

Interpretation / Elaboration of definitions in S. 2**Central Information Commission****AAO/590/RTI/07/2009 Appeal No. 591 of 2009**Request-

The appellant had made an application stating that the market for nifty futures closed for around 30 minutes on November 6, 2008 due to problems in the trading system and wanted to know who was responsible for alleged losses arising from such closure. The respondent declined to provide the details on the ground that the details sought were not 'information' under the RTI Act as the details sought were in the nature of seeking clarification and opinion.

Decision-

Dismissing the appeal, it has been noted that the appellant did not ask for any particular document or record. Nor did he ask for any information readily available with the public authority. He asked a question, the answer to which requires professional expertise. The RTI Act does not cast any obligation on the public authority to answer questions, as held by the Hon'ble CIC in **Dr. D.V. Rao Vs. Shri Yashwant Singh & Anr1**.

".. It is not open to an appellant to ask, in the guise of seeking information, questions to the public authorities about the nature and quality of their actions. The RTI Act does not cast on the public authority any obligation to answer queries, as in this case, in which a petitioner attempts to elicit answers to his questions with prefixes, such as, why, what, when and whether. The petitioner's right extends only to seeking information as defined in Section 2 (f) either by pinpointing the file, document, paper or record, etc., or by mentioning the type of information as may be available with the specified public authority..."

In fact, the appellant had sought professional opinion in the guise of seeking information. The right to information under the RTI Act cannot be converted into a legal right to call upon the public authority to give clarification, explanation and opinion in a given matter, as held by the Hon'ble CIC in **Shri Umesh Anand Vs. Shri Robin Hibu2** "RTI Act does not confer on an applicant the right to seek and obtain explanation of a public authority. Section 2(j) makes it amply clear that only information held by or under the control of a public authority can be accessed by a citizen. Section 2(f) defines the form of that information. Queries such as "Is fraud not a case of cheating, warranting filing of FIR?...".

Complaint Nos. CIC/AT/C/2007/0216, 365,462,498,540,511 and Complaint Nos. CIC/AT/C/2008/172,342,655,487 and Appeal No. CIC/AT/A/2007/0735, 729, 1370 and AppealNo.CIC/AT/A/2008/1420

CIC received 10 Complaint Petitions and 4 Appeal Petitions seeking information from three organizations, namely, LIC Housing Finance Limited, LIC Mutual Fund Asset Management Co. Ltd. And GIC Housing Finance Limited. The nature of information sought was almost similar as the appellants and complainants in all these cases sought certain information, which was denied by these organizations on the ground that they were not Public Authorities under Section 2(h) of the Right to Information Act, 2005 and hence the Right to Information Act is not applicable to them.

The only issue that needs be determined in all these cases is as to whether the respondent organizations can be termed as "Public Authorities" within the meaning of

Section 2(h) of the RTI Act. There can be no ambiguity that to be treated as Public Authority, an entity will need to come within the definition of "Public Authority" under Section 2(h) of the Right to Information Act, 2005. None of the above respondents are covered by clause (a) to (c) of Section 2(h) of the Act. The Commission needs, however, to determine as to whether all or any of them can be categorized either as a body owned, controlled or substantially financed directly or indirectly by funds provided by Appropriate Government so as to bring them within the ambit of Section 2(h), d(i) or (ii).

The LICHFL was incorporated by LIC of India and both of them share the Chairman and Managing Director. The stake of LIC in the LICHFL is 40.497%. If the share of the LIC is aggregated with other Government Insurance Companies, the total stake in the shareholding of LICHFL comes to 45.918%. As per Article 133(1) of the Articles of Association of LICHFL, the LIC has the authority to appoint one of its Directors and Managing Director of LICHFL.

In view of this, it can be inferred that the control of LIC over LICHFL is explicit and effective. The very fact that Chairman of the LIC is also the Chairman of LICHFL further strengthened this inference. The appellant has also submitted that if the shareholding of other Banks is added to the total shareholding of the PSU, the total shareholding will exceed 80%. It is an admitted fact that the total shareholding of the PSU is 45% and this is sufficient enough to bring it within the definition of the term "substantial finance". We may agree that the LICHFL is not owned by LIC of India as the total shareholding of the LIC does not exceed 50% but there can be no doubt that LIC and other insurance companies and banks taken together have financed LICHFL substantially.

In this context, it would be pertinent to refer to the decision of the High Court of Madras in **Tamilnadu Road Development Company Ltd. Vs. Tamilnadu Information Commission & another**. In their decision, the Hon'ble High Court has analysed the ambit and scope of Section 2(h) of the RTI Act and has held that Tamilnadu Road Development Company Ltd which was jointly promoted by IL&FS and Tamil Nadu Industrial Development Corporation (TIDCO) to be a Public Authority within the meaning of Section 2(h) of the RTI Act. In this case, the Hon'ble Court has also analysed the shareholding pattern of IL&FS and have found that a little less than 50% are held by the PSU and statutory corporations like LIC etc. The High Court has also examined the composition of the Board of Directors of Tamil Nadu Road Company and come to the finding that the Managing Director of the appellant company is the nominee of IL&FS and that there are three directors who are nominated by TIDCO along with other directors to be nominated by IL&FS. The High Court found that there is only one director who is not nominated by IL&FS or by TIDCO.

On the basis of these findings, the Hon'ble Court has come to the conclusion that the composition of the Board of Directors of the appellant company shows that it is a body which is controlled by Appropriate Government. The High Court, therefore, did not make a distinction between the control exercised directly by Appropriate Government or by one of the PSU owned and created by it. The High Court has given particular emphasis on the inclusive definition of "Public Authority" as defined under Section 2(h) of the RTI Act and has observed that under the well-known covenants of construction of purposive interpretation, the term "Public Authority" under Section 2(h)(d)(i) must be given a liberal interpretation so that the authorities like the appellant company who are owned, controlled and substantially financed directly or indirectly by the Government come within the purview of the RTI Act.

The LIC of India is a body established, constituted, owned and controlled by Central Government which is the Appropriate Government for the LIC of India and the funding by LIC of India and their general control over the functioning of the LIC Mutual Fund can be nothing but an indirect funding and control by the

Appropriate Government. LIC of India is a public authority having been constituted by an Act of Parliament. LIC of India in turn in order to further carry out their public function have formed LIC Mutual Fund approved for formation "through subsidiary" which has to function under LIC's control. The respondent Mutual Fund is fully financed and administratively controlled by the LIC of India through a Board of Trustees. The trustees of the Board who manage the LIC Mutual Fund are appointed with the approval of LIC of India. LIC of India has the power to change the Trustees from time to time. The corpus of the Trust amounting to Rs.10 lakhs was contributed by the LIC. The Trust Deed provides that a further sum not exceeding Rs.25 crores shall be made available as initial contribution to the Trust by the LIC. The LIC has floated the Mutual Fund to mop up the additional savings from the public in rural and semi-urban areas and it would be receiving considerable amount of insurance business from the Mutual Fund. LIC of India for the above purpose provides to the Mutual Fund all suitable help and guidance which includes payment of initial corpus of the Trust, financial assistance to the Trust, renting out premises after housing the Mutual Fund, provision of initial office equipment and deputation of suitable employees etc. The Chairman of LIC is authorized to take such administrative decisions as may be required periodically so as to ensure the smooth launching of the LIC Mutual Fund and its successful operation.

Now coming to G.I.C. Housing Finance Limited, the Commission's finding is not any different. **The shareholding of six Public Authorities in GIC Housing Finance is 47.68% and coupled with the control they exercise over the GIC Housing Finance is sufficient to bring them within the ambit of the definition of "Public Authority" as defined in Section 2(h) of the Right to Information Act, 2005.**

In view of the above observations and findings, we decide that all the three respondents, LIC Housing Finance Limited, LIC Mutual Fund Asset Management Co. Limited and GIC Housing Finance Limited as "Public Authorities" under the RTI Act. All of them are, therefore, obliged to take all necessary steps to carry out their duties and responsibilities assigned by the Act. Insofar as these appeals/complaints are concerned, the Commission directs the respondents to provide the requested information to the concerned applicants within a period of three weeks from the date of receipt of this Decision Notice.

Complaint No.CIC/WB/C/2009/000264 dated 12.5.2009

The Central Information Commission has held that there is no exception to the coverage of the Right to Information Act for the Leader of the Opposition in the Parliament. Deciding an appeal against the denial of information to leading RTI activist Subash Chandra Agrawal by the office of the Leader of Opposition, the Chief Information Commissioner Wajahat Habibullah declared as under;

"In this case we find the office of Leader of the Opposition has been established by Notification issued by Government in the Ministry of Parliamentary Affairs and is financed directly by funds provided by the Govt. of India. It is not material as to who has issued orders of appointment so long as the personnel of the office of Leader of the Opposition function under the Control of the public authority to which they are appointed. In this case that is so, even though the staff may be under the administrative control of the Lok Sabha Secretariat. The office of the Leader of the Opposition, therefore, is a public authority in its own right, which then makes it subject to the obligations of any public authority under the RTI Act"

Request-

The appellant was seeking information from Asst. Commissioner, Customs & Excise Department regarding the dues of one M/s Steel Knight Casings Ltd. and any litigation pending for recovery of such dues payable by the said company, action taken on the defaulting promoters and details of the recovery proceedings before Revenue Authorities etc.

Decision-

The Commission, while elucidating the meaning of "information" as described under the Act, directed the CPIO to provide only such factual information either held or under the control of the Public Authority, and to reject any hypothetical questions like reasons for not taking action against the defaulters etc.

Information would mean any material in existence and apparently it cannot mean and include something that is not in existence or has to be created.

An 'opinion' or an 'advice' if it is a part of the record is 'information' but one cannot seek from PIO either an 'opinion' or an 'advice' as seeking such opinion or advice would be in effect seeking a decision which the CPIO may not be competent or authorized to take.

An existing report is information but preparing a report after an enquiry cannot be treated as available 'information'

Data maintained in any electronic form is 'information' and the whole of such data or a part thereof can be made available to an applicant by a public authority under the RTI Act. But making an analysis of data or deriving certain inferences or conclusions based upon the data so collected cannot be expected to be done by the CPIO under the RTI Act.

Answering a question or proffering advice or making suggestions to an applicant is beyond the purview of the Right to Information Act.

Assam State Information Commission

Case No. NBL.3/2007

The Commission considered the written statement of the Deputy Commissioner, Nalbari, asked by the Commission to submit by 31st January, 2008 clarifying as to whether the Public Authority can access to any information from the Shri Shri Hari Mandir at Nalbari a private body, as contemplated under section 2 (f) of the Act.

The Commission decided that the Nalbari Hari Mandir is a non Government organization not substantially financed directly or indirectly by the Government. However the Commission was not clear whether the said Hari Mandir can be accessed by a Public Authority under any other law for the time being in force under section 2 (f) of the RTI Act and hence directed that the DC, Nalbari should send a written statement to the Commission clarifying as to whether the Public Authority can access to any information from the said Hari Mandir a private body, as contemplated under 2 (f) of the Act.

The Commission found that Shri Shri Hari Mandir, Nalbari is a religious institution and is managed out of the donation received from the public. The DC, Nalbari was of the opinion that it was not a public authority nor can it be accessed by any public authority under any law in force.

The Commission on perusal of the statement of the D.C Nalbari was of the view

that Shri Shri Hari Mandir, Nalbari is a private body and cannot be accessed by any public authority under any other law for the time being in force under section 2(f) of the RTI Act, 2005 and hence the affairs of Shri Shri Hari Mandir Committee at Nalbari do not come under the purview of the RTI Act.

Goa State Information Commission

Appeal No. 30/SCIC/2010

S. 2(f) provides only information held or under the control of any public authority. It, therefore, necessarily implies that the information to which an information seeker is entitled can only be that which is available on records of Public Authority concerned. It does not mean that an information seeker can solicit opinion from public Information officer of a public authority.

A ruling of CIC is as under;- Shri Subhash Chandra Agrawal V/s Department of Justice, Ministry of Law & Justice (Application No. CIC/AT/2007/00155 dated 10/05/2007) the Commission held that asking " who is the appointing and disciplinary authority for Judges and Chief Justices of High courts and Supreme Court amounts to expecting the respondents to provide their interpretation of constitutional and other laws. What the Appellant is asking is neither a 'material' as stipulated in section 2(f) nor it is held by the Respondents as in section 2(j).

In Dr. D. V. Rao V/s Department of Legal Affairs, Shastri Bhavan, New Delhi (File No. CIC/AT/A/2006/00045 dated 21/04/2006) where the information sought "Why the recruitment rules were amended" the Chief Information Commissioner held that RTI Act does not cast on public authority any obligation to answer queries in which attempt is made to elicit answers to questions with prefixes such as why, what, when and whether.

It is held (as decided by Chief Information Commissioner in K. Anand Kini V/s Canara Bank on 10/05/2007) that no queries like why, what, how etc can be answered by a public Authority. In the guise of information seeking explanations and queries about nature and quality of action of public authority need not be raised for answer. Again it is held that RTI Act does not cast on the public Authority any obligation to answer queries in which attempt is made to elicit to questions with prefixes such as why, what, when and whether.

In Vibhor Dileep Baria V/s Central Excise and Customs Nashik (Appeal No.CIC/At/A2006/00588 dated 30/11/2006) information sought was in the nature of some questions starting with 'whether'. In para 11 it is observed as under:-

Right to information Act confers on all citizen a right to access information and this right has been defined under section 2(j) of the said Act. An analysis of this section would make it clear that the right relates to information that is held by or under the control of any public authority. If the public authority does not hold information or the information cannot be accessed by it under section 2(f) or if the information is non-existent, the public authority cannot provide the same under the Act. The Act does not make it obligatory on the part of the public authority to create information for the purpose of its dissemination'. Again in para 14 it is observed.

Thus information would mean any material in existence and apparently it cannot mean and include something that is not in existence or has to be created. An "opinion" or an "advice" if it is a part of the record is "information" but one cannot seek from PIO either an "opinion" or an "advice" as seeking such opinion or advice would be in effect seeking a decision which the CPIO may not be competent or authorized to take. Similarly the

existing report is information but preparing a report after an inquiry cannot be treated as available "information".

Like wise the data maintained in any electronic form is "information" and the whole of such data or a part there of can be made available to an applicant by a public authority under the RTI Act. But making an analysis of data or deriving certain inferences or conclusions based upon the data so collected cannot be expected to be done by CPIO under the RTI Act. On the same analogy, answering a question or proffering advice or making suggestion to an applicant is clearly beyond the purview of the Right to Information Act."

In terms of provision of RTI Act a citizen is entitled to seek disclosure of information that is available in material form with public authority that is the information is available in any file or document and the like.

Complaint No.79/SIC/2010

The information under the RTI Act can be sought only by a citizen. A group of persons, associations or Company cannot seek information under the RTI Act. The request dated 04.01.2010 is of the Complainant and the Opponent called upon the Complainant to make payments for the information sought and also required the Complainant to furnish the identity at the time of payment of charges.

It was for the Complainant to make payment and collect the information personally and not by allowing any other person to collect the same with the letter of authority. After all the information sought by the Complainant was in his individual capacity and has to be provided only to the Complainant. As such, the Complainant to make the payment of fees and collect the information personally from the Appellant.

Gujarat State Information Commission

Inquiry No. 0005 / 2005 dt. 07.03.2006

A company which is wholly owned, controlled and substantially financed by another entity which is owned by Government is also a Public Authority (PA) under S. 2(h)(d)(i). Further in **Inquiry No. 0006 / 2005 dt. 16.03.2006**, when the IC on hearing the complaint realized that certain entities were, in fact, PAs, it ordered them to designate, within 30 days, Information Officers and Appellate Authorities as stipulated by the Act and that the appropriate PIO so should deal with the applicant's application as per the Acts' provisions.

Complaint No. 0631/ 2006-07 dt. 28.01.2010

File notings are included within the definition of information.

Complaint No. 0370/2008-09 dt. 29.01.2010

The respondent organization was registered as a Public Trust and was therefore not a Public Authority (PA) under the Act. The complainant had not adduced any evidence that it is a PA under S. 2(h), whereas the respondent's representative had submitted that the said Trust was not receiving any financial aid / grant, either directly or indirectly, from the State Government. Hence, the complaint was rejected.

Kerala State Information Commission

Ref: C.P. No. 1005(5)/2008/SIC File No. 9316/SIC-Gen 3/2008: Shri Ayyappan Pillai Vs. Kadakkal Priyadarshini Residence Welfare Co-operative Society, Kuttikad, Kerala: Order dated 27 January 2009

RTI application for information by the appellant to the society was rejected on the grounds that the Society did not come under the definition "public authority" u/s. 2(h) of the RTI Act. The Commission observed that the Co-operative Society has been formed under Kerala Co-operative Societies Act 1969 and it is controlled by the Registrar of Co-operative Societies and hence, it cannot claim that it is not a public authority. The Government of Kerala had already issued a circular, bringing all the Co-operative Societies under the purview of the Act. The State Public Information Officer is under the obligation to provide the information as per the provisions of the RTI Act.

Ref: AP.No.237 (4)/2008/SIC (File No.6747/SIC-Gen1/2007): .P. Abdulla Vs. Regional Transport Office, Vadakara: Decision dated 12-2-2009

The first appeal and other connected pleadings in all the appeal proceedings were seen signed by the power of attorney holder. He was asking information with regard to a vehicle KL-11/P/1593 and the file, notices, RTA notices etc. SIC examined the issues in this case pertaining to the locus standi of an attorney holder to prefer a request u/s.6 of the RTI Act or prefer a first appeal u/s.19(1) of the RTI Act and finally a second appeal before the Commission u/s.19(3) of the RTI Act. The commission observed thus:

*The Right to Information is a personal right. Of course, this is a fundamental right. It is personal as far as the individual citizens are conferred with the fundamental right. Section 3 of the RTI Act declared that all citizens have the right to information. The request u/s.6 (1) of the RTI Act was to be preferred by the person who desires to obtain information and the person should be a citizen. A power of attorney holder was asking for and on behalf of some person. He could not be termed as a citizen or a person. **A personal right could not be delegated to a power of attorney holder.** Therefore, the appeal petition requires no consideration by the Commission and the same is dismissed in-limine.*

Ref: AP.No.600(4)/2008/SIC (File No.5456/SIC-Gen3/2008): Shri. K. N. Natarajan vs. Registrar: Order dated 18 February, 2009

The requester was admittedly a BPL who had succeeded in proving the fact that he was a person under the BPL. The demand for fees by the PIO did not specify the amount that was to be remitted by the appellant. The Appellate Authority, however, while disposing off the appeal had found that the special fees leviable by the Department would have to be remitted by the requester, which he refused to remit.

The simple differentiation between exemption of fee under the RTI Act for persons claiming BPL status was that for information under the RTI Act and for information that emanates because of the RTI Act, no fee, is to be realized. But if a departmental statute prescribes certain fee for providing information like the copy of the document from the Sub Registrar Office or copy of the BTR register etc., that departmental fee will have to be remitted by the appellant. He could not claim exemption on that ground. The SPIO is hereby directed to provide the information on payment of prescribed fee by the appellant as per the departmental norms.

Maharashtra State Information Commission

Appeal No.2008/1602/02

Even though the reply expected is not 'information' as such but taking into account the importance of the issue raised, the information must be furnished.

Appeal No.2009/1874/02 (self disclosure of information)

Information regarding budget provision for provision of basic facilities for fishermen is one area where self disclosure under section 4 of the RTI could have applied.

Appeal No.2008/ 622/ 02 (PIO responsible to collect information from other PIOs)

Under RTI Act, 2005 if the information is held by another public authority the public authority to which such application is made should transfer the said application to the concerned public authority. In **Appeal No.2007/1263/02**, the Commission observed that the Act gives the right to the Appellant to get the information but he cannot insist that I must get the information from a particular office.

Appeal No.2009/1533/02 (Furnishing of available information – correctness of the info)

RTI Act ensures furnishing of the available information on record.

Appeal No.2009/2173/02 (Commission not expected to ask questions)

The RTI Act ensures furnishing of available information. It is not expected to ask questions and receive answers.

Appeal No.2009/2220/02 (give available information, not create information)

The RTI Act ensures furnishing of available information. It is not expected to generate information. It may not be serving the purpose of the appellant but that is what it is.

Appeal No.2009/2335/02 (Specific information, no need to inspect the file)

When the information sought is specific, there is no question of inspecting the file.

Appeal No.2008/1134/02 (Personal information, serving public interest)

Appeal No.2008/1135/02

Appeal No.2008/1136/02

Information should be furnished to the appellant if it is one of the grounds for appellant's dismissal from service, he is entitled to know the institution's stand on the issue. The document/information sought may look personal but it has an element of public interest as this may reveal the institution's approach to the issue.

Appeal No.2009/2211/02 (File to be reconstructed if info is not available)

The PIO will first take personal responsibility to locate and furnish information to the appellant. In case that is not possible he shall reconstruct the file and furnish required information to the appellant failure will lead to initiation of action under section 20 of the RTI Act.

Appeal No.2010/4347/02 (Format of the information sought)

The respondent's contention that information has been sought in the question answer form and therefore cannot be furnished is not accepted. If the questions are leading to facts / factual information it cannot be denied because of the format. The questions raised by the appellant have definite answers and therefore information should be furnished.

Appeal No.2010/4268/02 (Purpose of the information)

It is true that the RTI Act does not allow the public authorities to ask for the purpose for which the information is sought. The disclosure however is interesting. As case papers reveal this was done so that someone else gets information free of cost as the appellant belongs to BPL category. This is gross misuse of the provisions of the RTI Act. The PIO has asked the appellant to prove his citizenship.

This not required by law. The PIO prima facie is guilty of obstructing / delaying furnishing of information sought. The commission has taken a serious note of this. The appellant should be furnished information on payment of required fee because the information is actually required by someone else who is not entitled to information free of cost. The commission is not mandated to take action against fraud.

Appeal No.2009/2138/02 (Purpose of the information)

Appeal No.2009/2139/02

Nobody is permitted to ask the purpose for which the information is sought.

Appeal No.2007/236/02

Mr. Kewal Semrani of Mumbai had given application to the PIO and Deputy Registrar of Coop. Societies, Mumbai City (1), Mumbai on 2.8.2007 seeking the following information: " (i) Exemptions under Bombay Money Lenders Act 1946 to Citifinancial Consumer Finance India Ltd. (CCFIL) Mumbai; (ii) The period to which the information relates: 1.4.2004 till the date of providing information; (iii) Description of the information required: Certified true copies of: a) Specific provisions of Bombay Money Lenders Act 1946 under which CCFIL are exempted from Bombay Money Lenders Act, 1946; b) Details of all other Complaints, except those holding banking licence from RBI, which are exempted from Bombay Money Lenders Act - 1946 because of permission obtained by them from RBI for carrying on business in Maharashtra c) Any other information, relevant to the above; d) The information should be provided in print format as well as in e-format (CD) if available."

He received reply on 9.8.2007 that the information sought in his application does not come under the definition of the information, therefore, his application is filed. Being aggrieved by this, he has complained to this Commission u/s 18 of the Act on 21.8.2007. Taking into consideration the public interest involved in this complaint it was heard on priority on 18.9.2007 when Shri Kewal Semrani, Complainant and Mr. Patil, Dy. Registrar was present.

After hearing both the parties it transpired that District Deputy Registrar seem to be of the view that since the said complaint - Citifinancial Consumer Finance India Ltd. (CCFIL) has got licence from RBI they come under the control of RBI , therefore, there is no question of taking any action under Mumbai Money Lenders' Control Act, 1946 and this was informed by them by letter dt. 10.7.2007, based upon which the application under RTI Act, 2005 was done. Mr. Semrani produced a copy of letter he received from RBI dt. 13.8.2007, stating that even such companies are not exempt from the State laws unless the State Government has specifically exempted them. The Deputy Registrar promised that in view of the letter from RBI he will re-examine the matter and provide the information asked by the Complainant early.

Appeal No.2008/594/02 (Info maintained in the current form be given)

The information has to be furnished in the format in which it is maintained and appellant request for supply in the CD form has been rightly not entertained. The rates are fixed by govt. under the rules made under RTI Act and the PIO and appellate authority have

no discretion. As far as the point of certification is concerned, Commission is of the view that the Supreme Court's rules have entirely different context.

The opinion dated 31.12.2004 has elaborated these rules which makes it easy to understand the context. It deals with complaints, issue and service of summons. It says that summons shall be accompanied by the copy of the complaint. Thus it is very clear that summons cannot be issued without being accompanied by the complaint. It does not mean that if you want a copy of the complaint get summons by intervening.

In any case the context and spirit of the RTI are different and what cannot be disclosed is clearly mentioned. The Commission therefore feels that the document which has been filed by GAD or govt. of Maharashtra can be certified and certified copies may be furnished to the appellant. It will be unreasonable to expect the PIO to certify document which he has got from elsewhere but and has not prepaid it.

Appeal No.2008/706/02

Section 2(f) which clearly expands the definition of information and includes any information relating to anybody which can be accessed by a public authority under any other law for the time enforce. Accordingly, the licensing authority can always ask the licensee to provide a copy of the partnership deed.

Appeal No.2008/572/02

Section 2(j) is very clear. It says "right to information" means the right to information which is held by or under the control of any public authority. Thus citizens have right to seek information from the public authority which is holding the information. In fact the definition of information is so broad that it includes information which any private body is holding which can be accessed by a public authority under any other law for the time being in force.

It is under this provision that the Commission in many cases has directed the District Deputy Registrar of Co-operative Societies to secure information from Cooperative Societies under the Maharashtra Co-operative Societies Act 1960 and furnish to the applicant / appellant.

Appeal No.2008/590/02

Information accessible under this act is which is held by or under the control of public authority. Information itself has been defined and includes information relating to any private body which can be accessed by a public authority under any other law for the time in force. Societies work or any supposed to work according to provisions of the Maharashtra Cooperative Societies Act 1960. The information available with the society are held under the control of the District Deputy Registrar.

If information relating to any private body can be accessed by a public authority under any other law for the time in force, the information by the appellant is held under the control the Deputy Director and he should furnish the information after obtaining the same. If the society refuses, it should be proceed against according to the Maharashtra Cooperative societies Act 1960.

Appeal No.2008/659/02

Section 2(j) says that right to information means the right to information accessible under this Act which is held by or under the control of any public authority.

Appeal No.2008/681/02

The RTI Act guarantees access to available information. It is not important by what name it is known. If the work order is known as connection form a copy of the same must be furnished. Similarly if there are instructions to the effect that Landlords 'no objection' is not required the appellant deserves to be given a copy of the instructions.

Appeal No.2009/4005/02

The Right to Information Act ensures supply of available documents. If there are no documents relating to the adoption of the Industrial Disputes Act and the same has been told to the appellant, the obligation under RTI Act stands discharged.

Appeal No.2009/1861/02

The appellant has contended that persons who are junior to him have been promoted but he has not been promoted. He therefore wanted to know by what time was he likely to be promoted. After going through the case papers and considering the arguments advanced by parties the Commission has come to the conclusion that the desired information does not fall within the definition of information as defined under the RTI Act 2005.

Appeal No.2008/444/02

The RTI Act does not provide remedial measures. It empowers citizen to access information. The violation of ethical code has been brought to the notice of the Institute of Chartered Accountants and he wants action / information regarding that. This according to the Commission means stretching the definition of information a little too far.

The respondent has also contested that the State Information commission is not competent to entertain this case as the Institute has been set up under the Chartered Accountants Act 1949 and comes under the Ministry of corporate affairs Govt. of India and therefore Central Information Commission alone can entertain any application seeking information from them. The Commission is not commenting on these issues because the appeal fails on the basic premise – whether the request is 'information' or not.

Appeal No.2008/153/02 (Interpretation of the word 'opinion')

The word opinion used in section 2 of the RTI Act cannot have any other meaning except "opinion on record". According to the conventional office procedure we record our opinion on file and submit to the appropriate authority in the hierarchy who may take that opinion into account while making final decision. PIO and First Appellate Authority cannot be approached for rendering their advice or giving their opinion.

Appeal No.2008/266/02

The PIO the First Appellate Authority have held that the Information requested does not qualify as "information" under section 2(f) of the RTI Act and more in the nature of seeking advice. The words advice or opinion referred in section 2(f) are basically opinion, or advice on record to facilitate appreciation of the decision making process. No general advice or opinion can be sought under RTI Act.

Appeal No.2009/2788/02

The RTI Act ensures furnishing of available information. Answer to question 'why' are not information within the meaning of definition of information Public authorities are not

expected to communicate reason as to why a certain thing was done or not done. Such justifications are within the domain of adjudicating authorities and cannot be classified as information.

Appeal No.2009/2578/02 (no interpretation)

The Act mandates furnishing of available information and no interpretation is expected.

Appeal No.2009/2597/02

The RTI Act ensures furnishing of available information record and not provide any subjective answers.

Appeal No.2009/2224/02

The appellant has sought clarification on Hindu Succession Act 1956 and also on articles 14 and 16 of the Indian Constitutions. These queries are not supposed to be answered under the RTI Act.

Appeal No.2009/2317/02

If the appellant finds the information flawed, he cannot seek remedy under the RTI Act. The Act ensures furnishing available information on record.

Appeal No.2009/2382/02

Now office notings are available under the RTI. The list has to be made available to the appellant.

Appeal No.2009/2433/02

The RTI Act ensures furnishing of available information. It is not mandated under the RTI to give any clarification or any explanation. Why a particular decision has been taken cannot be answered under the RTI. The process of decision making and decision arrived at is accessible.

Appeal No.2009/2586/02

The RTI Act insures furnishing of available information on record. Questions are not expected to be replied.

Appeal No.2009/2635/02

The RTI Act ensures furnishing of available information. It is not expected to provide relief against dismissal.

Appeal No.2009/1188/02

The RTI Act ensures furnishing of available information. Copy of the non-existent occupancy certificate cannot be furnished. The issue as to 'why not' should be taken up with Municipal Commissioner, MCGM. More over the Hon CIC has decided three appeals 3523, 3524 and 3525 on the same issue.

Appeal No.2008/93/02

Appeal No.2009/1938/02

Under the Act only such information is required to be supplied which already exists and is held by the public authority or held under his control. It is beyond the scope of the Act to create information or to interpret information or to solve the problems raised by the applicant to furnish replies to hypothetical questions.

Appeal No.2008/120/02

The queries raised by the appellant whether a company can buy agricultural land do not fit into the definition of information as such. Although some people can say that the definition does include the word "opinion" and "advice" in the definition. But these opinion or device according are those rendered on files. This does not mean the information seekers can ask opinion or advice of the public authorities.

Appeal No.2008/3746/02

RTI Act ensures furnishing of available information. This can be used as a tool/weapon to get things corrected if the information reveals omissions or commissions. The commission however is not mandated to correct omissions / commissions if any.

Appeal No.2009/2097/02

DOPT under its circular dated 25.4.2008 has clarified as follows: Only such information is required to be supplied which already exists and is held by the public authority or held under the control of the public authority. It is not required under the Act to create information or to interpret information or to solve the problems raised by the applicants or to furnish replies to hypothetical questions.

Appeal No2007/1002/02

Commission so far has no evidence to show that the (Reliance Energy Limited) Company comes under the definition of Public Authority.

Appeal No.2007/181/02

" Where the grant or loan to a body or authority from the Consolidated Fund of India or of any State of any Union Territory having a Legislative Assembly in a financial year is not less than Rupees Twenty Five Lakhs only and the amount of such grant or loan is not less than seventy five percent of the total expenditure of that body or authority, such body or authority shall be deemed, for the purposes of this sub section to be substantially financed by such grants or loans, as the case may be."

Commission while examining this provision of CAG Act, 1971 (for its applicability to Mahatma Gandhi Mission's New Bombay Hospital) is also of the opinion that this definition is only to be taken as guidance material and should not be steadfastly adhered to. More so, when one decides the issue of whether organisation was substantially financed or not, Commission feels that reference to 25 lakhs is mainly there so as not to saddle A.G.'s office with the auditing work of too many small organisations. But this definition definitely gives the indication as to how any attempt should be made to determine "substantially financed". For the "openness purposes" which RTI professes 75% could definitely be brought down considerably further down. But by no stretch of imagination, one can say that in the budget of Rs. 16 crores, Rs. 23 lakhs would be considered substantial funding. In such cases, it is clear that the organisation is not substantially funded by the Government.

Though the picture of any body or authority coming within the definition of public authority, on the strength of control as mentioned in Cooperative Societies' Act or Public Trust Act, will be more clear after the judgments of Gujarat & Karnataka High Courts in these cases becomes available, in respect of this hospital besides being subject to the control which any public trust has from Charity Commissioner, CIDCO has authority and say in the management and governance of the hospital. Since CIDCO has already appointed its nominees on the hospital it is beyond doubt that the said hospital is a body controlled by the appropriate government.

Even besides this, under definition of information under section 2(f) even the information relating to any private body which can be accessed by public authority under any other law for the time being in force is to be given to the public. In this case the Charity Commissioner and CIDCO both have got access to the information held by this hospital and even on that count the information demanded by the public could be made available. Therefore, the hospital is declared to be the public authority u/s 2(h)(d)(i).

To summarise, it can be said that all the aspects – having received substantial funding from government, any government/public body having substantial and significant control – have to be considered for declaring an entity public authority.

Appeal No.2008/3387/02 (Affiliated colleges of Mumbai University)

University of Mumbai is a "Public Authority" as defined under sec.2 (h) of the RTI Act, 2005 and hence the said proviso suo motu applied to the affiliated colleges as well.

Appeal No.2007/924/02

At this juncture, there has been no clear verdict of the High Court as regards whether D.C.C.Banks are Public Authorities. This Commission, after seeking clarification from the Cooperation Department of the Government of Maharashtra had held that RTI Act is applicable to the D.C.C.Banks in the appeal of Shri Babanrao Dhakane V/s D.C.Cl Bank, Ahmednagar. D.C.C.Bank, Ahmednagar approached Aurangabad Bench of the High Court who had restrained this Commission from taking any coercive action against the Bank PIO pending decision of that bench. Both Karnataka and Gujarat Information Commission had held that all Cooperative Societies including District Central Cooperative Bank are Public Authorities under RTI Act. However, both Karnataka and Gujarat High Courts have given "stay" to this order.

Member of the Cooperative Society should first try to get the information under the provisions of Cooperative law, since he is a member of the Cooperative must subscribe to the spirit of cooperation. When this attempt fails, then public authority (in this case Deputy Registrar of Cooperative Societies or his subordinate under whose jurisdiction this Cooperative Housing Society falls) should step in to get the information from the Society and give to the applicant. Since, as regards applicability of the Act to the D.C.C. bank, final verdict is yet to come from the Hon. High Court.

Appeal No.2008/611/02

The impression in general is that societies are not covered under the Right to Information Act. The RTI Act defines information and includes "information relating to any private body which can be accessed by a public authority under any other law for the time in force". Section 2(J) also says that right to information means the right to information accessible under this act which is held by or under the control of any public authority. All society work under the control of the District Deputy Registrar, cooperative Societies and the information can be accessed by applicant under the

Maharashtra Co-operative Societies Act 1960. **Appeal No.2009/1865/02 and Appeal No.2009/1833/02** also confirm the same.

Appeal No.2007/1083/02

The Maharashtra Information Commission does not undertake cases relating to Co-operative Banks as some of its cases have been challenged in the Hon. High Court and no verdict has been passed by the Hon. High Court.

Appeal No.2008/1490/02

Any complaint against information not being furnished by the registrar of cooperative societies should be taken up under the Maharashtra Co-operative Societies Act 1960.

Appeal No.2010/4051/02 (District Cooperative Bank)

The commission's own order directing District Central Cooperative Bank Ahmednagar to furnish information has been stayed by the Hon High Court, Aurangabad Bench. It is therefore not possible to direct the Bank to furnish the required information.

In **Appeal No.2009/2817/02**, the Commissioner has submitted that the Chief Commissioner in his order dated 08.08.2006 held that the RTI Act was applicable to District Central Cooperative Banks. The order is exhaustive and detailed. The order however was challenged in the High Court of Judicature at Bombay, Bench Aurangabad and final order has not yet been passed.

Appeal No.2008/441/02

Appeal No.2008/404/02

The commission in certain cases has directed the DDR to collect the information and furnish to the society. The sole criterion has been that DDR should 'hold' such information and have direct control over such information. Documents relating to day to day functioning of the society or repairs to buildings or collection of services charges do not fall in this category. This is not to suggest that the Managing Committee should ignore its members. The solution lies in the Maharashtra cooperative societies Act 1960 and not in the RTI Act 2005. The cooperative Society Act empowers the DDR to even supersede the society if it is not run according to the bye laws of the society and rules/regulation under the Act.

Appeal No.2009/2875/02

The issue whether the RTI Act is applicable to a Cooperative Society or not has not been finally settled. The Hon. High Court of judicature at Bombay Bench at Aurangabad in write petition no.1304 of 2008 has restrained from disclosing any information other than balance sheet and profit and loss accounts the Cooperative Societies.

Appeal No.2009/2076/02

Societies have not been designated as Public Information Officer. The Dy. Registrar Cooperative Societies has also not been designated as the First Appellate Authority to hear the first appeal against societies. In such cases if any information is required, the Dy. Registrar can ask the society to furnish information as required under section 32 of the MCS Act.

Appeal No.2008/1108/02

The commission has been of the view that Cooperative Credit Society are not public authority under the RTI Act and the appeals is not maintainable.

Appeal No.2009/1939/02

The society's internal working and the information not held by the PIO are beyond RTI Act.

Appeal No.2009/1923/02
Appeal No.2009/1924/02
Appeal No.2009/1923/02
Appeal No.2008/3612/02

The Hon. Karnataka High Court in its judgment in writ petition no. 16901 / 2006 (GM RES) has held that solely on the basis of supervision and control by the Registrar of Societies, a society cannot be termed as public authority. So as to include a Society, within the definition of the term 'Public Authority' it should fulfill the conditions stipulated in such clause (d) of clause (b) of section 2 of the RTI Act.

The Commission however has devised a via media the information which is held by the office of the Deputy Registrar or should have been held by him can be accessed. The information sought about Property tax, addresses and telephone no. of members, occupation certificate etc does not fit into the category. The appellant however can approach the Deputy Registrar under the Maharashtra Co-operative Societies Act 1960 which sufficiently arms the Deputy Registrar to provide relief to Society members.

In **Complaint No.2008/76/02**, the commission has stated that whatever information relating to cooperative societies are available or are supposed to be available with the Dy. Registrar should be furnished. The commission would not like to go beyond that.

Appeal No.2008/1320/02

The Commission entertains applications where it feels that the information asked is 'held' by the deputy registrar because the RTI Act ensures furnishing of available information with the public authority.

Appeal No.2008/963/02

The decision of the PIO that societies do not come within the purview of the RTI Act is not acceptable. The commission has been of the view that information accessible under the Act which is 'held' by or is under the control of any public authority has to be furnished. The sole criterion is whether the information is 'held' by the public authority or is 'held under his control.'

Appeal No.2008/1030/02

It is possible that society may not volunteer to furnish the information, but then remedy is available under the Maharashtra Cooperative Societies Act and not under Right to Information Act.

Appeal No.2008/969/02
Appeal No.2008/970/02

It appears that the very application of the appellant has been filed under section 32 of the Maharashtra Co-operative Societies Act 1960. It is also clear that most of the information sought are not supposed to be with the Dy. Registrar. The Commission has

been of the view that the Dy. Registrar should furnish the information which is available with him.

Appeal No.2009/3311/02

Cooperative Housing Societies do not fall within the purview of the RTI Act. The issue has not been finally settled. The commissions however has been allowing access to information relating to societies through the PIO / First Appellate Authority appointed in the office of the Deputy Registrar of Cooperative Societies provided the information is held by them or held under their control.

Appeal No./ KR-267 and 2477/08

Co-operative Society is not a Public Authority.

Appeal No. 173 to 185 /2008 And Complaint No. 3 to 5/ 2008

Circular dated 08.02.2006 issued by the Commissioner of Cooperation, Maharashtra State states that only those cooperative housing societies which have been granted land by the Government or those which have received some financial help from Cooperation, Social Justice or any other department of the government come within the ambit of the Right to Information Act, 2005.

Appeal No.KR- 1940/2008

The First Appellate Authority has come to the conclusion that Mangaon Vibhag Vividha Karyakari Sahakari Seva Society Limited, is a Public Authority under R.T.I. Act, 2005, because of following amongst other reasons: a) Funds of Government are involved in giving benefit of loan waiver to its members, b) Funds are flowing to its members under the Government Scheme known as Dr. Punjabrao Deshmukh Interest Concession Scheme under which loans are given upto Rs. 3.00 lakh to member farmers, at interest rates 4% and less.

Appeal No.2008/1693/02 (Societies and Trusts)

The issue whether a trust or a society comes within the purview of the Act has not been finally settled. The Hon Karnataka High Court in its Judgement in writ petition no 16901 of 2006 has held that a society is not a public authority under the provisions of the RTI Act 2005.

The Hon Mumbai High Court in writ petition no 1874 of 2008 has stayed the order passed by the Hon Chief Information Commissioner, Maharashtra directing MGM Trust to furnish certain information to the appellant in complaint no 2007/181/02. The conclusion is that the trust is not a public authority since nothing contrary has been brought to the Commission's notice.

Appeal No.2010/3536/02 (Trusts)

Trusts are not covered under the RTI Act in view of the Hon High Court's (Nagpur Bench at Nagpur) in writ petition No.5294 of 2009.

Appeal No.2008/3419/02 (Trusts)

Appeal No.2008/2135/02

The Hon High Court of Judicature at Bombay, Nagpur Bench at Nagpur in writ no 5294 of 2008 (order dated 28th April 2008) has ruled that information from a trust cannot be sought under the RTI Act. It has however been held that the information can be sought under the Public Trust Act from the Charity Commissioner.

Appeal No.2009/1852/02 (Trusts)

If a trust does not receive govt. financial support, it is not covered under the RTI Act.

Appeal No.2008/3535/02 (Trusts)

A bare reading of definition would make it clear that public trust does not fall in either of the categories. It is not established or constituted under the constitution of India, by law passed by the parliament, by any law of the State Legislature or by Notification issued by any appropriate Government. It is also not a body substantively financed or controlled by the Government nor is it a NGO financed by the Government, nor does the trust receive any contribution or grant from the Government.

It is not the contention of the State that the State provides any funds to the petitioner trust. It is, therefore, clear from the provisions of this definition that the Act cannot apply to the Public Trust. Any public trust, therefore, is not all covered by the definition of the public authority.

It is only the public authority which is bound by the provisions of the Act. Any person seeking to establish that a particular public trust is covered by the provisions of the Right to Information Act will have to first prove that it is a public trust created by Government or Parliament or is substantively financed by the government. Until that is done, it must be held to be falling outside the scope of the Right to Information Act.

If any person is interested in the information of the trust, he can definitely apply to the Charity Commissioner under the provisions of the Public Trust Act to have such information, which the Charity Commissioner may deem fit to be provided. But as far as Right to Information Act is concerned, there is no need for public trust to appoint any Information Officer and to entertain any such application under the Right to Information Act.

Appeal No.2009/2629/02 (Bar Council as Public Authority)

It is true that the commission in the past had held the view that the Act does not apply to the Bar Council. It has however been brought to Commission's notice that the Bar Council of India, itself has appointed Public Information Officer and the First Appellate Authority and made the Act applicable to itself. The Commission therefore is of the view that the RTI Act is applicable to the Bar Council of Maharashtra and Goa.

In an earlier appeal -**Appeal No.2008/2365/02**- however, Commission has held that the Bar Council of Maharashtra is not a public authority.

Also, in **Appeal No.2008/1138/02**, the Commission held the view that the Bar Council does not fit into the definition of public authority. It is not a body or institution of self govt. established by law. It is also not substantially financed by govt. It is true that it has been established by law but any organization or body which claims to be doing anything legitimate has to be registered under some or the other law.

Appeal No.2008/73A/02 (Educational Institutions)

The Department of Education Govt. of Maharashtra itself has clarified that all education institutions whether aided or not aided are covered under the Act.

West Bengal State Information Commission

Appeal/complaint No. 186(2)-WBIC/RTI/60/06

Allowing inspection of Answer Scripts to candidates themselves is not covered by the Act, but the Commission has the scope to direct the public authority to permit a complainant to inspect his/her answer scripts without disclosing the identity of the examiners and scrutineers. In the present appeal, the SPIO has dwelt on 3 major points of law viz., **the scope of the Act as envisaged in the preamble, invoking Section 8 (1) (g)** and **scope of the definition of information and records**. The arguments of the SPIO on these points so far as it relates to denial of inspection of answer scripts are not tenable in tend of provisions of the RTI Act, 2005.

The Commission takes exception to the respondent's plea to use the preamble rather than the enacting provisions of the Act to justify his stand. The preamble of the Act should be read with other provisions of the Act to find out the meaning of the words in the enacting provisions about their clarity or ambiguity. The preamble in itself should not be the primary defence of the respondent ignoring the enacting provisions of the Act. The Commission takes this opportunity to quote the order of Hon'ble Supreme Court of India on the use of the preamble as a defence for the respondent. (Union of India v. Elphinstone Spinning and Weaving Co. Ltd. as reported in AIR 2001 Supreme Court - relevant page 740), "The utility of the preamble diminishes on a conclusion as to clarity of enacting provisions. It is therefore said that the preamble is not to influence the meaning otherwise ascribable to the enacting parts unless there is a compelling reason for it. If in an Act the preamble is general or brief statement of the main purpose, it may well be of little value. Mudholkar , J. had observed in Burakar Coal Co. Ltd. v. Union of India, AIR 1961 SC 954".

It is one of the cardinal principles of construction that where the language of an Act is clear, the preamble must be disregarded though, where the object meaning of an enactment is not clear the preamble may be resorted to explain it. Again where very general language is used in an enactment which, it is clear must be intended to have a limited application, the preamble may be used to indicate to what particular instances, the enactment is intended to apply. We cannot, therefore, start with the preamble for construing the provisions of an Act though we could be justified in resorting to it nay we will be required to do so if we find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application".

Section 8 (1) (g), the Commission points out, is applicable only in cases of such "information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes." Here the Commission feels that the words ' Information, the disclosure of which would endanger the life or physical safety of any person. ...' is relevant, though such a possibility of identifying the examiners and scrutineers by seeing the signature or handwriting on a mere inspection of the answer script is very remote.

The Commission further feels that though such a possibility is remote, when the University takes care not to disclose the identity of the examinees, it can very well evolve and apply similar or more full proof method of not disclosing the identity of the

examinees and scrutineers. The Commission further point outs that Section 7(1) allows the SPIO to reject the request for any of the reasons specified in Sections 8 & 9. The provisions of Sections 8 & 9 are therefore not merely illustrative as argued by the SPIO, but are exhaustive as has already been pointed out by the Commission. The Act does not allow to take shelter of the plea of other reasons compelling public authority for not sharing the information even if it is not covered by Sections 8 & 9.

SPIO stated that answer scripts are neither documents nor records of any kind and therefore they cannot come within the ambit of the Act nor can a student claim any right of inspection of answer scripts by invoking the Act. The Commission does not agree that the Act has no manner of application to allowing an inspection of answer scripts to the candidates as the same is not only beyond the scope of the Act but also beyond its purpose, since it cannot go beyond the definition of "Information" and "Record" as provided VIS 2 of the Act. Section 2(f) defines "information" as "any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force. "

Section 2 (i) defines "records" as those which includes"- (a) any document, manuscript and file, (b) any microfilm, microfiche and facsimile copy of a document; (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (d) any other material produced by a computer or any other device;"

It is therefore clear that inspection of answer scripts cannot be kept out of the purview of "information" or for that matter from the purview of "records".