

Some important cases and notes on Right to Information

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One of the objects of democracy is to bring about transparency, contain corruption and bring about accountability. But as observed by the Hon'ble Supreme Court in The Institute of Chartered Accountants of India vs. Shaunak H Satya and Other ((2011) decided on 02.09.2011) "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 section 3 and 4 seek to achieve the first objective, section 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."

Information-- Some misconceptions:

The Hon'ble Supreme Court in Central Board of Secondary Education and Anr vs. Aditya Bandopadhyay and Ors(2011)8SCC497 decided on 09.08.2011 cautioned about misconceptions about RTI Act in the following words:

"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) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or obstructions, 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' 50 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.

In *Khnapuram Gandiah vs. Administrative Officer and others* (decided on 04/01/2010) the Supreme Court held an applicant can get information which is already in existence and accessible, but cannot ask any information as to why such opinion or advice etc. has been given as the same is not information as it is not part of the record.

Competent authority means---(2e)-(a) Speaker of the House of the People or Legislative Assembly and Chairman of Rajya Sabha or Chairman of the legislative Council, (b) the Chief Justice of India/Chief Justice of the High Court and (c) the President of India or Governor.

Under Section 2(h) of the Act 'public authority' means anybody or institution or authority constituted or established

- (a) by or under the Constitution of India
- (b) by any law made by the Parliament
- (c) by any law made by the State Legislature
- (d) by any notification issued by the appropriate government and includes
 - (1) body owned, controlled or substantially financed
 - (2) NGOs substantially financed (directly or indirectly) by the appropriate Government.

What is substantial funding has been discussed in detail by the Hon'ble Supreme Court of India Talappalam Service Co-operative Bank Ltd. And others vs. State of Kerala and others decided on 07.10.2013. It held "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."

Public Authority and cooperative societies:

The same test of substantial funding is to be applied in case of cooperative institutions. One the basis of this test it can be said that Bihar State cooperative marketing union ltd (Biscomaun), Land Development Bank and Bihar State Cooperative Bank are public authorities as they are substantially funded by the State Government.

The information to which RTI Act applies falls into two categories: (i) information which promotes transparency and accountability in the working of every public authority enumerated in clauses (b) and (c) of section 4(1) of RTI Act and (ii) the other information held by public authorities which does not fall under section (1)(b) and (c) of RTI Act. Information falling under the first category has to be Suo moto published within one hundred and twenty days from the enactment of this Act and updated regularly thereafter. But in regard to other information which does not fall under Section 4(1)(b) and (c) of the Act, the same is subject to exceptions under sections 8 and 9 of the Act.

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. 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.

Refusal of information on the ground of exceptions under section 8 and 9 has been the subject of challenge before State/Central Information Commissions and Hon'ble High Courts and Supreme Court of India. Of particular interest has been refusal of personal information relating to employees of Central/State Governments, public sector undertakings and local bodies.

Often PIOs are asked information relating to details of salary, log books, T.A. bills, movable/immovable assets, departmental proceedings etc.

Under section 4(b) (x) "the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulation" is published on the official website of the government/organization. Additionally both the Central and State Governments have made it compulsory for their employees to submit

details of their movable and immovable assets and the same is uploaded on the official website. In such cases the PIOs can refer to the website and the information seeker can look up the website for the information.

But if the information is asked under section 6 of the Act, then exemptions will apply. Section 8 sub-section (1)(j) exempts "information which relates to personal information the disclosure of which has no relation to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information of 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."

It may also be mentioned that the Fundamental Right of Freedom of Speech and Expression (Art.19(1)(a)) includes right to information also (State of U.P. vs Raj Narain (1975)4SCC428 and S.P. Gupta vs Union of India (1981)Supp SCC 87) and Right to Privacy falls under Art.21 of the Constitution of India (Talappalam Service Co-operative Bank Ltd. And others vs. State of Kerala and others (decided on 07.10.2013 by SC)). Thus both are fundamental rights.

Section 11(1) says, "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 their 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 made 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."

Clearly in such cases where the information is not available on the official website the PIO will have to hear the third party and after taking into consideration the submissions, if he comes to the conclusion that larger public interest warrants disclosure, he can give the information after recording the reasons in writing. But in

case he decides not to disclose information as it falls under the domain of personal information and prima facie no case is made out to disclose it in larger public interest, he is not required to send notice to the third party. It may be noted that this order is appealable.

It has been held by a Constitution Bench of the Supreme Court that an individual does not forfeit his fundamental rights, by becoming a public servant, In O.K. Ghosh v. E.X. Joseph AIR 1963 SC 812. In Kameshwar Prasad V. State of Bihar AIR 1962 1166, the Supreme Court rejected an argument that public servants do not possess fundamental right. In S.C. Agrawal vs. Supreme Court of India WP No. 288/2009 the Delhi High Court Said,

"A private citizen's privacy right is undoubtedly of the same nature and character as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of the two differ. Yet, inherent in the situation of the latter is the premise that he acts for the public good, in the discharge of his duties, and is accountable for them. The character of protection, therefore, afforded to the two classes - public servants and private individuals, it to be viewed from this perspective. The nature of restriction on the right to privacy is, therefore, of a different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. Therefore, if a larger public good in public disclosure of personal information is demonstrated, in the particular facts of a case, by way of objective material or evidence, furnished by the information seeker, the protection afforded by Section 8(1)(j) may not be available. In such case, the information officer can proceed to the next step of issuing notice to the concerned public official, as a "third party" and consider his views on why there would be no disclosure. The onus of showing that disclosure should be made is upon the individual asserting it; he cannot merely say that as the information related to a public official, there is a public interest element. Adopting such a simplistic argument would defeat the objective of Section 8(1)(j); Parliamentary intention in carving out an exception from the normal rule requiring no "locus" by virtue of Section 6, in the case of exemptions, is explicit through the non-obstante clause."

In Girish Ramchandra Deshpande vs. Information Commr. And others (decided on 03.10.2012) the following information of the third party (employee) was denied to the petitioner:

- (1) salary details, (2) copies of memo, show cause notice, censure issued, (3) copy of return of assets and liabilities, (4) details of investment and other related

details, (5) copy of report of item wise and value wise details of gifts accepted, (6) copy of details of movable, immovable properties, (7) copy of certified true copy of charge sheet issued, (8) certified true copy of complete enquiry report initiated, and (9) certified true copy of the second show cause notice on the ground that it would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest.

Upholding the above decision the Hon'ble Supreme Court said "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. 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."

In R.K. Jain vs. Union of India and Anr (decided on 16.04.2013) The Hon'ble Supreme Court held that the annual confidential roll of a third person can not be given "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. "

Right to Information and Examining Bodies: (Central Board of Secondary Education and Anr vs. Aditya Bandopadhyay and Ors (2011)8SCC497 decided on 09.08.2011.

9. The Institute of Chartered Accountants of India vs. Shaunak H. Satya and Ors.(2011)8SCC781 decided 02.09.2011).

The Hon'ble Supreme Court held:

- (1)(a) Examinee has a right to inspect his evaluated answer books, not of others' and seek certified copies thereof. It has been held that the exemption under Section 8(1)(e) is not available to the examining bodies as it does not hold the evaluated

- answer-books in a fiduciary relationship;
- (b) but the names of examiners cannot be disclosed as it would expose them to danger to their lives or physical safety (section 8(1)(g));
- (c) right to access information does not extend beyond period during which examining body was expected to retain the answer-books.
- (2) Instructions and solutions to questions communicated by the examining body to the examiners, head examiners and moderators information available to such persons in their fiduciary relationship and therefore, exempted from disclosure under Section 8(1)(e).
- (3) Names of the members of the interview board can not be disclosed as they are likely to be exposed to danger to their physical safety and also it will hamper effective discharge of their duties as examiners. This is the information available with the examining body in confidence with the interviewers (**Bihar State Public Service Commission vs. Saiyad Hussain Abbas Rizwi and Anr decided on 13.12.2012**)

Right to Information and details of Bank accounts:

In **Ram Jethmalani and others vs. Union of India (decided on 04.07.2011)** the Supreme Court said that "Right to privacy is an integral part of right to life. Revelation of bank accounts details of individuals without establishment of prima facie grounds to accuse them of wrong doing would be a violation of their right to privacy."

Other Instances

A part from the above broad categories of information that have been the subject of intense judicial discussion, certain other situations have also arisen where the Courts have had to decide the issue of disclosure under section 8(1)(j), a brief summary of such situations is given below:

- (i) names and details of people who received money as donations from the President out of public funds was considered as information which has a definite link to public activities and was therefore liable to be disclosed; (**President's Secretariat v. Nitish Kumar Tripathi decided on 14/06/2012 by Delhi High Court.**)
- (ii) **information regarding the religion practiced by** a person, who is alleged to be a public figure, collected by the Census authorities was not disclosed since it was held that the quest to obtain the information about the religion professed or not

professed by a citizen cannot be in any event; (**P.C. Wadhawa v. Central Information Commission decided by Punjab Haryana High Court on 29/11/2010**)

- (iii) information regarding all FIRs against a person was not protected under section 8(1)(j) since it was already a matter of public record and Court record and could not be said to be an invasion of the person's privacy; (**Rajinder Jaina v. Central Information Commission decided by Delhi High Court on 04/11/2009**)
- (iv) information regarding the income tax returns of a public charitable trust was held not to be exempt under section 8(1)(j), since the trust involved was a public charitable trust functioning under a Scheme formulated by the District Court and registered under the Bombay Public Trust Act as such due to its character and activities its tax returns would be in relation to public interest or activities. (**Rajendra Vasantlal Shah v. Central Information Commission, New Delhi, AIR 2011 Guj 70.**)
- (v) But on 11th June, 2015 the Bombay High Court in **Shailesh Gandhi v. Shri Ajit Pawar and others (writ petition no.8753 of 2013)** held that income tax returns are exempted under section 8(1)(j) and there is no larger public interest to warrant its disclosure.

Some important court rulings on penalty:

(1) In Ankur Mutreja vs Delhi University (decided on 09.01.2012, in LPA No.764/2011) the Division Bench of Hon'ble Delhi High Court held:

"It is clear from the language of Section 20(1) that only the opinion, whether the Information Officer has "without any reasonable cause" refused to receive the application for information or not furnished information within the prescribed time or mala fide denied the request for information or knowingly given incorrect, incomplete or misleading information etc., has to be formed "at the time of deciding the appeal". The proviso to Section 20(1) of the Act further requires the CIC to, after forming such opinion and before imposing any penalty, hear the Information Officer against whom penalty is proposed. Such hearing obviously has to be after the decision of the appeal. The reliance by the appellant on Section 19(8)(c) of the RTI Act is misconceived. The same only specifies the matters which the CIC is required to decide. The same cannot be read as a mandate to the CIC to pass the order of imposition of the penalty along with the decision of the appeal. Significantly, Section 19(10) of the Act requires CIC to decide the appeal "in accordance with such procedure as may be prescribed". The said procedure is prescribed in Section 20 of the Act, which requires the CIC to, at the time of

deciding the appeal only form an opinion and not to impose the penalty.

"The aforesaid procedure is even otherwise in consonance with logic and settled legal procedures. At the stage of allowing the appeal the CIC can only form an opinion as to the intentional violation if any by the Information Officer of the provisions of the Act. Significantly, imposition of penalty does not follow every violation of the Act but only such violations as are without reasonable cause, intentional and malafide.

"While in deciding the appeal, the CIC is concerned with the merits of the claim to information, in penalty proceedings the CIC is concerned with the compliance by the Information Officers of the provisions of the Act. A discretion has been vested in this regard with the CIC. The Act does not provide for the CIC to hear the complainant or the appellant in the penalty proceedings, though there is no bar also there against if the CIC so desires. However, the complainant cannot as a matter of right claim audience in the penalty proceedings which are between the CIC and the erring Information Officer. There is no provision in the Act for payment of penalty or any part thereof if imposed, to the complainant."

Section 19 and Section 18:

In Chief Information Commissioner and anr vs. State of Kanipur (2011(13) SCALE460 the Supreme Court held that under section 18 the Central/State Information Commission has no power to provide access to information. The only order which it can pass is an order of penalty provided under section 20. However before such an order is passed the Commissioner must be satisfied that the conduct of the PIO was not bona fide. The Supreme Court, Therefore, directed the Appellants to file appeals under section 19 of the Act to get information.

Right of the Commission to recommend department action under Section 20(2) and right to hearing:

The Supreme Court in Manohar vs. State of Maharashtra (civil Appeal No. 9095 of 2012 decided on 13/12/2012 held "We may notice that proviso to Section 20(1) specifically contemplates that before imposing the penalty contemplated under Section 20(1), the Commission shall give a reasonable opportunity of being heard to the concerned officer. However, there is no such specific provision in relation to the matter covered under Section 20(2). Section 20(2) empowers the Central or the State Information Commission, as the case may be, at the time of deciding a complaint or appeal for the reasons stated in that section, to recommend for disciplinary action to be taken against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the relevant service rules. Power to recommend

disciplinary action is a power exercise of which may impose penal consequences. When such a recommendation is received, the disciplinary authority would conduct the disciplinary proceedings in accordance with law and subject to satisfaction of the requirements of law. It is a 'recommendation' and not a 'mandate' to conduct an enquiry. 'Recommendation' must be seen in contradistinction to 'direction' or 'mandate'. But recommendation itself vests the delinquent Public Information Officer or State Public Information Officer with consequences which are of serious nature and can ultimately produce prejudicial results including misconduct within the relevant service rules and invite minor and/or major penalty."

"Thus, the principles of natural justice have to be read into the provisions of Section 20(2)."

Section 22(overriding effect of the provisions of RTI Act):

The Supreme Court in Ashoka Marketing Limited and Another Vs. Punjab National Bank and Others. (1990) 4 SCC 406, held:

"One such principle of statutory interpretation which is applied is contained in the latin maxim: *leges posteriores priores contrarias abrogant*, (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: *generalalia specialibus non derogant*, (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34)."

"In U.P. State Electricity Board v. Hari Shankar Jain, [1979] 1 SCR 355 this Court has observed:

"In passing a special Act, Parliament devoted its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament."

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

"it is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases, of which the particular law is but one. This, as a matter of jurisprudence, as understood in England, has been laid down in a great number of cases, whether the prior law be an

express stature, or be the underlying common or customary law of the country. Where general words in a later Act are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so."

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

"A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus no derogant, or, in other words, where there are general words in a later Act capable of reasonable and sensible application without extending them to subject specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act."

In other words where there is a Rule/Law providing for a particular procedure and different fee for certified copy for certain documents, the same would prevail and the information seeker cannot insist that in view of section 22 of RTI Act he/she should be given certified copy under RTI Act and at the fee prescribed under the Rules made under RTI Act; for example, certified copies of the orders of the Court and certified copies of revenue record etc.

In Karnataka Information Commissioner v. State Information Officer (Special Leave to Appeal 1853/2013) the Supreme Court held it was open for the respondent to file an application for certified copies of the order sheet according to the Rules of the High Court, the SIC was not justified in directing the petitioner to furnish copies of the same free of costs and the order has been passed without application of mind to the relevant Rules of the High Court. In fact for filing a frivolous petition exemplary cost of Rs. 1,00,000/ (one lakh) on the information commissioner who was the petitioner in this case.

Supreme Court on frivolous petitions:

The Hon'ble Supreme Court in Central Board of Secondary Education and Anr vs. Aditya Bandopadhyay and Ors (2011) 8SCC497 decided on 09.08.2011, "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 amongst citizens. Nor should it be converted into a tool of oppression or intimidation of honest official 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 ~~cost~~ 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."

Substantive Review and Procedural Review:

The Supreme Court in Grindlays Bank Ltd vs. Central Government Industrial Tribunal & others (AIR 1981 SC 606) held ".... the question whether a party must be heard before it is proceeded against is one of procedure..... The expression 'review' is used in two distinct senses, namely, (1) a procedural review which is either inherent in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merit.... It is in the latter sense that no review lies on merits unless a statute specifically provides for it "

Following this ruling the Patna High Court in Vijay Narayan Sao vs. The State Information Commission (CWJC No.7379 of 2009) held that the Commission has power to review its order to correct the procedural defect. In this case the penalty was imposed without hearing the petitioner. The High Court quashed the order of penalty and remitted the matter back to the Commission for fresh consideration.

Information to visually impaired people-

Aseer Jamal vs. Union of India (writ petition © No. 137 of 2018)

The visually impaired citizens of Bihar were the first in the country to get copies under the Right to Information Act and Rules made by the State Government in Braille and Audio files.