सूचना का अधिकार
RIGHT TO INFORMATION

All (16) Judgments of Supreme Court of India on Right to Information

Reviewed by

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Published by

BCAS Foundation

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Dear Friends of RTI:

Yashada(http://yashada.org/2012/index.php?option=com_content&view=article&id=228&Itemid=134#) has done a good service in providing the citizens with full text of the 16 judgements of the Supreme Court and of the High Courts on RTI.

Shailesh Gandhi, our leader of RTI, has summarised all 16 judgements of the Supreme Court with his comment on them. We are thankful to him.

BCAS Foundation decided to print the same for discussion as Shailesh Gandhi has offered an alternate view. We hope you will find this publication useful.

Narayan Varma
Trustee – BCAS Foundation

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Supreme Court pronouncements on RTI Act

Reviewed by
Shailesh Gandhi
Former Central Information Commissioner

Transparency advocates and RTI users have always given credit to the Supreme Court of India for its outstanding role in recognising the Right to Information as a fundamental right of Citizens.

We believe that the first landmark pronouncement in this respect was made by Justice Mathew in State of Uttar Pradesh v. Raj Narain (1975) 4 SCC 428 wherein he stated, "*In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their 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*".

Effectively he signalled that the only bar on information should be one which would impact public security. Repeated pronouncements were made in SP Gupta, Rajagopal, ADR and other cases reiterating this ideology and principle recognising the right to information as a fundamental right.

Parliament recognised and codified this fundamental right of citizens in 2005 in which it clearly laid out that there would be ten exemptions instead of one as pronounced by Justice Mathew. Justice Ravindra Bhat of Delhi High Court captured the spirit of the RTI Act in his judgement in the *Bhagat Singh vs. CIC WP (c) no. 3114/2007* in which he stated:

"*13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.*

14. A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view (See Nathi Devi v. Radha Devi Gupta 2005 (2) SCC 201; B. R. Kapoor

v. State of Tamil Nadu 2001 (7) SCC 231 and V. Tulasamma v. Sesha Reddy 1977 (3) SCC 99). Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted."

Citizens have had great hopes that the judiciary would be the sentinel in defending this fundamental right and help to hold the government authorities to the strictest test, which would help empower individual citizens to hold their governments accountable and reduce arbitrariness and corruption.

RTI has spread very well and empowered citizens thereby deepening Indian democracy. Individual citizens have become the vigilance monitors of government and public servants bringing greater transparency and accountability. They have uncovered many scams and exposed corruption. This is slowly moving the nation from being an elective democracy to a meaningful participatory democracy where active citizenship can be practised.

In this backdrop, I decided to analyse the judgements delivered by the Supreme Court on the RTI law to see the role played by the apex court in this journey. The author has taken the judgements from the Yashada website which lists sixteen cases presently[1].

I am giving my findings below:

JUDGMENT 1: NO.6454 OF 2011 [Arising out of SLP [C] No.7526/2009] CBSE Vs. Aditya Bandopadhyay Judges: RV Raveendran & A K Patnaik; 9 August 2011. (2011) 8 SCC 497.

The main issue before the Court: Whether an examinee's (Students) 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? The examining body,-CBSE,- had claimed that it held the information in a fiduciary relationship and hence this was exempt under Section 8 (1) (e) of the RTI Act.

The observations of the Court: Para 18: "*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 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."*

Para 23. *"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."*

Para 26*: "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."*

[1] Yashada website http://www.yashada.org/2012/index.php?option=com_content&view=article&id=228&Itemid=134

Para 37. *"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, tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties."*

The Court held that: The Court ruled that corrected answer sheets were information which would have to be provided to students who seek them under RTI.

My analysis of the judgment: The Court ordered the information to be provided. It held that it was not exempt since the examining body did not hold any information in a fiduciary relationship with the examiners or examinees. Unfortunately, despite the Supreme Court's observation at para 18 that *the provisions of the RTI Act will prevail over the provisions of the bye-laws/rules,* Public Information Officers (PIOs) of most Courts refuse to give information in RTI to citizens regarding various matters saying citizens should approach them under Court rules.

The observations made by Apex Court in Para 37 hereinabove are wholly uncalled for, and unsubstantiated. There was no cause for this. It does not befit the Supreme Court to make such disparaging remarks in respect of a fundamental right of citizens. There is not a shred of evidence that RTI is *'obstructing the national development and integration, or destroying the peace, tranquillity and harmony amongst its citizens*.' To label citizens exercising their fundamental right as oppressors and intimidators is unacceptable. I concede the statement is rhetorical, but such observations from the apex court are gleefully picked up by public officials and quoted to curb the citizen's fundamental right. RTI has been recognised by the Supreme Court as being integral to Article 19 (1) (a) which states that all citizens shall have the right to freedom of speech and expression subject only to the restrictions laid out in Article 19 (2) of the constitution. Section 8 (1) effectively covers these.

If it is argued that only information that is proved to be related to transparency and accountability and eradication of corruption should be sought, it can be argued that the freedom of expression to criticise can also be used after it is subjected to this test. Unfortunately many PIOs and Information Commissioners are now parroting these lines.

As for the charge of RTI not taking up 75% of time, I did the following calculation: By all accounts the total number of RTI applications in India is less than 10 million annually. The total number of all government employees is over 20 million. Assuming a 6 hour working day for all employees for 250 working days it would be seen that there are 30000 million working hours. Even if an average of 3 hours is spent per RTI application 10 million applications would require 30 million hours, which is 0.1% of the total working hours. This means it would require 3.2% staff working for 3.2% of their time in furnishing information to citizens. This too could be reduced drastically if computerised working and automatic updating of information was done as specified in the Act.

If Section 4 was properly implemented as envisaged in the law, the number of RTI applications would be less than 50% of the current level. The Supreme Court has not commented on the lack of Section 4 compliance by all public authorities but finds it worthwhile to pass unwarranted and unsubstantiated strictures against citizens using their fundamental right.

An extensive study done by RAAG[2] led by the scholarly and respected Shekhar Singh, shows that –

- around 54% of the RTI applications sought information which should have been displayed suo moto by the public authorities under their obligations under Section 4;
- About 20% of the RTI applicants were asking for information which should have been provided to them without their ever having to file an application or even without using the RTI Act. These applicants were seeking acknowledgement or response to earlier, often long pending, missives, or seeking feedback about, or an update on an ongoing interaction with the public authority.

The Central Secretariat Manual of Office Procedures, (Thirteenth Edition, Ministry of Personnel, Public Grievances and Pensions, Department of Administrative Reforms and Public Grievances. September, 2010) mandates that proper replies to all communications from citizens should be sent within 30 days[3]. Thus only 26% of the applications asked for information that was not required to be disclosed proactively, either publicly or privately to the applicants. It would have been appropriate if the Supreme Court had directed public authorities to do their duty as per the RTI Act instead of castigating citizens using their fundamental right as if they were interlopers or terrorists.

JUDGMENT 2: CIVIL APPEAL NOs.10787-10788 OF 2011 (Arising out of S.L.P(C) No.32768-32769/2010) Judges: Ashok Kumar Ganguly & Gyan Sudha Misra; 12 December 2011; Chief Information Commissioner vs. State of Manipur; AIR 2012 SC 864

The main issue before the Court: Whether the Information Commissioner can direct the disclosure of information when a complaint is made u/s 18 of the RTI Act.

The observations of the Court: Para 36: "*This Court accepts the argument of the appellant that any other construction would render the provision of Section 19(8) of the Act totally redundant. It is one of the well known canons of interpretation that no statute should be interpreted in such a manner as to render a part of it redundant or surplusage."*

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

The Court held that: No information can be ordered to be given in complaints made u/s 18 of the RTI Act.

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2 Report of RTI Assessment and Analysis Group: http://rti-assessment.org/interim_report.pdf

3 **Manual of Office Procedures : DOPT September 2010 para 66 pg. 39 http://darpg.gov.in/darpgwebsite_cms/Document/file/CSMOP.pdf**

My analysis of the judgment: The information which was sought by the applicant was regarding magisterial enquiries. A complaint was filed since no response was received. The Commission ordered information to be provided. A single judge of High Court upheld the Commission's order. This was challenged before a division bench, which held that in a complaint under Section 18 the Information Commission cannot pass an order to release information.

The Supreme Court adopted a literal interpretation of the RTI Act and refused to consider whether a purposive interpretation would have served the purpose of the Act better. This is in contrast to the Allahabad High Court judgement in AP 3262 (MB) of 2008 which said, '"We are also of the view that the Commission while enquiring into the complaint under Section 18, can issue necessary directions for supply/disclosure of the information asked for, in case the Commission is satisfied that the information has been wrongly withheld or has not been completely given or incorrect information has been given."

By this judgement an RTI applicant who files a complaint will have to file a separate appeal for the same matter to obtain information. If a PIO refuses to accept an RTI application the applicant will have to first go in a complaint to the Commission and perhaps get the PIO penalised if she is lucky. After this if the PIO takes her application but denies the information saying it is '*unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption'*, she can be denied her fundamental right. She would then have to go through the first and second appeals for the information. The load on the Commissions would also increase unnecessarily.

JUDGMENT 3: CIVIL APPEAL NO. 7571 OF 2011 [Arising out of SLP (C) No.2040/2011] Inst. Of Chartered Accountants vs. Shaunak H Satya; RV Raveendran & AK Patnaik 2 September 2011; AIR 2011 SC 3336

The issue before the Court:

(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?

The observations of the Court: The Court first held at para 12 that denial of information could not justified under Section 8(1) (d). It also held at para 13 and 14 that denial could not be justified under Section 9. At para 16 and 17 it held that the information is exempt under Section 8 (1) (e):

Para 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."*

Para 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*."(appears to be a typing error and should be 8 (1)(e).

My analysis of the judgment: ICAI said instructions to examiners and model answers cannot be disclosed since they were exempt. Commission denied the information but the High Court accepted the applicant's right to get the information. The apex court ruled out the applicability of Section 8 (1) (d) and Section 9. The Supreme Court then upheld the denial of Model answers by the examining body to the applicant holding it to be information held by ICAI in a fiduciary relationship.

It is interesting to note that in paras 23 and 26 in the CBSE case referred earlier the Supreme Court had stated that an examining body is not in a fiduciary relationship with the examiners or examinees. If an examining body is not holding information in a fiduciary relationship with examiners or examinees then for whom is the ICAI holding model answers in a fiduciary relationship? It appears that the Court has held that ICAI holds information in a fiduciary relationship when the information belongs to it and there is no beneficiary.

JUDGMENT 4: CIVIL APPEAL NO. 7571 OF 2011 [Arising out of SLP (C) No.2040/2011] Khanapuram Gandaiah vs. Administrative Officer; K.G. BALAKRISHNAN, CJI, AND DR. B.S. CHAUHAN, J.; 04.01.2010; AIR 2010 SC 615

The issue before the Court: The scope of the definition of "Information" contained in section 2(f) of the RTI Act.

The observations of the Court:

Para 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."

The Court held that: No information could be given, as none existed.

My analysis of the judgment: In my opinion denial was justified since no information existed.

JUDGMENT 5: CIVIL APPEAL NO. 10044 OF 2010 ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 32855 OF 2009; CPIO, Supreme Court vs Subhash Chandra Agrawal; B. Sudarshan Reddy & Surinder Singh Nijjar 26 November 2010; Constitution Bench to be formed

The issue before the Court: Whereas the information sought pertains to the Appointment of Judges in the Apex Court itself, the court framed the following issues to be addressed,

1. Whether the concept of independence of judiciary requires and demands the prohibition of furnishing of the information sought? Whether the information sought for amounts to interference in the functioning of the judiciary?
2. Whether the information sought for cannot be furnished to avoid any erosion in the credibility of the decisions and to ensure a free and frank expression of honest opinion by all the constitutional functionaries, which is essential for effective consultation and for taking the right decision?
3. Whether the information sought for is exempt under Section 8(1)(j) of the Right to Information Act?

The observations of the Court:

Para 3:**.** *The respondent Subhash Chandra Agarwal requested the CPIO, Supreme Court of India to arrange to send him a copy of "complete file/s (only as available in Supreme Court) inclusive of copies of complete correspondence exchanged between concerned constitutional authorities with file notings relating to said appointment of Mr. Justice HL Dattu, Mr. Justice AK Ganguly and Mr. Justice RM Lodha superseding seniority of Mr. Justice P Shah, Mr. Justice AK Patnaik and Mr. Justice VK Gupta as allegedly objected to Prime Minister's Office (PMO) also".*

Para 12: **"***The case on hand raises important questions of constitutional importance relating to the position of Hon'ble the Chief Justice of India under the Constitution and the independence of the Judiciary in the scheme of the Constitution on the one hand and on the other, fundamental right to freedom of speech and expression. Right to information is an integral part of the fundamental right to freedom of speech and expression guaranteed by the Constitution. Right to Information Act merely recognizes the constitutional right of citizens to freedom of speech and expression. Independence of Judiciary forms part of basic structure of the Constitution of India. The independence of Judiciary and the fundamental right to free speech and expression are of a great value and both of them are required to be balanced."*

The Court held that: Registry to place this matter before Hon'ble the Chief Justice of India for constitution of a Bench of appropriate strength.

My analysis of the judgment: The CIC, single judge of Delhi High Court and division bench of Delhi High Court had given rulings against the PIO of the Supreme Court and ordered information to be provided. The Supreme Court violating a basic principle of natural justice,- that nobody can be judge in his own cause,- stayed these judgements in a writ before itself. It has held that a Constitution bench will hear this matter. For the last four years it has not been heard. No great harm would have come to the Supreme Court if it had displayed the wisdom of gracefully accepting the verdict of the CIC and the High Court and avoided making itself a judge in its own cause, who then does not decide the matter. It is unfortunate that the Supreme Court has not considered this matter to be important enough to be decided.

JUDGMENT 6: WRIT PETITION (CIVIL) NO. 210 of 2012; Namit Sharma vs. Union of India; Swatanter Kumar & AK Patnaik 13 September 2012;

The issue before the Court: The Constitutional validity of Sections 12(5), 12(6), 15(5) and 15(6) of RTI Act, were challenged, which deals with the appointment and qualifications of Information Commissioners.

My analysis of the judgment:
Outcome: The Court ruled that all Information Commissions must sit in benches of two, one of whom should be a retired judge and there should be transparency in the selection of Commissioners. This judgement would have resulted in the effective disposal rates of all Commissions being reduced to less than 50% and possibly made it difficult for citizens to approach Commissions without lawyers. Its immediate impact was that many Commissions stopped working and backlogs which were already high became unmanageable.

How this petition was decided: Taken from DOPT's affidavit for review.

Preliminary Hearing	11/7/2012 no respondent
Listed & Part heard	18/7/2012 no respondent

DOPT learnt on 18/7 about the petition and briefed Add. Solicitor General

ASG asked for time on 19/7 to file a counter affidavit. Court said this

was not necessary and ASG should give his arguments.

ASG gave his arguments and judgement reserved on	19/7/2012
DOPT filed written submissions	11/09/2012
Court's 107 page judgement allowing writ	13/09/2012

DOPT's anguished statement in the review petition: "T. *FOR THAT this Hon'ble Court, in the impugned judgment, has neither considered the oral arguments of the Petitioner herein, nor the Written Submissions filed by the Petitioner on 11.09.2012, putting forth the case of the Petitioner. The impugned judgment, at no place, records the submissions made by the counsel for the Petitioner when the matter was heard."* The respondent, Union of India,-in the petition is mentioned only once in the 107 page judgement,- in the title. The entire judgement reads as if there is only a petitioner and the Court!

The judgement disrupted the working of some Information Commissions. If implemented it would have dropped the disposal rate to less than 50% since two Commissioners would have to sit together, one of whom would have to be a retired judge. Generally retired judges insist on lawyers arguing matters before them, whereas currently less than 1% of the appellants have a lawyer. This would have discouraged most ordinary citizens from approaching the Commission. It appears to have been given without regard to the law. If it had not been reviewed it would have damaged RTI permanently.

Judgement 7: Namit Sharma stayed 16 April 2013

On a review being sought by the Union of India, with Rajasthan Govt., CHRI, Aruna Roy and the author being interveners the Court stayed the objectionable parts.

Judgement 8 : Namit Sharma

A K Patnaik & S K Sikri 3 September 2013

Earlier order partly withdrawn. The main objectionable parts of the judgement which had been given were withdrawn.

JUDGMENT 9: Special Leave Petition (Civil) No. 27734 of 2012; Girish Ramchandra Deshpand Versus Cen. Information Commr. & Ors; K S Radhakrishnan & Dipak Misra; 3 October 2012; (2013) 1 SCC 212

The issue before the Court: Whether the information pertaining to a Public Servant in respect of his service career and also the details of his assets and liabilities, movable and immovable properties, can be denied 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.

The observations of the Court: "*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."

The Court held that: The Apex Court has held that copies of all memos, show cause notices and orders of censure/punishment, assets, income tax returns, details of gifts received etc. by a public servant are personal information as defined in clause (j) of Section 8(1) of the RTI Act and hence exempted.

My analysis of the judgment: The judgement has expanded the scope of Section 8 (1) (j) without any discussion or interpretation of the law. The only justification is that it agrees with the decision of the CIC. The Court mentions," The performance of an employee/officer in an organization is primarily a matter between the employee and the employer", forgetting that the employer is 'we the people' who gave ourselves the constitution. Section 8 (1) (j) exempts *"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."

The Supreme Court has missed realising that the exemption applies to personal information only if it has no relationship to any public activity or is an unwarranted invasion on the privacy of an individual. Besides the Court should have applied the acid test of whether the information would have been denied to Parliament. It also appears to be contrary to the following two judgements of the Supreme Court:

1. *R Rajagopal and Anr. v state of Tamil Nadu* (1994), SC
The ratio of this judgement was:

"*28. We may now summarise the broad principles flowing from the above discussion:*

(1) 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. None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages Position may, however be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including Court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interest of decency (Article 19(2)) an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being published in press/media.

(3) There is yet another exception to the Rule in (1) above - indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties."

Public record as defined in the Public Records Act is any record held by any Government office. This judgement at point 2 clearly states that for information in public records, the right to privacy can be claimed only in rare cases. This is similar to the proposition in Section 8 (1) (j) which does not exempt personal information which has relationship to public activity or interest. It also talks of certain kinds of personal information not being disclosed which has been covered in the Act by exempting disclosure of personal information which would be an unwarranted invasion on the privacy of an individual. At point 3 it categorically emphasizes that for public officials the right to privacy cannot be claimed with respect to their acts and conduct relevant to the discharge of their official duties. The Girish Deshpande judgement is

clearly contrary to the earlier judgement, since it accepts the claim of privacy for Public servants for matters relating to public activity which are on Public records.

2. The Supreme Court judgement in the ADR/PUCL Civil Appeal 7178 of 2001 has clearly laid down that citizens have a right to know about the assets of those who want to be Public servants (stand for elections). It should be obvious that if citizens have a right to know about the assets of those who want to become Public servants, their right to get information about those who are Public servants cannot be lesser. This would be tantamount to arguing that a prospective groom must declare certain matters to his wife-to-be, but after marriage the same information need not be disclosed!

When quoting Section 8 (1) (j) the Court has forgotten to mention the important proviso to this Section which stipulates, 'Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.' The Supreme Court did not mention this in its judgement when quoting this section and has not considered it. If this proviso was quoted the Court would have had to record that in its opinion the said information would be denied to Parliament.

Bihar Government, Gujarat government, Municipal Corporation of Mumbai and many others have displayed the assets of all its officials on its website. The decision of the Supreme Court will reverse the transparency march and constrict Right to Information. It appears that the Court has not taken into account the two earlier judgements mentioned above, and the important proviso to Section 8 (1) (j) and hence the decision in Shirish Deshpande's case may be *per incuriam*. Besides there does not appear to any *'ratio decidendi'* in this judgement. Hence this judgement cannot be a precedent. Unfortunately it has resulted in most information about public officials being denied, and consequently the arbitrary favours to public servants and their corruption has been obscured from the eyes of the public. The Maharashtra government has issued a circular based on this judgement. It is worth recording that the main ground for the judgement is agreement with the CIC decision. A perusal of the CIC decision also does not display any proper reasoning but is based on an earlier decision by a bench of the Commission. The bench decision which was relied on by CIC, did not even relate to information about a public servant!

JUDGMENT 10: CIVIL APPEAL NO. 9095 OF 2012 (Arising out of SLP(C) No.7529 of 2009); Manohar s/o Manikrao Anchule vs. State of Maharashtra; 13 December 2012; AIR 2013 SC 681

The issue before the Court: It was a case where disciplinary action had been recommended against the PIO under Section 20 (2) of the Act.

The observations of the Court: "11. The impugned orders do not take the basic facts of the case into consideration that after a short duration the appellant was transferred from the post in question and had acted upon the application seeking information within the prescribed time. Thus, no default, much less a negligence, was attributable to the appellant.

12. Despite service, nobody appeared on behalf of the State Information Commission. The State filed no counter affidavit."

The Court held that: The Commission's order was quashed.

My analysis of the judgment: The Supreme Court has looked at the factual matrix to overturn the decision of the Commission and the High Court to quash the order of the Commission. Can this be a legitimate exercise in a writ? The seven judge bench of the Supreme Court in Hari Vishnu Kamath v. Ahmad Ishaque 1955-IS 1104 : ((S) AIR 1955 SC 233) has laid down, " (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous." The Supreme Court's judgement is based on its assessment of the facts of the matter. Is it consistent with the decision in Hari Vishnu Kamath? The RTI Act does not have any provision for an appeal beyond the Commission. The Court in its writ jurisdiction appears to have used appellate jurisdiction.

Again in this matter there is no respondent present.

JUDGMENT 11: CIVIL APPEAL NO. 9052 OF 2012 (Arising out of SLP (C) No.20217 of 2011); Bihar Public Service Commission vs. Saiyed Hussain Abbas Rizvi; Swatanter Kumar & Sudhansu Jyoti 13 December 2012; JT 2012 (12) SC 552

The main issue before the Court: The applicant had asked for names and addresses of interviewers in an interview board selecting candidates for Bihar government jobs.

The Court held that: the Commission is not bound to disclose the information asked for by the applicant under Query No.1 of the application.

My analysis of the judgment: The applicant had in 2008 sought the names and addresses of persons who had conducted interviews for Bihar Public Service Commission (BPSC) in 2002. This was denied claiming exemption on grounds of Section 8 (1) (j). The State Commission had upheld the denial and the matter was finally contested in the Division Bench of the High Court. The Division Bench upheld the contention of the applicant and ordered the names of the interviewers to be provided.

Commonwealth Human Rights Initiative (CHRI) has done a very detailed and well-argued analysis[4] of this matter from which some parts are being reproduced below:

> "2.1 The Special Leave Petition (SLP) was admitted in March, 2012 and a two-judge bench of the Supreme Court (the Court) comprising of Justice A K Patnaik and Justice Swatanter Kumar decided the matter within nine months. The Court allowed the appeal and set aside the judgement of the Division Bench. Writing the judgement for the Court, Justice Swatanter Kumar held that BPSC was not bound to disclose any information beyond what was provided already. A summary of the Court's reasoning is provided below:
>
> (i) BPSC had relied heavily on Section 8 (1) (j) of the RTI Act while rejecting the request for names and addresses and also during the proceedings before the Bihar State Information Commission and the Patna High Court. [4]Though BPSC claimed the protection of Section 8 (1) (j) in its petition, it did not press this point during the

[4] http://www.humanrightsinitiative.org/

Commonwealth Human Rights Initiative (CHRI) has done a detailed analysis http://sartian.org/media/k2/attachments/SCI-BPSC-v-SAHRizwi-CHRIAnalysis-Jan131358759507_1.pdf

hearings before the Court. Therefore the Court did not go into the correctness of the Division Bench's judgement about this line of reasoning.
(ii) BPSC changed track and claimed that the names and addresses of the subject experts could not be disclosed as it was entitled to the protection of both Section 8 (1) (e) and Section 8 (1) (g) of the RTI Act. The Court rejected the claim to Section 8 (1) (e) in light of the principles governing a fiduciary relationship recognised by the Court in an earlier RTI-related matter. The Court ruled that there was no fiduciary relationship between BPSC and the interviewers (subject experts) or the candidates interviewed.

(iii) The Court upheld BPSC's claim of Section 8 (1) (g) of the RTI Act by linking it to Article 21 of the Constitution which guarantees protection for life and liberty of a person. It reasoned that the members of the Board are likely to be exposed to danger to their lives or physical safety if their names and addresses are disclosed. *"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,"* the Court held.

(iv) The Court gave two more reasons for rejecting the request for names and addresses. First, it held that the disclosure of names and addresses of examiners would hamper effective performance and the discharge of their duties. Second, it held that disclosure would serve no fruitful much less any public purpose. The Division Bench of the High Court had earlier rejected the contention of the PIO about applicability of Section 8 (1) (g) by stating:

"*13. … 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…*

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 known to all the parties. When court proceedings can be held in broad daylight and the names of the judges are known to all the parties, why not the names of interviewers be disclosed to the applicant."

As nothing in the BPSC judgement indicates that the Court weighed and measured this line of reasoning of the Division Bench, before dismissing it, in our humble opinion, it is difficult to accept the rationale for rejection.

(iii) Third, the Division Bench clearly pointed out that denying information about interviewers could defeat the very purpose of the Act in the following manner:
"13. …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 a 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."

The Division Bench was clearly referring to potential conflicts of interests that may be identified if the names of the interviewers were disclosed. If not, they would remain hidden under a cloak of secrecy. It is respectfully submitted that instead of weighing and measuring this line of reasoning which is based on a very real case adjudicated by the Court earlier (amounting to material facts justifying the disclosure of names), the Court has rejected it by holding that preventing bias in the selection process cannot be a ground for denying BPSC the protection of Section 8 (1) (g). In our humble opinion the Court has not adequately appreciated the reasoning of the Division Bench which by ordering disclosure sought to uphold the very public interests mentioned in the Preamble of the RTI Act, viz., 'bringing about transparency in governance' and 'containing corruption'.

(iv) Fourth, nowhere in its judgement does the Court recognise that the Division Bench had refused to order disclosure of the addresses of the interviewers."

It sounds highly improbable that a candidate, who was not selected in an interview in 2002, would seek the names of the interviewers in 2008 and pursue the matter in the Supreme Court to with the intention of physically harming the interviewers. Imagination is being stretched too far if it is assumed that the unsuccessful candidate would harm the interviewers after 10 years. The Division Bench of the High Court had come to a very reasonable conclusion that most probably the attempt was to expose nepotism in the selection process. The Supreme Court ruling has led to a situation where the denial of information under Section 8 (1) (g) has been done by thinking of remote highly unlikely situations to deny information. A PIO has to merely imagine the possibility of some likely harm to deny information. A mere apprehension that some interest may be affected has been dubbed to be adequate to deny information. This decision makes it difficult for citizens to expose corruption and favouritism. Besides it opens the possibility to imagine new ways to deny information by conjuring even a highly improbable harm.

Many High Court decisions including the Bhagat Singh case quoted earlier stated that the harm to a protected interest must be a reasonable possibility, not a distant probability. This approach of the apex court of thinking of a remote possibility to apply the exemption is becoming a haven for denying information to the citizens.

SC12 CIVIL APPEAL NO. 3878 OF 2013 (arising out of SLP(C)No.22609 of 2012)

RK Jain vs. Union of India; GS Singhvi & Sudhansu Jyoti 16 April, 2013; JT 2013 (10) SC 430

The issue before the Court: The information requested was inspection of adverse confidential remarks against 'integrity' of a member of Tribunal and follow up actions taken on issue of integrity. Exemption was claimed on the basis of Section 8 (1) (j).

The Court held that: Inter alia relying upon the ruling made in Girish Ramchandra Deshpande case, the information is exempted from disclosure under Section 8 (1) (j). read with section 11 of the RTI Act.

Para 13*".... Under Section 11(1), if the information relates to or has been supplied by a third party and has been treated as confidential by the third party, and if the Central Public Information Officer or a State Public Information Officer intends to disclose any such information or record on a request made under the Act, in such case after written notice to the third party of the request, the Officer may disclose the information, if the third party agrees to such request or if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party*."

My analysis of the judgment: Section 11 (1) is quoted hereunder:

SECTION 11: Third-party information: (1) "Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third pary, 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 Supreme Court appears to have given an interpretation to Section 11 which does not appear to be justified by the provisions of the Act.

> Section 7 (1) Subject to the proviso to sub-section (*2*) of section 5 or the proviso to sub-section (*3*) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:"

> Thus it is clear that only Section 8 or 9 can be used to deny information.
> Section 7 (7) states:
>
> "Before taking any decision under sub-section (*1*), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11."

Section 11 is not an exemption but only a procedural provision to safeguard the interests of the third party. The Court's statement above implies that if third party objects to the disclosure of information, it can only be given if there is a larger public interest in disclosure. Denial of information in RTI can only be done under Section 8 or 9 as clearly mentioned in Section 7 (1). In Section 8 (1) the need to show a larger public interest arises only when an exemption under Section 8 (1) applies. The Act states that when a PIO 'intends to disclose' information regarding third party he shall intimate the third party. It also states that 'submission of the third party shall be kept in view while taking a decision about disclosure of information'. The PIO can only deny information as per the provisions of the exemptions of Section 8 (1) or 9. The RTI Act does not give veto power to the third party, but provides it with an opportunity to raise his legitimate objections, and in case the PIO decides to disclose the information despite the objections, the concerned third party may prefer an Appeal against the decision of the PIO, as per the provisions of Section 11 (2) to 11 (4). These express provisions 11(2) to 11(4) makes it clear that the third party is not rendered remediless, in cases where PIO disagrees with the third party's objection in disclosure of information. Section 7 (1) of the RTI Act clearly states that denial of information can only be based on Section 8 or 9, provisions of this Act, all citizens shall have the right to information and Section 3 states that 'Subject to the provisions of this Act, all citizens shall have the Right to Information.' Thus the denial of any information can only be on the basis of the RTI Act where only Section 8 and 9 detail the information which can be denied. The Court has raised the procedure of Section 11 to that of an exemption of Section 8 (1). This is a erroneous reading of Section 11.

Information denied, partly depending on Girish Deshpande judgement where there was no *ratio decidendi,* and a flawed interpretation of Section 11

JUDGMENT 13: Petition(s) for Special Leave to Appeal (Civil)...../2013 CC 1853/2013; Karnataka Information Commissioner vs. PIO (HC); GS Singhvi & HL Gokhale 18 January 2013;

About the case: A RTI applicant requested the Karnataka High Court for certified copies of some information/documents regarding guidelines and rules pertaining to scrutiny and classification of writ petitions and the procedure followed by the Karnataka High Court in respect of Writ Petition Nos.26657 of 2004 and 17935 of 2006. The PIO refused the information on the grounds that the applicant should seek the information under the Karnataka High Court rules. When the matter went to the State Information Commission it disagreed with the PIO and ordered the information to be provided under the RTI Act.

The Commission's order was challenged by the PIO in the Karnataka High Court which named the applicant as a respondent in the case and quashed the Commission's order.

The Commission challenged this order before the Supreme Court and the petition was filed by an Information Commissioner. The Court took offence to the petition being filed by an Information Commissioner and said that the Commission and Commissioner have no *locus standi* and were wasting public money by challenging the order. In a harsh snub it imposed a cost of Rs. 100000 on the Commission.

My analysis of the judgement: It is worth mentioning that the Supreme Court itself had accepted the Chief Information Commissioner (Manipur) as the petitioner in Civil Appeal no. 10727. Many High Courts name the Commission as party in many petitions challenging their decision. The important matter of Section 22 which gives an overriding effect to the RTI Act, was not addressed at all. This harsh snub by the Supreme Court has silenced the Information Commissions into not questioning the Courts, but becoming intellectually subservient to them.

ii) Section 22 states that *"the provisions of this RTI Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act"*. In other words, where there is any inconsistency in a law as regards furnishing of information, such law shall be superseded by the RTI Act. Insertion of a non-obstante clause in Section 22 of the RTI Act was to safeguard the citizens' fundamental right to information from convoluted interpretations of other laws and rules adopted by public authorities to deny information. This section simplifies the process of implementing the right to information both for citizens as well as the PIO. Citizens may seek to enforce their fundamental right to information by invoking the provisions of the RTI Act if they desire to. By its order in the case of the Karnataka Commission, the Supreme Court, without addressing the provision of Section 22, sanctified and legitimized denial of information under Right to Information, if any public authority claims there are any other rules for giving information. This ruling has neutralised Section 22 of the RTI Act without any proper reasoning or discussion.

Besides it appears to be contrary to the Supreme Court's pronouncement at para 18 in the CBSE Vs. Aditya Bandopadhyay case quoted above where it had held, "*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 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."* Surely the rules of the Court cannot be treated differently.

Judgment 14: CIVIL APPEAL NOs. 9020, 9029 & 9023 OF 2013 (Arising out of SLP (C) No.24291 of 2012, 13796 and 13797 of 2013); Thalappalam Ser. Coop. Bank vs. State of Kerala; KS Radhakrishnan & AK Sikri 7 October, 2013;

The issue before the Court: Whether a co-operative society will fall within the definition of "public Authority" under Section 2(h) of the RTI Act and be bound by the obligations to provide information sought for by a citizen under the RTI Act.

The observations of the Court:
Para 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.

Para 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."*

The Court held that: 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 unless they are substantially financed. **No Information provided.**

My analysis of the judgment: The Court ruled that Cooperative Societies are not Public authorities covered in RTI unless they are substantially financed. It defined the word substantial finance thus:

The Court after looking at the various dictionary meanings-'material', 'important', 'of considerable value', 'not illusive' decided that it means essential only, when it says, *'Substantially' is closer to 'essentially'* Thus even if a NGO or private body receives 100 crores annually it may not be deemed to be substantially financed if its total budget is around 500 crores and it argues that the amount from the Government is not essential for its working. The Court did not choose the words 'material, important, of considerable value, not illusive' which would have expanded the scope of the Act.

Judgment 15: CIVIL APPEAL NOs. 6362, 6363, 6364 & 6365 of 2013 (Arising out of SLP (C) No.16870,16871,16872 & 16873 of 2012); Union Public Service Commission vs. Gourhari Kamila; G. S. Singhvi and V. Gopala Gowda 6 August 2013

Issue before the Court: The applicant had sought the following information for an examination conducted by UPSC which had been denied.

4. How many years of experience in the relevant field (Analytical methods and research in the field of Ballistics) mentioned in the advertisement have been considered for the short listing of the candidates for the interview held for the date on 16.3.2010?

5. Kindly provide the certified xerox copies of experience certificates of all the candidates called for the interview on 16.3.2010 who have claimed the experience in the relevant field as per records available in the UPSC and as mentioned by the candidates at Sl.No.10(B) of Part-I of their application who are called for the interview held on 16.3.2010.

The CIC decided in favour of disclosure and asked UPSC to disclose the information. UPSC challenged this order and the single judge and the division bench of the High Court dismissed UPSC's petition.

The observations of the Court:
Quoting from CBSE case :

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

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

One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated answer books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8(1)(e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it."

(emphasis supplied)

The Court held that:

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

My analysis of the judgment:

In para 23 in the CBSE judgement the Supreme Court had held: "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."

In the CBSE judgement the Supreme Court had clearly come to the conclusion that it cannot be said that the examining body is in a fiduciary relationship with the examinee. After this the Court had assumed that even if an assumption were made that there is fiduciary relationship, certain outcomes would flow. It is not clear why the court made such an assumption. But in this case the assumption appears to have been treated as the ratio and the decision has been given on that basis!

Judgment 16: CIVIL APPEAL NOs. 9020, 9029 & 9023 OF 2013 (Arising out of SLP (C) No.24291 of 2012, 13796 and 13797 of 2013); Thalappalam Ser. Coop. Bank vs. State of Kerala; KS Radhakrishnan & AK Sikri 7 October, 2013;

This relates to a challenge to the appointment of the State Information Commissioners in Tamilnadu. The case was remanded to the High Court and does not have any significance in terms of interpreting the Act or disclosing or denial of information.

The above analysis shows that in only one case did the Supreme Court rule in favour of a RTI applicant. In this case also the Court has made extremely strong comments almost condemning the use of RTI by citizens. Citizens expect the Supreme Court to be *sentinel on the qui vive* defending and expanding their fundamental rights.

Some of the statements quoted above seem to at great variance with what the Supreme Court said in S.P.Gupta (AIR 1982 SC 149) "…The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest…"

It is difficult to believe that the Supreme Court which earlier held that denial of information should be an 'exception justified only where the strictest requirement of public interest demands' (which are now covered under Section 8) is now justifying denial of information unless a public interest is shown! Whereas the law clearly states that a citizen needs to give no reasons for seeking information, the apex Court's judgements suggest that there should be a demonstrable reason for obtaining information.

There are two other aspects of judicial functioning to which I would draw attention:

1. Quite often on important matters if an Information Commission orders disclosure of information, public authorities obtain a ex-parte stay. Parliament has categorically stated that no appeals can be entertained, and many of the stays are obtained by merely calling blatant appeals as writs. Many of these stays are given without any mention of any reason, violating the Supreme Courts orders of an essential requirement for any judicial order. Courts have ordered reduction in penalties, stopped Commissioners from conducting enquiries, gone into facts to overrule Commissions. Even when Article 226 (3) of the Constitution is invoked, Courts refuse to abide by it.

2. Most applicants cannot pursue the Court cases and hence once a stay is obtained the matter languishes.

Citizen empowerment and democratic awareness is growing rapidly in India. One of the important tools in this journey has been the Right To Information. The government has made four attempts to make amendments to the Act and had to retract in the face of adverse public opinion. This right now faces danger from two sources:

1. Information Commissioners- most of whom are selected in an act of political patronage,- without any process,- have no passion for transparency. Besides most Commissions are not delivering decisions to citizens in any time-bound manner and often display a casual approach to their work.

2. The Supreme Court of India by its judicial interpretations appears to be constricting the scope of the Act and does not appear to be considering the great value this has for the nation. Judicial interpretations as seen above will emasculate the law and curtail citizen's fundamental right.

There should be wide discussions of these judgements so that this important right does not get constricted by interpretation. At stake is the nation's democracy.

Notes