of the Act, which is headed "Exemption from disclosure of information". Law is well settled that the Court shall put a construction on the terms of the statute which shall advance its aims, objects, and the legislative intent. It is evident on a perusal of the aims and objects of the Act and the preamble that the Act seeks to promote transparency of functioning in the public domain, and all informations have got to be

supplied with alacrity and without demur, except those which are clearly prohibited by the express terms of the Statute. We would like to emphasise that in case of doubt or difficulty, the Court shall lean in favour of the information-seeker. This is not to dilute some of the stringent provisions of section 8 of the Act which relate to sovereignty and integrity of India etc. In view of a combined reading of section 6, read with section 8, of the Act, the concerned authority is bound in law to provide all informations sought for by any information-seeker without the necessity of satisfying the principle of Locus Standi, or without the requirement of providing reasons for seeking the information, except the items clearly prohibited by different clauses of section 8 of the Act.

7. Learned counsel for respondent no.2 has submitted that the requisite foundational fact has not been laid for some of the contentions being advanced on behalf of the appellant. The contention has been dealt with hereinabove while dealing with the provisions of section 6(2) of the Act. We have found that the applicant is not required to give reasons for seeking information. Once it is so held, the issue whether or not the alleged bungling was in his mind becomes wholly irrelevant, and completely obviated by the strident approach of section 6(2) of the Act. The contention is rejected.

8. Learned counsel for respondent no.2 has submitted that it has devised a fool-proof system to provide to or to withhold, informations from, the applicant. It is submitted that it is a time-tested system and inspiration and guidance is derived from the three reported judgments of the Supreme Court. The contention completely overlooks the non-obstante clause of the Act. The judgment relied on by learned counsel for respondent no.2 is **Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupesh Kumar Sheth** (supra), and was rendered much before the Act was enforced and, therefore, is not relevant for the purpose of disposal of the present appeal. In so far as the remaining two cases are concerned, namely, **H.P. Public Service Commission v. Mukesh Thakur** (supra), and **Khanapuram Gandaiah v. Administrative Officer** (supra), the same raised different issues and rest on their own facts. All offices in the public domain in this country will now have to rise to the stringent provisions of the Act and have to bring transparency in their functioning, and shall provide all informations sought for under the Act subject to the prohibitions/restrictions engrafted in section 8 of the Act. Disclosure is the rule, withholding information is an exception for which the authority will have to make out a case.

9. Learned counsel for respondent no.2 has next submitted that the appellant has sought informations which are in the

private domain and, therefore, may not be supplied in view of the provisions of section 2(n), read with section 8(1)(j), and section 11, of the Act. Section 2(n) defines "third party", and means a person other than the citizen making a request for information and includes a public authority. Section 8 contains exceptions to right of information provided under section 3 of R.T.I. Act. The provision enumerates the various conditions in which informations sought may not be disclosed. In the case in hand, we are concerned mainly with exemption from disclosure of information provided in section 8(1) j) which is 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 xxx
> xxx xxx xxx xxx
>
> (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:
>
> Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

10. Section 11 deals with third-party informations and set out hereinbelow as the appellant is also aggrieved with non-furnishing of address/details of other participating candidates:

"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.

(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. It appears that there are certain restrictions with respect to supply of informations touching third party. 'Third party' has been defined to mean that a person other than the citizen or public authority of this country. In other words, the information may be denied if it touches third party, i.e. a person who is not a citizen or authority of this country, and the information sought with respect to such persons is either not in public domain or is an invasion of privacy of such third party. It appears to us that the provisions of section 8 (1) (j) of the Act has been viewed incorrectly by the respondents. The bar to provide information in terms of Section 8(1) (j) regarding supply of informations with respect to the affairs which has no relationship with any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual, notwithstanding which the concerned authority may be obliged to divulge the information provided it would be in larger public interest. To illustrate this by a hypothetical example, the love affair between the Managing Director of a government company or the Secretary of a department of the government with a girl may not be directed to be disclosed unless larger public interest suggests that such love affair has adversely affected governmental functioning as we usually hear about defence contracts and the like. In such a

situation, a case will have to be made out that it is in larger public interest to direct supply of information which, in view of its subterranean currents, may have a bearing on the issues in the public domain. Larger public interest may in such cases demand that information has got to be disclosed even though seemingly not in public domain, and may be invasion of the privacy of the individual. On the other hand, in the present case, the interviewers have been discharging the duties in the public domain and there is no question of invasion of their privacy. The contention is rejected.

12. Learned counsel for respondent no.2 has laid considerable emphasis on the provisions of section 8(1) (j) of the Act which has been reproduced in foregoing paragraphs. We fail to appreciate its applicability to the facts and circumstances of the present case. Section 8(1) (j) is applicable to a situation with respect to law-enforcement agency and for security purposes. No such consideration arises with respect to the affairs of respondent no.2. The contention is rejected.

13. We now come to the factual aspect of the present matter. The appellant raised eight queries as would appear in his communication dated 16.12.2008. Some of the informations have been supplied to the appellant and he is satisfied. The substance of the queries which have evoked no response are to the effect that he wants the names of the interviewers along with their addresses and

photo-copy of the signatures of the interview statement. We must make it clear that we would not allow divulgence of information if it will adversely affect the selection process, or may cause leakage of the questions. In the present case, the names of the interviewers cannot be denied for various reasons. The interviewers are visible to the candidates while the interview is being held. They have public egress and ingress to the venue of the interview. It is a possible situation that the applicant may have reasons for suspicion that a particular interviewer was on the interview board and his close relation was appearing. Such determination cannot be made unless the names of the interviewer and the candidate who appeared are disclosed. If he denies this information, it would be defeating the aims and objects, the preamble, and the legislative intent of the Act. We cannot countenance such an obstruction to such laudable Act which is intended to bring about transparency in governance, and root out corruption, in this country. The Judgment of the Supreme Court in the case of **A.K. Kraipak and others vs. Union of India and others (A.I.R. 1970 S.C. 150**) is an appropriate example to show that one of the members of the Board was himself a candidate for promotion from the State cadre to the Central cadre of Indian Forest Service. If we prohibit the information which the applicant is seeking to obtain, the misdeed as had taken place in **A.K. Kraipak vs. Union of India** (supra), may not be set at naught.

14. To make a comparison with the court/judicial proceedings, vis-à-vis an interview; Court proceeding is open and the names of the Judges who are hearing the matter are well-known to the parties. When court proceedings can be held in broad day-light and the names of Judges are known to all the parties, why not the names of interviewers be disclosed to the applicant. We must, however, strike the requisite note of caution that the applicant on account of over-enthusiasm or inexperience, has sought irrelevant informations by seeking photo copies of the signatures of the interviewers and has equally over-done by seeking their residential addresses, which will serve no public purpose. Respondent no.2, therefore, is justified in declining informations to that extent because the same would not be in public interest, and will not in the least serve the applicant's purpose.

15. It is equally true that merely because the information relates to a public official, it cannot be assumed in all circumstances that it would have a public interest element. Informations sought to serve a personal feud in private litigations may not be maintained in the name of public interest. In case of Vijay Prakash Vs. Union of India & Ors, reported in AIR 2010 Delhi 7, the Delhi High Court observed that disclosure of service record of public servant sought by her husband, so as to establish his case in matrimonial suit is impermissible, as such disclosure does not involve public interest.

The husband, Vijay Prakash, had sought information regarding the service records of his wife for the purposes of using the same in a divorce proceeding. Disallowing the prayer of the petitioner and affirming the order of the Information Commissions, the learned Single Judge observed that information sought for was not in public interest and has rightly been refused by the Information Commissions.

16. This takes us on to the last issue canvassed on behalf of the appellant. He submits that, in view of the provisions of the Act, his appeal ought to have been heard by all the members sitting together. In view of the scheme of the Act, we find it difficult to accede to the submission for the reason that section 15 of the Act is headed "Constitution of State Information Commission", and sub-section (4) of which provides as follows:

> "15.Constitution of State Information Commission.
>
> xxx xxx xxx xxx
>
> xxx xxx xxx xxx
>
> (4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act."

In other words, the Chief Information Commissioner, assisted by the State Information Commissioner, has been vested with the general powers of superintendence.

17. In view of the powers conferred by section 28 of the Act which are rule-making powers, the Bihar State Information Commission (Management) Regulation 2007 (hereinafter referred to as the "Regulation"), has been framed. Regulation 6 of the Regulation is reproduced hereinbelow:

> "**6. Posting of appeal or complaint before the Commission:**
>
> (i) An appeal or a complaint, or a class or categories of appeals or complaints, shall be heard either by a Single State Information Commissioner or a Division Bench of two State Information Commissioners, or a Full Bench of three or more State Information Commissioners, as decided by the State Chief Information Commissioner by a special or general order issued for this purpose from time to time.
>
> (ii) Where in the course of the hearing of an appeal or complaint or other proceeding before a Single State Information Commissioner, the Commissioner considers that the matter should be dealt with by a Division of Full Bench, he shall refer the matter to the State Chief Information Commissioner by a reasoned order who may thereupon constitute such a Bench for the hearing and disposal of the matter.
>
> (iii) Similarly, where during the course of the hearing of a matter before a Division Bench the Bench considers that the matter should be dealt with by a Full Bench, or where a full Bench considers that a matter should be dealt with by a larger Bench, it shall refer the matter to the State Chief Information

> Commissioner by a reasoned order who may thereupon constitute such a Bench for the hearing and disposal of the matter".

It is thus evident that the State Chief Information Commissioner by special or general order can issue orders for hearing of appeals from time to time. We are informed by learned counsel for respondent nos.1 and 3 that the current practice is to assign all matters to single-member Benches, who have the requisite, statutory power under section 6(ii) of the Regulation to refer matters to larger Benches. In such a situation, if all matters are initially placed before a single-member Bench, then there cannot be any objection to the same, but this practice must be consistently followed. We may, however, point out for the guidance of respondent no.3 that it is possible to classify different kinds of matters coming up before it in accordance with the nature and the importance of such matters. For example, it may be open to respondent no.3 to create one category of cases which concern the life or liberty of a person because the information has to be provided within 48 hours on receipt of the request in terms of proviso to section 7(1) of the Act. It may also be possible, for example, all cases covered by section 8(1) (j) or 8(1) (f) of the Act, in one category. The strength of the Bench may be determined according to the nature and the importance of such matters, if the Commission in future decides to categories the matters coming up before it.

18. In the result, we disagree with the order of the learned Single Judge in so far as it relates to exemption of names of the interviewers from being disclosed. The appeal and the writ petition are allowed. Respondent no.2 is directed to communicate the information to the appellant in the manner indicated hereinabove forthwith. In the circumstances of the case, there shall be no order as to costs.

(S.K. Katriar, J.)

S.P. Singh, J. I agree**.**

(S.P. Singh, J.)

Patna High Court Patna
Dated the 20th of January, 2011.
S.K.Pathak/Uday (AFR)

IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.14486 of 2009

1. SAIYED HUSSAIN ABBAS RIZWI S/O LATE MD. SAIYED MOHAMAD RIZWI R/O NAWAB KOTHI, (SOUTH OF RAMNA ROAD), NAYATOLA, P.S- KADAMKUAN, DISTT- PATNA

VERSUS

1. THE STATE INFORMATION COMMISSION THROUGH THE REGISTRAR (JUDICIAL) 4TH FLOOR, INFORMATION BUILDING, BAILEY ROAD, PATNA
2. THE BIHAR PUBLIC SERVICE COMMISSION, THROUGH ITS SECRETARY, BAILEY ROAD, PATNA
3. STATE INFORMATION COMMISSIONER 4TH FLOOR INFORMATION BUILDING, BAILEY ROAD, PATNA

For the Petitioner : Mr. Gyan Prakash Ojha.
With
Pallavi Thakur.
For the Respondent No.1 : Mrs. Binita Singh
For the Respondent No.2 : Mr. Ratnesh Kumar Singh.

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02 **27.11.2009** The petitioner had sought information under the Right To Information Act, from the Bihar Public Service Commission in relation to examination conducted for appointment of State Examiner of Questioned Documents in Police Laboratory in C.I.D, Government of Bihar, Patna. Petitioner in particular wanted the marks obtained by the applicants for the said examination, the name and address of officials, who were in the interview panel, who interviewed. On application being made, the Public Information Officer of the Bihar Public Service Commission conveyed that so far as marks and merit list are concerned, they are being supplied but so far as name and

addresses of the interview panel is concerned, they were refused to be supplied in terms of Section 8(1) (j) of the Right to Information Act.

Petitioner filed an appeal before the State Information Commission. Notices were issued but after hearing the parties the State Information Officer of the State Information Commission rejected the appeal stating that all information that could be given has been given.

Petitioner is aggrieved by non-disclosure of name and addresses of interview panelist. He asserts that in some other interviews, department had furnished the name and addresses. Thus, the question for consideration is, whether personal details of persons can be disclosed or not. The second question that has been raised is whether the State Information Commissioner had the jurisdiction to pass an order which could be said to be an order of the State Information Commission in appeal.

Heard the parties and with their consent the writ petition is being disposed of

at the stage of admission itself.

"Information" is defined in Section 2(f), which is quoted hereunder:-

> "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;

It is to be considered whether disclosure of names and particulars of interview panelist could be withheld. First one must keep in mind that the function of the Public Service Commission is not like an executive awarding a contract or taking a policy decision. It is about a process of selection. While maintaining transparency, secrecy is equally important, as selection is on basis of marks that is awarded in view of members at the interview. If information with regard to them is disclosed, the secrecy and the authenticity of the process itself may be jeopardized apart from that information would be an unwarranted invasion into privacy of the

individual. Restricting giving this information has a larger public purpose behind it. It is to maintain purity of the process of selection. Thus, in view of specific provision in Section 8(1) (j), in my view, the information could not be demanded as matter of right. The designated authority in that organization also did not consider it right to divulge the information in larger public interest, as provided in the said provision.

This Court is not sitting in appeal over that decision. Even though, this would have disposed of the writ petition, as the second question has been raised and argued at length about the power and function of the State Information Commission, I deem it proper to decide the same as well.

The State Information Commission, who decided the matter and dismissed the appeal, is not the Commission, it is submitted. In my view, this argument is also misconceived. State Information Commission is defined in Section 2(k), which is quoted hereunder:-

> "State Information Commission" means the State Information Commission constituted under sub-section(1) of

section15;

It only refers to Section 15(1), whereunder the Commission is constituted thereunder. Section 15(1) provides that the government shall notify a body known as the State Information Commission under the Act. Sub-Section (2) provides that the State Information Commission shall consist of the State Chief Information Commissioner and such number of State Information Commissioners not exceeding 10. It is on this basis, it is submitted that once the constitution of the Commission is specified by Sub-section (2) of Section 15 all decisions of the State Information Commission has to be taken by the whole body and not by any individual constituting that body. On this premise, it is submitted that the order being passed by one State Information Commissioner alone is not the order of the State Information Commission and thus the appeal has been incompetently disposed of by quorum non judice. I am afraid that learned counsel fails to take note of Section 15(4), which is quoted hereunder:-

> "The general superintendence, direction and management of the affairs of

> the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act."

A plain reading of the provision of Section 15(4) shows that the general superintendence, direction and management of the affairs of the State Information Commission vests in the State Chief Information Commissioner. Thus, the power to manage the affairs of the Commission is entrusted to the State Chief Information Commissioner. Affairs of the State Information Commission would include the very object for which the Commission has been created, that is, to entertain appeals and decide the same. Thus, how the affairs of the Commission would be managed is as per the discretion of the State Chief Information Commissioner. To clear any ambiguity as to the status of the other State Information Commissioners, who are members of the

Commission as well, it is stipulated that they shall assist the Chief Information Commissioner. The Section further provides that they, the State Information Commissioner shall have all such powers and would be competent to do all such things which could be done by the State Information Commission. Thus, it is clear that the Commission is constituted of the State Chief Information Commissioner and State Information Commissioners. It does not necessarily follow that in all its functions all members of the Commission must jointly participate. That is left to the State Chief Information Commissioner, to decide.

Here, it may be pertinent to notice that in view of the provisions of Section 15 (4) of the Right to Information Act, 2005, the State Chief Information Commissioner has made regulations known as the Bihar State Information Commission (Management) Regulation, 2007, in which elaborate provisions has been made with regard to how appeal would be filed listed, who would deal with them and how they will be dealt with. It

permits State Information Commissioner to sit singly. Nothing has been shown that the appeal preferred by the petitioner was heard and decided in contravention of these regulations.

Petitioner submits that the detail tabulation of marks have not been made available to the petitioner. There appears to be some controversy whether they were made available or not. If the tabulated marks have not been made available then the Bihar Public Service Commission would be under obligation to give the tabulated marks sheet of the candidates, who appeared in the examination, without disclosing the name of either the invigilator or the interview panelist.

Thus, I find no merit in either of the submissions as made on behalf of the Petitioner. The writ is accordingly dismissed.

Trivedi/ **(Navaniti Prasad Singh, J.)**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

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

Girish Ramchandra Deshpande .. Petitioner

Versus

Cen. Information Commr. & Ors. .. Respondents

O R D E R

1. Delay condoned.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Aggrieved by the said order, the petitioner filed a writ petition No.4221 of 2009 which came up for hearing before a learned Single Judge and the court dismissed the same vide order dated 16.2.2010. The matter was taken up by way of Letters Patent Appeal No.358 of 2011 before the Division Bench and the same was dismissed vide order dated 21.12.2011. Against the said order this special leave petition has been filed.

7. Shri A.P. Wachasunder, learned counsel appearing for the petitioner submitted that the documents sought for vide Sl. Nos.1, 2 and 3 were pertaining to appointment and promotion

and Sl. No.4 and 12 to 15 were related to disciplinary action and documents at Sl. Nos.6 to 9 pertained to assets and liabilities and gifts received by the third respondent and the disclosure of those details, according to the learned counsel, would not cause unwarranted invasion of privacy.

8. Learned counsel also submitted that the privacy appended to Section 8(1)(j) of the RTI Act widens the scope of documents warranting disclosure and if those provisions are properly interpreted, it could not be said that documents pertaining to employment of a person holding the post of enforcement officer could be treated as documents having no relationship to any public activity or interest.

9. Learned counsel also pointed out that in view of Section 6(2) of the RTI Act, the applicant making request for information is not obliged to give any reason for the requisition and the CIC was not justified in dismissing his appeal.

10. This Court in **Central Board of Secondary Education and another** v. **Aditya Bandopadhyay and others** (2011) 8 SCC 497 while dealing with the right of examinees to inspect evaluated answer books in connection with the examination conducted by the CBSE Board had an occasion to consider in detail the aims and object of the RTI Act as well as the reasons for the introduction of the exemption clause in the RTI Act, hence, it is unnecessary, for the purpose of this case to further examine the meaning and contents of Section 8 as a whole.

11. We are, however, in this case primarily concerned with the scope and interpretation to clauses (e), (g) and (j) of Section 8(1) of the RTI Act which are extracted herein below:

> "**8. Exemption from disclosure of information**.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-
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> **(e)** information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

> **(g)** information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
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> **(j)** information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information."

12. The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is

whether the above-mentioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act.

13. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the

larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

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

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

16. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for

the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.

.....J.
(K. S. RADHAKRISHNAN)

.....J.
(DIPAK MISRA)

New Delhi
October 3, 2012

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the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.

.....J.
(K. S. RADHAKRISHNAN)

.....J.
(DIPAK MISRA)

New Delhi
October 3, 2012

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPEALLATE JURISDICTION

CIVIL APPEAL NO. 9017 OF 2013
(Arising out of SLP (C) No.24290 of 2012)

Thalappalam Ser. Coop. Bank
Ltd. and others Appellants

Versus

State of Kerala and others
Respondents

WITH

CIVIL APPEAL NOs. 9020, 9029 & 9023 OF 2013
(Arising out of SLP (C) No.24291 of 2012, 13796 and 13797 of 2013)

J U D G M E N T

K.S. Radhakrishnan, J.

1. Leave granted.

2. We are, in these appeals, concerned with the question whether a co-operative society registered under the Kerala Co-operative Societies Act, 1969 (for short "the Societies

Act") will fall within the definition of "public authority" under Section 2(h) of the Right to Information Act, 2005 (for short "the RTI Act") and be bound by the obligations to provide information sought for by a citizen under the RTI Act.

3. A Full Bench of the Kerala High Court, in its judgment reported in AIR 2012 Ker 124, answered the question in the affirmative and upheld the Circular No.23 of 2006 dated 01.06.2006, issued by the Registrar of the Co-operative Societies, Kerala stating that all the co-operative institutions coming under the administrative control of the Registrar, are "public authorities" within the meaning of Section 2(h) of the RTI Act and obliged to provide information as sought for. The question was answered by the Full Bench in view of the conflicting views expressed by a Division Bench of the Kerala High Court in Writ Appeal No.1688 of 2009, with an earlier judgment of the Division Bench reported in ***Thalapalam Service Co-operative Bank Ltd.*** v. ***Union of India*** AIR 2010 Ker 6, wherein the Bench took the view that the question as to whether a co-operative society will fall under

Section 2(h) of the RTI Act is a question of fact, which will depend upon the question whether it is substantially financed, directly or indirectly, by the funds provided by the State Government which, the Court held, has to be decided depending upon the facts situation of each case.

4. Mr. K. Padmanabhan Nair, learned senior counsel appearing for some of the societies submitted that the views expressed by the Division Bench in ***Thalapalam Service Co-operative Bank Ltd.*** (supra) is the correct view, which calls for our approval. Learned senior counsel took us through the various provisions of the Societies Act as well as of the RTI Act and submitted that the societies are autonomous bodies and merely because the officers functioning under the Societies Act have got supervisory control over the societies will not make the societies public authorities within the meaning of Section 2(h) of the RTI Act. Learned senior counsel also submitted that these societies are not owned, controlled or substantially financed, directly or indirectly, by the State Government. Learned senior

counsel also submitted that the societies are not statutory bodies and are not performing any public functions and will not come within the expression “state” within the meaning under Article 12 of the Constitution of India.

5. Mr. Ramesh Babu MR, learned counsel appearing for the State, supported the reasoning of the impugned judgment and submitted that such a circular was issued by the Registrar taking into consideration the larger public interest so as to promote transparency and accountability in the working of every co-operative society in the State of Kerala. Reference was also made to various provisions of the Societies Act and submitted that those provisions would indicate that the Registrar has got all pervading control over the societies, including audit, enquiry and inspection and the power to initiate surcharge proceedings. Power is also vested on the Registrar under Section 32 of the Societies Act to supersede the management of the society and to appoint an administrator. This would indicate that though societies are body corporates, they are under the statutory control of

the Registrar of Co-operative Societies. Learned counsel submitted that in such a situation they fall under the definition of "pubic authority" within the meaning of Section 2(h) of the RTI Act. Shri Ajay, learned counsel appearing for the State Information Commission, stated that the applicability of the RTI Act cannot be excluded in terms of the clear provision of the Act and they are to be interpreted to achieve the object and purpose of the Act. Learned counsel submitted that at any rate having regard to the definition of "information" in Section 2(f) of the Act, the access to information in relation to Societies cannot be denied to a citizen.

Facts:

6. We may, for the disposal of these appeals, refer to the facts pertaining to Mulloor Rural Co-operative Society Ltd. In that case, one Sunil Kumar stated to have filed an application dated 8.5.2007 under the RTI Act seeking particulars relating to the bank accounts of certain members of the society, which the society did not provide. Sunil

Kumar then filed a complaint dated 6.8.2007 to the State Information Officer, Kerala who, in turn, addressed a letter dated 14.11.2007 to the Society stating that application filed by Sunil Kumar was left unattended. Society, then, vide letter dated 24.11.2007 informed the applicant that the information sought for is "confidential in nature" and one warranting "commercial confidence". Further, it was also pointed out that the disclosure of the information has no relationship to any "public activity" and held by the society in a "fiduciary capacity". Society was, however, served with an order dated 16.1.2008 by the State Information Commission, Kerala, stating that the Society has violated the mandatory provisions of Section 7(1) of the RTI Act rendering themselves liable to be punished under Section 20 of the Act. State Information Officer is purported to have relied upon a circular No.23/2006 dated 01.06.2006 issued by the Registrar, Co-operative Societies bringing in all societies under the administrative control of the Registrar of Co-operative Societies, as "public authorities" under Section 2(h) of the RTI Act.

7. Mulloor Co-operative Society then filed Writ Petition No.3351 of 2008 challenging the order dated 16.1.2008, which was heard by a learned Single Judge of the High Court along with other writ petitions. All the petitions were disposed of by a common judgment dated 03.04.2009 holding that all co-operative societies registered under the Societies Act are public authorities for the purpose of the RTI Act and are bound to act in conformity with the obligations in Chapter 11 of the Act and amenable to the jurisdiction of the State Information Commission. The Society then preferred Writ Appeal No.1688 of 2009. While that appeal was pending, few other appeals including WA No.1417 of 2009, filed against the common judgment of the learned Single Judge dated 03.04.2009 came up for consideration before another Division Bench of the High Court which set aside the judgment of the learned Single Judge dated 03.04.2009, the judgment of which is reported in AIR 2010 Ker 6. The Bench held that the obedience to Circular No.23 dated 1.6.2006 is optional in the sense that if the Society feels that it satisfies

the definition of Section 2(h), it can appoint an Information Officer under the RTI Act or else the State Information Commissioner will decide when the matter reaches before him, after examining the question whether the Society is substantially financed, directly or indirectly, by the funds provided by the State Government. The Division Bench, therefore, held that the question whether the Society is a public authority or not under Section 2(h) is a disputed question of fact which has to be resolved by the authorities under the RTI Act.

8. Writ Appeal No.1688 of 2009 later came up before another Division Bench, the Bench expressed some reservations about the views expressed by the earlier Division Bench in Writ Appeal No.1417 of 2009 and vide its order dated 24.3.2011 referred the matter to a Full Bench, to examine the question whether co-operative societies registered under the Societies Act are generally covered under the definition of Section 2(h) of the RTI Act. The Full Bench answered the question in the affirmative giving a

liberal construction of the words "public authority", bearing in mind the "transformation of law" which, according to the Full Bench, is to achieve transparency and accountability with regard to affairs of a public body.

9. We notice, the issue raised in these appeals is of considerable importance and may have impact on similar other Societies registered under the various State enactments across the country.

10. The State of Kerala has issued a letter dated 5.5.2006 to the Registrar of Co-operative Societies, Kerala with reference to the RTI Act, which led to the issuance of Circular No.23/2006 dated 01.06.2006, which reads as under:

"G1/40332/05

Registrar of Co-operative Societies,
Thiruvananthapuram, Dated 01.06.2006

Circular No.23/2006

Sub: Right to Information Act, 2005- Co-operative Institutions included in the definition of "Public Authority"

Ref: Governments Letter No.3159/P.S.1/06
Dated 05.05.2006

According to Right to Information Act, 2005, sub-section (1) and (2) of Section 5 of the Act severy public authority within 100 days of the enactment of this Act designate as many officers as public information officers as may be necessary to provide information to persons requesting for information under the Act. In this Act Section 2(h) defines institutions which come under the definition of public authority. As per the reference letter the government informed that, according to Section 2(h) of the Act all institutions formed by laws made by state legislature is a "public authority" and therefore all co-operative institutions coming under the administrative control of The Registrar of co-operative societies are also public authorities.

In the above circumstance the following directions are issued:

1. All co-operative institutions coming under the administrative control of the Registrar of co-operative societies are "public authorities" under the Right to Information Act, 2005 (central law No.22 of 2005). Co-operative institutions are bound to give all information to applications under the RTI Act, if not given they will be subjected to punishment under the Act. For this all co-operative societies should appoint public information/assistant public information officers immediately and this should be published in the government website.

2. For giving information for applicants government order No.8026/05/government administration department act

and rule can be applicable and 10 rupees can be charged as fees for each application. Also as per GAD Act and rule and the government Order No.2383/06 dated 01.04.2006.

3. Details of Right to Information Act are available in the government website (www.kerala.gov.in.....) or right to information gov.in) other details regarding the Act are also available in the government website.

4. Hereafter application for information from co-operative institutions need not be accepted by the information officers of this department. But if they get such applications it should be given back showing the reasons or should be forwarded to the respective co-operative institutions with necessary directions and the applicant should be informed about this. In this case it is directed to follow the time limit strictly.

5. It is directed that all joint registrars/assistant registrars should take immediate steps to bring this to the urgent notice of all co-operative institutions. They should inform to this office the steps taken within one week. The Government Order No.2389/06 dated 01.04.2006 is also enclosed.

Sd/-
V. Reghunath
Registrar of co-operative societies (in charge)"

11. The State Government, it is seen, vide its letter dated 5.5.2006 has informed the Registrar of Co-operative

Societies that, as per Section 2(h) of the Act, all institutions formed by laws made by State Legislature is a "public authority" and, therefore, all co-operative institutions coming under the administrative control of the Registrar of Co-operative Societies are also public authorities.

12. We are in these appeals concerned only with the co-operative societies registered or deemed to be registered under the Co-operative Societies Act, which are not owned, controlled or substantially financed by the State or Central Government or formed, established or constituted by law made by Parliament or State Legislature.

Co-operative Societies and Article 12 of the Constitution:

13. We may first examine, whether the Co-operative Societies, with which we are concerned, will fall within the expression "State" within the meaning of Article 12 of the Constitution of India and, hence subject to all constitutional limitations as enshrined in Part III of the Constitution. This

Court in ***U.P. State Co-operative Land Development Bank Limited*** v. ***Chandra Bhan Dubey and others*** (1999) 1 SCC 741, while dealing with the question of the maintainability of the writ petition against the U.P. State Co-operative Development Bank Limited held the same as an instrumentality of the State and an authority mentioned in Article 12 of the Constitution. On facts, the Court noticed that the control of the State Government on the Bank is all pervasive and that the affairs of the Bank are controlled by the State Government though it is functioning as a co-operative society, it is an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution. In ***All India Sainik Schools employees' Association*** v. ***Defence Minister-cum-Chairman Board of Governors, Sainik Schools Society, New Delhi and others*** (1989) Supplement 1 SCC 205, this Court held that the Sainik School society is "State" within the meaning of Article 12 of the Constitution after having found that the entire funding is by the State Government and by the Central Government

and the overall control vests in the governmental authority and the main object of the society is to run schools and prepare students for the purpose feeding the National Defence Academy.

14. This Court in ***Executive Committee of Vaish Degree College, Shamli and Others v. Lakshmi Narain and Others*** (1976) 2 SCC 58, while dealing with the status of the Executive Committee of a Degree College registered under the Co-operative Societies Act, held as follows:

> "10.....It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character....."

15. We can, therefore, draw a clear distinction between a body which is created by a Statute and a body which, after

having come into existence, is governed in accordance with the provisions of a Statute. Societies, with which we are concerned, fall under the later category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Co-operative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suites and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a society vests in the general body of its members and every society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Final authority so far as such types of Societies are concerned, as Statute says, is the general body and not the Registrar of Cooperative Societies or State Government.

16. This Court in ***Federal Bank Ltd. v. Sagar Thomas and Others*** (2003) 10 SCC 733, held as follows:

> "32. Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(*c*)(*a*) of the Banking Regulation Act does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for the acquiring authority".

17. Societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but cannot be said that the State exercises any direct or indirect control over the affairs of the society

which is deep and all pervasive. Supervisory or general regulation under the statute over the co-operative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the "State" or instrumentality of the State. Above principle has been approved by this Court in ***S.S. Rana*** v. ***Registrar, Co-operative Societies and another*** (2006) 11 SCC 634. In that case this Court was dealing with the maintainability of the writ petition against the Kangra Central Co-operative Society Bank Limited, a society registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968. After examining various provisions of the H.P. Co-operative Societies Act this Court held as follows:

> **"9.** It is not in dispute that the Society has not been constituted under an Act. Its functions like any other cooperative society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the Society. The State has no say in the functions of the Society. Membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of the cooperative society, indisputably, are governed by the Rules. Rule 56, to which

reference has been made by Mr Vijay Kumar, does not contain any provision in terms whereof any legal right as such is conferred upon an officer of the Society.

10. It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society in the sense that the majority Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely, (*1*) How was the Society created? (*2*) Whether it enjoys any monopoly character? (*3*) Do the functions of the Society partake to statutory functions or public functions? and (*4*) Can it be characterised as public authority?

11. Respondent 2, the Society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control thereover would mean that the same satisfies the tests laid down by this Court in *Ajay Hasia* v. *Khalid Mujib Sehravardi*. [See *Zoroastrian Coop. Housing Society Ltd.* v. *Distt. Registrar, Coop. Societies (Urban)*.]

12. It is well settled that general regulations under an Act, like the Companies Act or the Cooperative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of

> the society and the State or statutory authorities would have nothing to do with its day-to-day functions."

18. We have, on facts, found that the Co-operative Societies, with which we are concerned in these appeals, will not fall within the expression "State" or "instrumentalities of the State" within the meaning of Article 12 of the Constitution and hence not subject to all constitutional limitations as enshrined in Part III of the Constitution. We may, however, come across situations where a body or organization though not a State or instrumentality of the State, may still satisfy the definition of public authority within the meaning of Section 2(h) of the Act, an aspect which we may discuss in the later part of this Judgment.

Constitutional provisions and Co-operative autonomy:

19. Rights of the citizens to form co-operative societies voluntarily, is now raised to the level of a fundamental right and State shall endeavour to promote their autonomous functioning. The Parliament, with a view to enhance public faith in the co-operative institutions and to insulate them to

avoidable political or bureaucratic interference brought in Constitutional (97th Amendment) Act, 2011, which received the assent of the President on 12.01.2012, notified in the Gazette of India on 13.01.2012 and came into force on 15.02.2012.

20. Constitutional amendment has been effected to encourage economic activities of co-operatives which in turn help progress of rural India. Societies are expected not only to ensure autonomous and democratic functioning of co-operatives, but also accountability of the management to the members and other share stake-holders. Article 19 protects certain rights regarding freedom of speech. By virtue of above amendment under Article 19(1)(c) the words "co-operative societies" are added. Article 19(1)(c) reads as under:

> "19(1)(c) – All citizens shall have the right to form associations or unions or co-operative societies".

Article 19(1)(c), therefore, guarantees the freedom to form an association, unions and co-operative societies. Right to

form a co-operative society is, therefore, raised to the level of a fundamental right, guaranteed under the Constitution of India. Constitutional 97th Amendment Act also inserted a new Article 43B with reads as follows :-

> "the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies".

21. By virtue of the above-mentioned amendment, Part IX-B was also inserted containing Articles 243ZH to 243ZT. Cooperative Societies are, however, not treated as units of self-government, like Panchayats and Municipalities.

22. Article 243(ZL) dealing with the supersession and suspension of board and interim management states that notwithstanding anything contained in any law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months. It provided further that the Board of any such co-operative society shall not be superseded or kept under suspension where there is no government shareholding or loan or financial assistance

or any guarantee by the Government. Such a constitutional restriction has been placed after recognizing the fact that there are co-operative societies with no government share holding or loan or financial assistance or any guarantee by the government.

23. Co-operative society is a state subject under Entry 32 List I Seventh Schedule to the Constitution of India. Most of the States in India enacted their own Co-operative Societies Act with a view to provide for their orderly development of the cooperative sector in the state to achieve the objects of equity, social justice and economic development, as envisaged in the Directive Principles of State Policy, enunciated in the Constitution of India. For co-operative societies working in more than one State, The Multi State Co-operative Societies Act, 1984 was enacted by the Parliament under Entry 44 List I of the Seventh Schedule of the Constitution. Co-operative society is essentially an association or an association of persons who have come

together for a common purpose of economic development or for mutual help.

Right to Information Act

24. The RTI Act is an Act enacted to provide for citizens to secure, access to information under the control of public authorities and to promote transparency and accountability in the working of every public authority. The preamble of the Act reads as follows:

> "An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.
>
> WHEREAS the Constitution of India has established democratic Republic;
>
> AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

> AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;
>
> AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;
>
> NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

25. Every public authority is also obliged to maintain all its record duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such record is facilitated. Public authority has also to carry out certain other functions also, as provided under the Act.

26. The expression "public authority" is defined under Section 2(h) of the RTI Act, which reads as follows:

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

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

(a) by or under the Constitution;

(b) by any other law made by Parliament;

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

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

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government"

27. Legislature, in its wisdom, while defining the expression "public authority" under Section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions 'means' and includes'. When a word is defined to 'mean' something, the definition is *prima facie* restrictive and where the word is defined to 'include' some

other thing, the definition is *prima facie* extensive. But when both the expressions "means" and "includes" are used, the categories mentioned there would exhaust themselves. Meanings of the expressions 'means' and 'includes' have been explained by this Court in ***Delhi Development Authority*** v. ***Bhola Nath Sharma (Dead) by LRs and others*** (2011) 2 SCC 54, (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions.

28. Section 2(h) exhausts the categories mentioned therein. The former part of 2(h) deals with:

(1) an authority or body of self-government established by or under the Constitution,

(2) an authority or body or institution of self-government established or constituted by any other law made by the Parliament,

(3) an authority or body or institution of self-government established or constituted by any other law made by the State legislature, and

(4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate government.

29. Societies, with which we are concerned, admittedly, do not fall in the above mentioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by the Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate government. Let us now examine whether they fall in the later part of Section 2(h) of the Act, which embraces within its fold:

(5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government,

(6) non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate government.

30 The expression 'Appropriate Government' has also been defined under Section 2(a) of the RTI Act, which reads as follows :

> "**2(a)**. "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly-
>
> (i) by the Central Government or the Union territory administration, the Central Government;
> (ii) by the State Government, the State Government."

31. The RTI Act, therefore, deals with bodies which are owned, controlled or substantially financed, directly or indirectly, by funds provided by the appropriate government and also non-government organizations substantially financed, directly or indirectly, by funds provided by the appropriate government, in the event of which they may fall within the definition of Section 2(h)(d)(i) or (ii) respectively. As already pointed out, a body, institution or an organization, which is neither a State within the meaning of Article 12 of the Constitution or instrumentalities, may still answer the definition of public authority under Section 2(h)d (i) or (ii).

(a) **Body owned by the appropriate government** – A body owned by the appropriate government clearly falls under Section 2(h)(d)(i) of the Act. A body owned, means to

have a good legal title to it having the ultimate control over the affairs of that body, ownership takes in its fold control, finance etc. Further discussion of this concept is unnecessary because, admittedly, the societies in question are not owned by the appropriate government.

(b) **Body Controlled by the Appropriate Government**

A body which is controlled by the appropriate government can fall under the definition of public authority under Section 2h(d)(i). Let us examine the meaning of the expression "controlled" in the context of RTI Act and not in the context of the expression "controlled" judicially interpreted while examining the scope of the expression "State" under Article 12 of the Constitution or in the context of maintainability of a writ against a body or authority under Article 226 of the Constitution of India. The word "control" or "controlled" has not been defined in the RTI Act, and hence, we have to understand the scope of the expression 'controlled' in the context of the words which exist prior and subsequent i.e. "body owned" and

"substantially financed" respectively. The meaning of the word "control" has come up for consideration in several cases before this Court in different contexts. In ***State of West Bengal and another v. Nripendra Nath Bagchi***, AIR 1966 SC 447 while interpreting the scope of Article 235 of the Constitution of India, which confers control by the High Court over District Courts, this Court held that the word "control" includes the power to take disciplinary action and all other incidental or consequential steps to effectuate this end and made the following observations :

> "The word 'control', as we have seen, was used for the first time in the Constitution and it is accompanied by the word 'vest' which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge.... In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, ..."

32. The above position has been reiterated by this Court in ***Chief Justice of Andhra Pradesh and others v. L.V.A. Dixitulu and others*** (1979) 2 SCC 34. In ***Corporation of the City of Nagpur Civil Lines, Nagpur and another v. Ramchandra and others*** (1981) 2 SCC 714, while interpreting the provisions of Section 59(3) of the City of Nagpur Corporation Act, 1948, this Court held as follows :

> "4. It is thus now settled by this Court that the term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers-vested in the authority concerned....."

33. The word "control" is also sometimes used synonyms with superintendence, management or authority to direct, restrict or regulate by a superior authority in exercise of its supervisory power. This Court in ***The Shamrao Vithal Co-operative Bank Ltd. v. Kasargode Pandhuranga Mallya*** (1972) 4 SCC 600, held that the word "control" does not comprehend within itself the adjudication of a claim made by a co-operative society against its members. The

meaning of the word "control" has also been considered by this Court in ***State of Mysore v. Allum Karibasappa & Ors.*** (1974) 2 SCC 498, while interpreting Section 54 of the Mysore Cooperative Societies Act, 1959 and Court held that the word "control" suggests check, restraint or influence and intended to regulate and hold in check and restraint from action. The expression "control" again came up for consideration before this Court in ***Madan Mohan Choudhary v. State of Bihar & Ors.*** (1999) 3 SCC 396, in the context of Article 235 of the Constitution and the Court held that the expression "control" includes disciplinary control, transfer, promotion, confirmation, including transfer of a District Judge or recall of a District Judge posted on ex-cadre post or on deputation or on administrative post etc. so also premature and compulsory retirement. Reference may also be made to few other judgments of this Court reported in ***Gauhati High Court and another v. Kuladhar Phukan and another*** (2002) 4 SCC 524, ***State of Haryana v. Inder Prakash Anand HCS and others*** (1976) 2 SCC 977, ***High Court of Judicature for Rajasthan v. Ramesh***

Chand Paliwal and Another (1998) 3 SCC 72, ***Kanhaiya Lal Omar v. R.K. Trivedi and others*** (1985) 4 SCC 628, ***TMA Pai Foundation and others v. State of Karnataka*** (2002) 8 SCC 481, ***Ram Singh and others v. Union Territory, Chandigarh and others*** (2004) 1 SCC 126, etc.

34. We are of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate government must be a control of a substantial nature. The mere 'supervision' or 'regulation' as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature,

which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Co-operative Societies Act.

35. We are, therefore, of the view that the word "controlled" used in Section 2(h)(d)(i) of the Act has to be understood in the context in which it has been used vis-a-vis a body owned or substantially financed by the appropriate government, that is the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body.

SUBSTANTIALLY FINANCED

36. The words "substantially financed" have been used in Sections 2(h)(d)(i) & (ii), while defining the expression public

authority as well as in Section 2(a) of the Act, while defining the expression "appropriate Government". A body can be substantially financed, directly or indirectly by funds provided by the appropriate Government. The expression "substantially financed", as such, has not been defined under the Act. "Substantial" means "in a substantial manner so as to be substantial". In ***Palser v. Grimling*** (1948) 1 All ER 1, 11 (HL), while interpreting the provisions of Section 10(1) of the Rent and Mortgage Interest Restrictions Act, 1923, the House of Lords held that "substantial" is not the same as "not unsubstantial" i.e. just enough to avoid the *de minimis* principle. The word "substantial" literally means solid, massive etc. Legislature has used the expression "substantially financed" in Sections 2(h)(d)(i) and (ii) indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc.

37. We often use the expressions "questions of law" and "substantial questions of law" and explain that any question

of law affecting the right of parties would not by itself be a substantial question of law. In ***Black's Law Dictionary (6th Edn.)***, the word 'substantial' is defined as 'of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material.' The word 'substantially' has been defined to mean 'essentially; without material qualification; in the main; in substance; materially.' In the Shorter Oxford English Dictionary (5th Edn.), the word 'substantial' means 'of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; sold; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough.' The word 'substantially' has been defined to mean 'in substance; as a substantial thing or being; essentially, intrinsically.' Therefore the word 'substantial' is not synonymous with 'dominant' or 'majority'. It is closer to 'material' or 'important' or 'of considerable value.' 'Substantially' is closer

to 'essentially'. Both words can signify varying degrees depending on the context.

38. Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as “substantially financed” by the State Government to bring the body within the fold of “public authority” under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety five per cent grant-in-aid from the appropriate government, may answer the definition of public authority under Section 2(h)(d)(i).

NON-GOVERNMENT ORGANISATIONS:

39. The term "Non-Government Organizations" (NGO), as such, is not defined under the Act. But, over a period of time, the expression has got its own meaning and, it has to be seen in that context, when used in the Act. Government used to finance substantially, several non-government organizations, which carry on various social and welfare activities, since those organizations sometimes carry on functions which are otherwise governmental. Now, the question, whether an NGO has been substantially financed or not by the appropriate Government, may be a question of fact, to be examined by the authorities concerned under the RTI Act. Such organization can be substantially financed either directly or indirectly by funds provided by the appropriate Government. Government may not have any statutory control over the NGOs, as such, still it can be established that a particular NGO has been substantially financed directly or indirectly by the funds provided by the appropriate Government, in such an event, that organization

will fall within the scope of Section 2(h)(d)(ii) of the RTI Act. Consequently, even private organizations which are, though not owned or controlled but substantially financed by the appropriate Government will also fall within the definition of "public authority" under Section 2(h)(d)(ii) of the Act.

BURDEN TO SHOW:

40. The burden to show that a body is owned, controlled or substantially financed or that a non-government organization is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the applicant who seeks information or the appropriate Government and can be examined by the State Public Information Officer, State Chief Information Officer, State Chief Information Commission, Central Public Information Officer etc., when the question comes up for consideration. A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government.

41. Powers have been conferred on the Central Information Commissioner or the State Information Commissioner under Section 18 of the Act to inquire into any complaint received from any person and the reason for the refusal to access to any information requested from a body owned, controlled or substantially financed, or a non-government organization substantially financed directly or indirectly by the funds provided by the appropriate Government. Section 19 of the Act provides for an appeal against the decision of the Central Information Officer or the State Information Officer to such officer who is senior in rank to the Central Information Officer or the State Information Officer, as the case may be, in each public authority. Therefore, there is inbuilt mechanism in the Act itself to examine whether a body is owned, controlled or substantially financed or an NGO is substantially financed, directly or indirectly, by funds provided by the appropriate authority.

42. Legislative intention is clear and is discernible from Section 2(h) that intends to include various categories, discussed earlier. It is trite law that the primarily language employed is the determinative factor of the legislative intention and the intention of the legislature must be found in the words used by the legislature itself. In ***Magor and St. Mellons Rural District Council*** v. ***New Port Corporation*** (1951) 2 All ER 839(HL) stated that the courts are warned that they are not entitled to usurp the legislative function under the guise of interpretation. This Court in ***D.A. Venkatachalam and others*** v. ***Dy. Transport Commissioner and others*** (1977) 2 SCC 273, ***Union of India*** v. ***Elphinstone Spinning and Weaving Co. Ltd. and others*** (2001) 4 SCC 139, ***District Mining Officer and others*** v. ***Tata Iron & Steel Co. and another*** (2001) 7 SCC 358, ***Padma Sundara Rao (Dead) and others*** v. ***State of Tamil Nadu and others*** (2002) 3 SCC 533, ***Maulvi Hussain Haji Abraham Umarji*** v. ***State of Gujarat and another*** (2004) 6 SCC 672 held that the court must avoid the danger of an *apriori* determination of the

meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provisions to be interpreted is somehow fitted. It is trite law that words of a statute are clear, plain and unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequences, meaning thereby when the language is clear and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the statute speaks for itself. This Court in ***Kanai Lal Sur*** v. ***Paramnidhi Sadhukhan*** AIR 1957 SC 907 held that "if the words used are capable of one construction only then it would not be open to courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

43. We are of the view that the High Court has given a complete go-bye to the above-mentioned statutory principles and gone at a tangent by mis-interpreting the meaning and content of Section 2(h) of the RTI Act. Court

has given a liberal construction to expression “public authority” under Section 2(h) of the Act, bearing in mind the “transformation of law” and its “ultimate object” i.e. to achieve “transparency and accountability”, which according to the court could alone advance the objective of the Act. Further, the High Court has also opined that RTI Act will certainly help as a protection against the mismanagement of the society by the managing committee and the society’s liabilities and that vigilant members of the public body by obtaining information through the RTI Act, will be able to detect and prevent mismanagement in time. In our view, the categories mentioned in Section 2(h) of the Act exhaust themselves, hence, there is no question of adopting a liberal construction to the expression “public authority” to bring in other categories into its fold, which do not satisfy the tests we have laid down. Court cannot, when language is clear and unambiguous, adopt such a construction which, according to the Court, would only advance the objective of the Act. We are also aware of the opening part of the definition clause which states “unless the context otherwise

requires". No materials have been made available to show that the cooperative societies, with which we are concerned, in the context of the Act, would fall within the definition of Section 2(h) of the Act.

Right to Information and the Right to Privacy

44. People's right to have access to an official information finds place in Resolution 59(1) of the UN General Assembly held in 1946. It states that freedom of information is a fundamental human right and the touchstone to all the freedoms to which the United Nations is consecrated. India is a party to the International Covenant on Civil and Political Rights and hence India is under an obligation to effectively guarantee the right to information. Article 19 of the Universal Declaration of Human Rights also recognizes right to information. Right to information also emanates from the fundamental right guaranteed to citizens under Article 19(1)(a) of the Constitution of India. Constitution of India does not explicitly grant a right to information. In ***Bennet Coleman & Co. and others Vs. Union of India and others*** (1972)

2 SCC 788, this Court observed that it is indisputable that by "Freedom of Press" meant the right of all citizens to speak, publish and express their views and freedom of speech and expression includes within its compass the right of all citizens to read and be informed. In ***Union of India Vs. Association of Democratic Reforms and another*** (2002) 5 SCC 294, this Court held that the right to know about the antecedents including criminal past of the candidates contesting the election for Parliament and State Assembly is a very important and basic facets for survival of democracy and for this purpose, information about the candidates to be selected must be disclosed. In ***State of U.P. Vs. Raj Narain and others*** (1975) 4 SCC 428, this Court recognized that the right to know is the right that flows from the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. In ***People's Union for Civil Liberties (PUCL) and others Vs. Union of India and another*** (2003) 4 SCC 399, this Court observed that the right to information is a facet of freedom of speech and expression contained in Article 19(1)(a) of the Constitution of

India. Right to information thus indisputably is a fundamental right, so held in several judgments of this Court, which calls for no further elucidation.

45. The Right to Information Act, 2005 is an Act which provides for setting up the practical regime of right to information for citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority. Preamble of the Act also states that the democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. Citizens have, however, the right to secure access to information of only those matters which are "under the control of public authorities", the purpose is to hold "Government and its instrumentalities" accountable to the governed. Consequently, though right to get information is a fundamental right guaranteed under Article 19(1)(a) of the

Constitution, limits are being prescribed under the Act itself, which are reasonable restrictions within the meaning of Article 19(2) of the Constitution of India.

46. Right to privacy is also not expressly guaranteed under the Constitution of India. However, the Privacy Bill, 2011 to provide for the right to privacy to citizens of India and to regulate the collection, maintenance and dissemination of their personal information and for penalization for violation of such rights and matters connected therewith, is pending. In several judgments including ***Kharak Singh Vs. State of U.P. and others*** AIR 1963 SC 1295, ***R. Rajagopal alias R.R. Gopal and another Vs. State of Tamil Nadu and others*** (1994) 6 SCC 632, ***People's Union for Civil Liberties (PUCL) Vs. Union of India and another*** (1997) 1 SCC 301 and ***State of Maharashtra Vs. Bharat Shanti Lal Shah and others*** (2008) 13 SCC 5, this Court has recognized the right to privacy as a fundamental right emanating from Article 21 of the Constitution of India. Right to privacy is also recognized as a basic human right under

Article 12 of the Universal Declaration of Human Rights Act, 1948, which states as follows:

> "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, not to attack upon his honour and reputation. Everyone has the right to the protection of law against such interference or attacks."

Article 17 of the International Covenant on Civil and Political Rights Act, 1966, to which India is a party also protects that right and states as follows:

> "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence nor to unlawful attacks on his honour and reputation...."

This Court in ***R. Rajagopal*** (supra) held as follows :-

> "The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters."

Restrictions and Limitations:

47. Right to information and Right to privacy are, therefore, not absolute rights, both the rights, one of which falls under Article 19(1)(a) and the other under Article 21 of the Constitution of India, can obviously be regulated, restricted and curtailed in the larger public interest. Absolute or uncontrolled individual rights do not and cannot exist in any modern State. Citizens' right to get information is statutorily recognized by the RTI Act, but at the same time limitations are also provided in the Act itself, which is discernible from the Preamble and other provisions of the Act. First of all, the scope and ambit of the expression "public authority" has been restricted by a statutory definition under Section 2(h) limiting it to the categories mentioned therein which exhaust itself, unless the context otherwise requires. Citizens, as already indicated by us, have a right to get information, but can have access only to the information "held" and under the "control of public authorities", with limitations. If the

information is not statutorily accessible by a public authority, as defined in Section 2(h) of the Act, evidently, those information will not be under the "control of the public authority". Resultantly, it will not be possible for the citizens to secure access to those information which are not under the control of the public authority. Citizens, in that event, can always claim a right to privacy, the right of a citizen to access information should be respected, so also a citizen's right to privacy.

48. Public authority also is not legally obliged to give or provide information even if it is held, or under its control, if that information falls under clause (j) of Sub-section (1) of Section 8. Section 8(1)(j) is of considerable importance so far as this case is concerned, hence given below, for ready reference:-

> **"8. Exemption from disclosure of information –** (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen –
>
> (a) to (i) xxx xxx xxx

> (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

49. Section 8 begins with a non obstante clause, which gives that Section an overriding effect, in case of conflict, over the other provisions of the Act. Even if, there is any indication to the contrary, still there is no obligation on the public authority to give information to any citizen of what has been mentioned in clauses (a) to (j). Public authority, as already indicated, cannot access all the information from a private individual, but only those information which he is legally obliged to pass on to a public authority by law, and also only those information to which the public authority can have access in accordance with law. Even those information, if personal in nature, can be made available only subject to the limitations provided in Section 8(j) of the

RTI Act. Right to be left alone, as propounded in ***Olmstead v. The United States*** reported in 1927 (277) US 438 is the most comprehensive of the rights and most valued by civilized man.

50. Recognizing the fact that the right to privacy is a sacrosanct facet of Article 21 of the Constitution, the legislation has put a lot of safeguards to protect the rights under Section 8(j), as already indicated. If the information sought for is personal and has no relationship with any public activity or interest or it will not sub-serve larger public interest, the public authority or the officer concerned is not legally obliged to provide those information. Reference may be made to a recent judgment of this Court in ***Girish Ramchandra Deshpande v. Central Information Commissioner and*** **others** (2013) 1 SCC 212, wherein this Court held that since there is no *bona fide* public interest in seeking information, the disclosure of said information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the Act. Further, if the authority

finds that information sought for can be made available in the larger public interest, then the officer should record his reasons in writing before providing the information, because the person from whom information is sought for, has also a right to privacy guaranteed under Article 21 of the Constitution.

51. We have found, on facts, that the Societies, in these appeals, are not public authorities and, hence, not legally obliged to furnish any information sought for by a citizen under the RTI Act. All the same, if there is any dispute on facts as to whether a particular Society is a public authority or not, the State Information Officer can examine the same and find out whether the Society in question satisfies the test laid in this judgment. Now, the next question is whether a citizen can have access to any information of these Societies through the Registrar of Cooperative Societies, who is a public authority within the meaning of Section 2(h) of the Act.

Registrar of Cooperative Societies

52. Registrar of Cooperative Societies functioning under the Cooperative Societies Act is a public authority within the meaning of Section 2(h) of the Act. As a public authority, Registrar of Co-operative Societies has been conferred with lot of statutory powers under the respective Act under which he is functioning. He is also duty bound to comply with the obligations under the RTI Act and furnish information to a citizen under the RTI Act. Information which he is expected to provide is the information enumerated in Section 2(f) of the RTI Act subject to the limitations provided under Section 8 of the Act. Registrar can also, to the extent law permits, gather information from a Society, on which he has supervisory or administrative control under the Cooperative Societies Act. Consequently, apart from the information as is available to him, under Section 2(f), he can also gather those information from the Society, to the extent permitted by law. Registrar is also not obliged to disclose those information if those information fall under Section 8(1)(j) of the Act. No provision has been brought to our knowledge indicating that,

under the Cooperative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a cooperative bank. Only those information which a Registrar of Cooperative Societies can have access under the Cooperative Societies Act from a Society could be said to be the information which is "held" or "under the control of public authority". Even those information, Registrar, as already indicated, is not legally obliged to provide if those information falls under the exempted category mentioned in Section 8(j) of the Act. Apart from the Registrar of Co-operative Societies, there may be other public authorities who can access information from a Co-operative Bank of a private account maintained by a member of Society under law, in the event of which, in a given situation, the society will have to part with that information. But the demand should have statutory backing.

53. Consequently, an information which has been sought for relates to personal information, the disclosure of which has no relationship to any public activity or interest or which

would cause unwarranted invasion of the privacy of the individual, the Registrar of Cooperative Societies, even if he has got that information, is not bound to furnish the same to an applicant, unless he is satisfied that the larger public interest justifies the disclosure of such information, that too, for reasons to be recorded in writing.

54. We, therefore, hold that the Cooperative Societies registered under the Kerala Co-operative Societies Act will not fall within the definition of "public authority" as defined under Section 2(h) of the RTI Act and the State Government letter dated 5.5.2006 and the circular dated 01.06.2006 issued by the Registrar of Co-operative Societies, Kerala, to the extent, made applicable to societies registered under the Kerala Co-operative Societies Act would stand quashed in the absence of materials to show that they are owned, controlled or substantially financed by the appropriate Government. Appeals are, therefore, allowed as above, however, with no order as to costs.

.....J.
(K.S. Radhakrishnan)

.....J.
(A.K. Sikri)

New Delhi,
October 07, 2013

ITEM NO.2 COURT NO.12 SECTION XIV

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

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

UNION PUBLIC SERVICE COMMISSION
Petitioner(s)

VERSUS

SHIV SHAMBU & ORS.
Respondent(s)

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

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

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

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

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

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

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

The Special Leave Petition is, accordingly, dismissed.

(Shiveraj Kaur)
PS to Addl.Regr.

(S.S.R.Krishna)
Court Master