

Miscellaneous

Central Information Commission

F.No. CIC/WB/C/2008/01340/LS Dt. 4.3.2009

Request-

The appellant had referred to the provisions of the section 48 (1) of the Punjab Cooperative Societies Act, 1961 which provides for auditing of the accounts of every cooperative Society once in each year and sought information as to why the accounts of the NABARD Employee Cooperative USET/C Society, Chandigarh were not audited as per the prescribed periodicity for the year 1992, 1993 & 1994.

It is the forceful submission of the Appellant that the audit of the Society for the 1992 to 1994 has not been done correctly with a view to shielding certain influential persons who embezzled huge amounts and requests for directions to the Registrar of Cooperative Societies for re-audit of the accounts of the Society.

Decision-

The Registrar of Cooperative Societies is directed to have the audit of the aforesaid Society conducted by an independent and impartial auditor for the years 1992, 1993 & 1994 and after the audit is completed, to provide copies of the audit reports to the appellant.

[Many issues dealt with simultaneously]

Complaint No. CIC/AT/C/2008/00025 Dated 27.07. 2009

ISSUES FOR DETERMINATION:

I. A public officer cannot be compelled to disclose a communication made to him in official confidence when he considers that the public interest would suffer by such disclosure — Whether provisions of Sections 123, 124 and 129 of the Indian Evidence Act stand overridden by *non-obstante* clause appearing in Section 22 of the RTI Act?

II. Can a Public Authority claim exemption from disclosure by invoking Section 11(1) of the RTI Act?

III. Whether a Public Authority is obliged to disclose everything even though the said disclosure is considered to be contrary to public interest?

IV. Whether denial of information in the instant case is justified?

DECISION & REASONS:

Appellant's main query is regarding the action, if any, taken after a notice u/s 80 CPC was served on him. He also wanted to inspect the file in which the matter has been dealt with from the date of receipt of the notice till the date of filing of caveat by the Public Authority. The request for information includes copies of 18 documents including legal advice, if any, received by the Ministry. The requested information was denied on the ground that what was being asked for did not qualify as information within the meaning of Section 2(f) of the RTI Act and that the information asked for was wholly personal to the applicant attracting exemption under Section 8(1)(j) of the RTI Act, which exempted disclosure of personal information which had no relationship to any public activity or

interest, or which would cause unwarranted invasion of privacy of the individual unless the CPIO was satisfied that larger public interest justifies disclosure of such information.

During the hearing, the appellant, taking the broad meaning of the term "public interest", argued that every act of a Public officer was in "public interest". The respondents on the other hand have argued that the question of applicability of Section 8 (1) (j) mandates disclosure only when larger public interest so justified and must be read in the context of Section 123 of the Indian Evidence Act. The learned counsel appearing on behalf of respondent Public Authority submitted that a public officer could not be compelled to disclose communications made to him in official confidence when he considered that public interest would suffer by such disclosure. This means that the existence or otherwise of public interest is to be determined by the officer concerned. The learned counsel also argued that under Section 123 of the Indian Evidence Act, no public servant could be permitted to give any evidence derived from any public official or public records relating to affairs of the State except with the permission of the Head of Department. The decision to disseminate information concerning official matters, therefore, was required to be taken by the Head of Department and not by the CPIO. He submitted that disclosure of the information asked for by the appellant would be prejudicial to public interest and, therefore, attracted the bar under Section 8(1)(j) read with Sections 123, 124 and 129 of the Indian Evidence Act, 1872.

Sections 123, 124 and 129 of the Indian Evidence Act read as follows:

123. Evidence as to affairs of State - *No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.*

124. Official communications - *No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.*

129. Confidential communication with Legal Advisers - *No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness in which case he may be compelled to disclose any such communication as may appear to the Court necessary to be known in order to explain any evidence which he has given, but not others.*

The appellant on the other hand submitted that the provisions of Sections 123 and 124 of the Indian Evidence Act stand overridden by Section 22 of the RTI Act, which reads as under:

"Section 22:

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

One of the questions that the Commission needs to determine is whether Sections 123 and 124 of the Indian Evidence Act are inconsistent with the provisions of the RTI Act so as to stand overridden in terms of Section 22 of the Act.

The question of applicability of Section 123 and 124 of the Indian Evidence Act came up before AP High Court in **Writ Petition No.156717 of 2008** in which it was clearly stated that even a document claimed to be privileged under Article 74 of the Constitution of India read with section 123 of the Evidence Act will have to be disclosed under RTI Act, i.e. if it was not exempted u/s 8(1) of the RTI Act. The court has further held that it is not permissible to read "implied prohibitions" or "invisible mandates" in RTI Act. This

being so, the question of any inconsistency between the law of evidence and the obligations to disclose under the RTI Act need to be contextualized, i.e. such determination is to be made in the context of each case given its circumstances and facts. It is important to note that Section 123 of the Indian Evidence Act *per se* does not bar disclosure of an unpublished official record relating to an affair of the State. It only provides that evidence in regard to a record shall not be permitted except with the permission of the officer at the head of the department concerned. It thus only provides a mechanism about disclosure of information concerning unpublished official records relating to affairs of the State.

The decision to disclose documents that relate to affairs of State, which are a part of unpublished official records as per the Indian Evidence Act lies with the Head of Department who becomes the holder of the information within the meaning of Section 2(j) of the RTI Act. It follows from it that the CPIO before disclosing any such information shall have to refer the matter to the HOD for disclosing the information to the requester. This will give an opportunity to the HOD to consider whether disclosure is covered by any of the exemptions provided for in the RTI Act and/or whether the requested information came within the scope of Section 11(1) read with Section 2(n) of the RTI Act. The responsibility for not disclosing the information and to defending its decision will, therefore, lie with the HOD in terms of the provisions of the RTI Act as the holder of the information.

Similar is the relationship between Section 124 of the Indian Evidence Act and the RTI Act. A public officer cannot be compelled to disclose communication made to him in official confidence when he considers that it would jeopardize public interest. The disclosure of any such information, which is a part of official confidence, is therefore, permissible only when larger public interest commands it. Read in this context, there is no inconsistency between the RTI Act and Section 124 of Evidence Act. The only issue that needs be decided is whether it would be in larger public interest if the information requested by the appellant is disclosed.

Although it is admitted that the expression 'public interest' is not capable of precise definition and it has no rigid meaning, it takes color from the statute in which the expression has been used. It varies from case to case and as observed by Hon'ble Supreme Court in State of Bihar Vs. Kameshwar Singh (AIR 1952 SC 252) what is 'public interest' today may not remain so a decade later. Public interest therefore, can be taken to be what is the opposite of a private interest of a person. Public interest must concern either the public in general or at least a section of the public. It cannot be the solitary interest of one single individual.

If the facts and circumstances of this case are taken into consideration, it would be clear that the appellant is spearheading a private interest — his own interest — rather than any public interest. He first filed a notice u/s 80 CPC threatening to file a civil suit against the Government and thereafter filed another RTI application seeking to know as to what Government has done or would be doing in his case. What he is seeking is a matter of internal confidential official communications, which is well within the meaning of section 124 of the Indian Evidence Act. The respondents have forcefully submitted that disclosure in such a case is permissible only when Public interest so demands and absence of any such interest disentitles the appellant to receive the information.

As is obvious under the scheme of the Indian Evidence Act, contained in its Sections 123 and 124, the Government and the public authorities are allowed to hold confidential certain categories of documents in public interest. As has been held by the High Court of Andhra Pradesh, a decision to hold confidential an information under the Indian Evidence Act will be no bar to examine the disclosability of the same information in terms of the RTI Act. In other words, if an information which was held confidential under the Indian Evidence Act is found to be disclosable under the RTI Act, such disclosure shall be

authorized, the decision of the public authority under Indian Evidence Act notwithstanding.

This context, however, changes when an information held confidential in terms of Sections 123 and 124 of the Indian Evidence Act is also found to be either exempt under Section 8(1) of the RTI Act or on the basis of it being a third-party information whose disclosability is to be tested in terms of Section 11(1) of the RTI Act. In case, a certain set of information, which has been held confidential under the Indian Evidence Act, is also found to be exempt under the provisions of the RTI Act, then there should be no inconsistency between the provisions of the both Acts and the information shall not be liable for disclosure.

We have noted that the concept of public interest appears both in the Indian Evidence Act (Sections 123 and 124 as well as in various sub-sections of Section 8(1), and 8(2) as well as in Section 11(1) of the RTI Act. It is to be noted that 'public interest' is the reason which allows the Head of the Department to 'withhold' a given information under the Sections 123 and 124 of the Indian Evidence Act. In case of the RTI Act, the concept of public interest has been used as 'override' in Sections 8(2) principally, as well as in sub-sections 8(1)(d) and 8(1)(e); only in Section 8(1)(j) of the RTI Act 'public interest' is a pre-condition for disclosure of a personal information, which is otherwise to be held undisclosed.

Therefore, if a public authority takes a position that a certain information should be held to be non-disclosable under Section 123 and 124 of the Indian Evidence Act, it will hold good only so long as the relevant Section of the RTI Act also allows the public authority to withhold such information in public interest. In other words, if within the meaning of the RTI Act, an information is to be disclosed in public interest and if the same information is held confidential in public interest within the meaning of the Indian Evidence Act, then the provisions of the Indian Evidence Act shall be inconsistent with the RTI Act. There may be circumstances, however, where, as in Section 8(1)(j) of the RTI Act, a personal information can be held to be non-disclosable unless warranted by public interest. If such personal information is also held confidential under any Section of the Indian Evidence Act on grounds of public interest, there shall be perfect compatibility / harmony between that withholding of the information or any order to withhold the information under Section 8(1)(j) of the RTI Act.

The question of consistency or inconsistency between the provisions of the RTI Act and the Indian Evidence Act will have to be decided on the facts of each case and the applicability of the specific provisions of the RTI Act. The issue is decided accordingly.

It has also been submitted before us that the information asked for by the appellant relates to a Public Authority and has been treated as confidential by it, any disclosure relating to it will adversely affect the interest of the Public Authority and this being the case, the Public Authority under Section 11(1) of the RTI Act is entitled to object to the disclosure. The Commission, therefore, is also required to decide and determine as to whether Public Authority as a third party can claim exemption from disclosure by invoking section 11 of the RTI Act.

In this context, it will be pertinent to refer to the definition of "third party" appearing in Section 2(n) of the RTI Act which reads as under:
 "Sec.2(n): "third party" means a person other than the citizen making a request for information and includes a public authority."

Section 11 of the Right to Information Act, 2005 reads as under:

Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request

made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information: Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party."

The inclusive definition provided under section 2 (n) certainly covers a Public Authority and as such in cases where the CPIO intends to disclose an information or record or part thereof to an applicant which "relates to" a 3rd party (Public Authority in this case) and has been treated as confidential by that 3rd party, CPIO is duty bound to hear and consider the objections before deciding whether to allow disclosure. In this case, this situation did not arise as the PIO decided not to disclose the information. But if ever a PIO decides to disclose such information, which relates to a Public Authority and has been treated as confidential by such Public Authority the PIO before deciding to disclose such information must at least take the view of the HOD.

A Public Authority as a 3rd party is, therefore, entitled to protect from disclosure an information which relates to it and which it has considered confidential. The disclosure of such an information by the PIO is possible only after hearing the party and taking into account the objections, if any, raised by it to the intended disclosure. The PIO can order disclosure only if the public authority decides that public interest in disclosure outweighs any possible harm or injury to the interest of such Public Authority as third party.

A Public Authority being a 3rd party, therefore, cannot be denied its right to object to any intended disclosure by the PIO if it is of the view that the disclosure is likely to cause any harm or injury to its interest.

This present appeal raises, apart from others, a larger issue, which is the rights and the liabilities of a public authority as a party to a litigation. If the interpretation of the RTI law by the appellant is to be accepted, it would mean that even when the Government is litigating vis-à-vis another person, that person will have the right to access all information about how the Government is seeking to defend its position in the legal proceeding without having any corresponding right to access similar information of the opposite party. On any scale of equity, this will appear to be biased against the public authority. Before the enactment of the RTI Act, such public authorities received protection to its position and the information held by it was exempt from disclosure in any suit or legal proceeding, under several provisions of the Indian Evidence Act, which have been mentioned in para 16 above. Now, with the advent of the RTI Act it is, arguably, no more possible for such public authority to hold its side of information and evidence from being directly accessed by the opposite party except for exemptions contained in RTI Act. In normal course, the Government as well as the opposite party would have produced their evidences and arguments before the court of law, who would have then decided how to allow the evidence to be shared between the parties and at what stage. Now, private litigants are choosing to invoke RTI Act in order to equip themselves in advance about the position taken or likely to be taken by the public authority in an ongoing litigation in order to counter it. It will need to be examined whether such interpretation of the RTI Act is possible □ i.e. to allow a party to a litigation to access the other party's (which in this case happens to be a public authority) evidence and stated position in order to build his own case against that position.

The point for consideration before us is whether the public authority can hold confidentially its side of the information and the internal deliberations it may have had in order to put up its case before a court and whether it is obliged to disclose all this information to the very person whom it intends contesting in the court of law.

We have been referred to the provisions under Section 2(n) and Section 11(1) of the RTI Act by the Counsel for the respondents. It has been argued before us that within the meaning of Section 2(n), a public authority is a 'third-party', who under Section 11(1) can hold or supply an information confidentially. In that sense, the present public authority (CBDT) has claimed that it holds confidential information regarding how it wishes to contest the legal challenge which the appellant has thrown at one of its officers and also at the public authority. They are disinclined to share this information with the appellant on the ground that it serves no public interest and the appellant cannot be allowed to disguise his own personal interest as public interest. They have also claimed that it is their inherent right not to disclose the evidence they want to marshal in litigation and the line of argument they want to adopt to defend the public authority's position and interest

In the present case, the reason offered by the public authority for not disclosing the information held by them was that they were disinclined to share with the very person they were engaged in a litigation or who seeks to engage the public authority in litigation, the information which they hold and which they have internally processed through consultations with others, such as the legal advisers, officers of the department, etc. The public authority does not want to share with the appellant any information about 'which officer of the public authority took what position in recording his notes on the file vis-à-vis the appellant's Section 80 CPC notice. They are also disinclined to disclose the advice they have received from legal sources. They doubt the motive of the appellant in seeking to access this information which they believe seeks to inflict harm on the very public authority through whose avenue the litigant is seeking the information to be disclosed. It is the claim of the public authority that under the law of the land, they are obliged to produce the evidence only before a law court and are under no obligation to share it in advance with the appellant who is seeking to engage the public authority in a legal proceeding. They have argued that if this line is accepted, serious harm shall be inflicted on the government and the public authority's ability to safeguard public interest, against intrusive action by self-seeking litigants. A public authority is duty-bound to defend its officers' bona-fide interest as well as its own interest in any litigation with the opposite party, and if it is forced to submit to that opposite party's demand for all information about, what decision was taken to defend the government's interest; what evidence was marshalled and how the evidence was collected and the decision made, would irretrievably damage the public authority's interest as litigant and compromise its ability to carry out its mandate of defending the public authority through its actions. A public authority must not be obligated to explain its conduct by revealing the entire decision-making process to the very litigant with whom it may be engaged in a dispute legal or otherwise.

The sum-total of the respondents' arguments, therefore, is that appellant has tried to conflate his personal interest with public interest in order to force the public authority to share with him all that it knows confidentially about how it wished to defend its position in the law suit by the appellant.

The respondents have derived strength from Sections 123, 124 and 129 of the Indian Evidence Act, which authorize them under certain circumstances to withhold from public disclosure information held by the officers of the public authority in confidence, except when public interest warrants such disclosure.

They have further argued that these provisions of the Indian Evidence Act were entirely consistent with the provisions under Section 11(1) of the RTI Act. The CPIO is duty-

bound under Section 11(1) to consider the grounds which a public authority urges to keep confidential information undisclosed and to decide on the validity of the grounds for its decision. According to the public authority, the grounds for non-disclosure of present set of information are: no public interest was being served but the appellant's personal interest; disclosure would compromise the ability of the public authority to find the best way to legally defend the interest of one of its officers, who is threatened by legal action of the appellant; the right of the Government not to share the evidence and the records it holds in that regard with the very person threatening to drag it to the law court; the larger implication of such right being conferred on litigants to access all information held by Government relating to litigation they themselves start; such disclosures would compromise the public authority's ability to carry out its mandate and to attend with the best of its ability to the responsibilities it is entrusted to discharge, etc.

In our view, respondents have persuasively argued that under Section 11(1) of the Act, there are compelling grounds for them to hold confidential information relating to how they wished to defend their legal position in litigation or a threatened litigation. Their reference to the violation of the norms of equity in allowing the very person, who seeks to drag the public authority to court, all information about how the public authority wishes to defend itself is also quite convincing.

In our view, appellant has failed to cite any public interest that would commend superseding the protected interest in the matter of disclosure of the requested information, within the meaning of Section 11(1) of the RTI Act. The appeal petition, fails scrutiny and is dismissed.

[Many issues dealt with simultaneously]

Appeal No.CIC/WB/A/2007/00725 decision dated 30th June 2009

Request-

Mr. Asaf Ali of the People's Council for Civil Rights, Kerala, had sought from the President's Secretariat copies of the letters of support provided by various political parties in favour of the United Progressive Alliance's claim to form the Government at the Union level in 2004. The application was rejected by the Public Information Officer stating that the letters were exempt from disclosure under section 8(1)(e) as they were given to the President in a fiduciary capacity. The first appellate authority upheld this view. Mr. Asaf Ali challenged these orders before the CIC.

Decision-

The CIC ruled that letters of support provided by various parties in favour of the United Progressive Alliance to the President of India could be disclosed under the Right to Information Act (RTI Act). This decision, unless challenged before the High Court, will open up to some extent a dark and murky aspect of government formation in the era of coalitions in India.

The CIC held that there was no pre-existing relationship between the President and political parties. They have no official dealing with the President of India nor do they interact with the President or the President interact with them in the decision making process. The decision to support a particular party or group has been arrived at by the concerned political parties on their own. 'Relationship' denotes a pre-existing connection or an association. It may signify a fact or state of being related to one another. It signifies a condition or a character due to being related. The relationship can be either by

blood or by affinity. It could also be as a result of allegiance as described by Lexicographers.

A relationship could also be given a wider meaning so as to include even a working relationship. Examples of such relationship are and maybe the relationship existing between a lawyer and a client, a company and its directors, a Company and its employees or even the Government and its employees. It could also be *inter-se* relationship between members of a society and the society. In the light of this, the argument that the letters were written to Hon'ble the President in a fiduciary capacity that exists between the authors of the letters and the President seems far fetched. To come within the ambit of 'Fiduciary Relationship', trust becomes an inalienable component. Viewed in this context, the information provided to the President by various political parties cannot be treated as one emanating from Fiduciary Relationship and that makes section 8(1)(e) inapplicable to the facts and circumstances of this case. The CIC ordered disclosure of the letters within 15 working days.

You are all aware of the landmark judgement of the Delhi High Court in the matter of The CPIO, Supreme Court of India v Subhash Chandra Agarwal, W.P. (C) 288/2009 which arose out of an application made by a citizen seeking to know whether judges of the Supreme Court and the High Courts were filing their assets declarations in accordance with the the 1997 Full Court resolution of the Supreme Court. This decision clarifies several issues and expands the understanding of the citizen's right to information.

1) Information available with a public authority in material form is important-not how it was obtained: The petitioners in this case had argued that the assets declaration were not information at all because they were not filed by judges in the performance of a public duty. The petitioners claimed that there was no law that required judges to file assets declarations, they did it in response to two resolutions (1997 and 1999) which did not have binding value. So they argued that where information is not generated in the performance of a public duty (duty cast by a public law i.e., a law that governs or regulates the relationship between the State and individuals or private entities) it is not covered by the definition of 'information' under section 2(f). The Court has torn through this argument which was weak in any case and has held that the test must be whether or not the document/information is available in 'material' form with the public authority that has received the request. Judges file declarations in material form, so that makes them 'information' for the purpose of the RTI Act irrespective of how they were obtained- under a law or a binding convention like the 2 resolutions. The Court has held: "*Thus inter se correspondence of public authorities may lead to exchange of information or file sharing; in the course of such consultative process, if the authority borrowing the information is possessed of it, even temporarily, it has to account for it, as it is 'material' held.*" This clarification comes as an eye-opener for many Information Commissions that have given decisions stating - "if a record is available with a superior public authority then such authority and not the records creating authority must make a decision regards granting access. For example, if a document has been presented to a court as part of a suit and a copy of the same is held by the public authority which filed the document before the court, it is for the court to make a determination about providing access and not the public authority. This is mischievous as there is no scope for such an interpretation under any provision of the RTI Act. Following the Delhi High Court's decision, now every public authority must make a decision regards access if it simply possesses the information in material form. Of course if a court has ordered that the document shall not be disclosed then section 8(1)(b) will be attracted and access may be denied.

2) All information available with a public authority is covered by the RTI Act: The Court has further clarified that even private information held by a public authority i.e. information held about private individuals and entities is covered by the RTI Act and a determination regards access must be made in the same manner as it

would be made for information generated in the context of performance or observance of a public duty. At para #62 of the judgement the Court's use of the term 'public information' makes every bit of information held by a public authority 'information' for the purpose of section 2(f). *"The right to access public information, that is information in the possession of state agencies and governments in democratic societies is an accountability measure empowering citizens to be aware of the actions taken by such state "actors".* This pronouncement comes very close to the practice in countries like Sweden where any communication, letter or email sent by any person or entity to a public official is treated as a 'public document' so long as the agency possesses it. In India a 'public document' is defined not in the RTI Act but in the Indian Evidence Act and a 'public record' is defined in the Public Records Act. Both definitions restrict it to mean that if a document is created by a sovereign functionary or an officer of the legislative, judicial or executive branch of the State then it becomes a public document/record. The Court's treatment of the term 'public information' is entirely in tune with the letter and spirit of the RTI Act. It is now the responsibility of public authorities to appreciate the wisdom behind this interpretation and apply it while dealing with RTI applications.

3) Protection for the personal information of public officials could be lesser than the protection for the personal information of private individuals in specific circumstances:

While recognising that public officials are also entitled to the protection of their privacy just as private citizens are, the Court has held that in a given circumstance the protection for personal information of a public official may not be as high as that which is enjoyed by a private individual. This principle is also in the correctness of things - maintenance of probity and integrity in public life is a heavier burden on public functionaries- not so on private individuals. So if circumstances so demand, personal information of public officials could be disclosed in public interest. The Court lays down what appears to be three tests for making a determination regards disclosure:

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

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

3) whether the disclosure will furnish any information required to establish accountability or transparency in the use of public funds;"

RTI advocators will immediately recognise that the Court has pointed to two public interest tests at points #1 and #3 which must be used while making a determination regards disclosure of personal information.

4) Section 4 is overridden by the exemptions under section 8(1): The Court has held that the non-obstante clause in section 8(1) relating to exemptions to disclosure overrides the proactive disclosure provisions given in section 4. For example, while section 4(1)(b) requires voluntary disclosure of operational manuals used by a public authority. But can this provision be sued to compel atomic energy plants to disclose their operational manuals proactively. Such manuals may attract one or more exemptions under section 8(1), so they may not be proactively disclosed. This is useful advice for public authorities.

However a question may be raised regards the language of section 8(1) which states:

"Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,..." [emphasis supplied]

Does 'give' mean - "in response to a formal request" to an applicant while the intention of section 4(1)(b) is not to give to any particular individual but furnish the information to the whole world. This is a moot point and must be taken up for detailed consideration when there is a compelling occasion to so do.

5) Merely labelling a document 'confidential' does not exempt it from disclosure: The petitioners had argued that the assets declarations were filed in confidence by the judges and that there is a duty to keep them secret under the 1997 resolution. Several public information officers use this excuse routinely. The author of this email has been denied some documents by Ministries in this manner and these matters are pending before the Central Information Commission. The Court has looked down upon such practice. The Court has held that the overriding effect of section 22 of the RTI Act is a much stronger provision than a mere label accorded to a document by a public official. So if non-disclosure cannot be justified under sections 8 and 9 of the RTI Act the information will still have to be disclosed irrespective of the security classification assigned to it.

Readers will remember that the Second Administrative Reforms Commission had recommended in its very first report that the security classification accorded to documents ('secret', 'top secret' and 'confidential') be reviewed in the light of section 8 of the RTI Act. The Government of India accepted this recommendation and said that it would issue instructions to all Ministries to accord security classification only to such documents that attract one or more exemptions under section 8(1). However readers will remember a recent media report that the PMO has not declassified a single record this year.

6) Everything labelled 'confidential' is not held in 'fiduciary capacity': Several public information officers around the country routinely use section 8(1)(e) which protects information shared in a fiduciary relationship, to deny access to information which is merely marked 'confidential'. Information Commissions have also faulted on this point on many occasions. The Court clarifies when a fiduciary relationship occurs and in what contexts. The Court has identified four situations where a fiduciary relationship may occur:

- 1) *when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first;*
- 2) *when one person assumes control and responsibility over another;*
- 3) *when one person has a duty to act or give advice to another on matters falling within the scope of the relationship; and*
- 4) *When there is specific relationship that has traditionally been recognised as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer."*

A list of such relationships is provided at para #56 of the judgement, which is useful to public authorities.

7) Whether the Chief Justice of India (CJI) is a public authority distinct from the Supreme Court: A major point of contention during the proceedings before the Central Information Commission (CIC) in this case was whether the Chief Justice's office has an existence that is distinct from that of the Supreme Court as an institution. The CIC examined the issue and held that the CJI is part of the Supreme Court and cannot be treated as a distinct public authority.

This position seems to have been reversed in the High Court decision. The Court has held that the CJI is a public authority but stopped short of holding that office to be distinct from the Supreme Court which is also a public authority. The effect of the Court's findings is that the CJI's office can be treated as a distinct public authority due to the numerous functions performed by the CJI in addition to the adjudicatory role of being the chief judge. There should be no problem with either position so long as no document is kept out of the purview of the RTI Act. But this case is a pointer to the long standing demand of CHRI and other RTI advocates that a comprehensive list of public authorities must be prepared for the entire country. This is the job of the Ministry of Personnel being the administrative ministry for this law under the Government of India. The Ministry has issued circulars to this effect and sent reminders to all Ministries. Yet we do not have a comprehensive list of public authorities under the Central Government. It is not enough to have only a list of public information officers. For the purpose of clarity

regards compliance with section 4(1)(b) and for the purpose of use of section 6(3) this listing of public authorities is important.

Assam State Information Commission

Case No. KP(M)109/2007

The Special Branch of Assam Police functions under the overall control of the Director General of Police, Assam. It operates under the separate budgetary provision and in matters relating to intelligence, security, source money etc. the Special Branch would come within the exclusion as notified by the Government under section 24(4) of the Act.

The policies regulating the surrender of militants are open policies of the government to encourage the militants to come overground eschewing the path of violence and there is nothing secret about them. It may be of course that a few details of surrenderees need to be kept secret in the interest of their safety and successful implementation of the policies. The public authorities, in the true spirit of surrender policies, often come out with the news of surrender by arranging public functions and holding media briefing. The photographs of the surrenderees and their addresses along with public authorities, the details of the weapons surrendered are frequently seen in the electronic and print media. **Therefore, information which the appellant sought is already available in some form or the other to the public and it cannot be denied to him.**

The appellant did not seek the information from the Special Branch which is a notified organization under section 24(4) of the Act, but from the Director General of Police who is the head of the State Police Force and his organization has not been notified under that section of the Act. So it cannot be denied to the appellant under that section of the Act.

Goa State Information Commission

Complaint No.62/SIC/2008 (RTI not for getting relief)

Information which is required to be provided under RTI Act is from the records. The Opponent provided to the Complainant Form No. IX as well as Form No. V, Register of Disputed Cases wherein by Order dated 07.09.1971 the name of Diogo Francis Pereira was ordered to be recorded as co-occupant in Survey No. 144/12 of Corjuem Village.

If the Complainant requires the name.... to be restored in the Survey, **the Complainant needs to approach the proper authorities to do the needful, as such relief is not contemplated under the RTI Act.**

Gujarat State Information Commission

Complaint No. 0369/2008-09 dt. 30.01.2010

If further fees are not paid, even after receiving intimation about them in time, the information cannot be later claimed to be given for free after paying the fees at a later date. Moreover, if further fees are not paid and information is not received, there is no question of making an appeal / complaints regarding any issue with the information that would have been furnished.

Kerala State Information Commission

Ref: A.P. No. 1029(5)/2008/SIC (File No. 10034/SIC-G1/2008): Smt. Girija C.E Vs. Institute of Human Resources Development, Thiruvananthapuram, Kerala : Order dated 12 February 2009

Information requested by the appellant could not be provided completely owing to flaws in the institutions' record management system. Moreover, the appellant has been seeking the same information repeatedly. The SIC observed that there was no proper system of keeping the files with the public authority. However, the Commission cannot agree to the stand taken by the public authority that the files are not traceable. *The information seeker has the right to seek for information repeatedly and the public authority has no right to deny the information under the plea that the information was provided earlier.*

Ref: CP No.981(1)/SIC/2008 File No.8928/SIC-Gen1/2008: Shri Abdul Rafi P.P. Vs. Dte. of Higher Secondary Education, Kerala : Order dated 5 January 2009

Appellant's request for information was rejected on the grounds that the same information was provided on a prior application by the applicant. SIC observed thus: 'RTI Act does not envisage that information provided to a request under the Act should not be provided to a subsequent request made by the same requestor, though the information sought could be the same OR seeking further information on the same subject matter. Whether the requestor had sought the same information in an earlier request was immaterial. Each application received under the Act has to be disposed of as per the provisions of the Act. The action of the respondent was, therefore, in violation of the provisions of the Act and, he was not conversant with its provisions'.

Ref: CP. No.1125(4)/2008/SIC File No.10444/SIC-Gen1/2008 : Shri Joyi L Vs. Kerala State Women's Dev. Corporation: Order dated 19 February 2009

Appellant had made many requests for the very same remedy on different dates and the requests were seen answered on different dates. 5.7.2007. SIC observed thus: 'The Right to Information Act is a personal fundamental right conferred on individual citizens to be exercised in a reasonable way and not to be represented on each occasion for the very same purpose resulting in mis-use of the provisions of the Act'.

Ref: AP. No.40/2007/SIC(FileNo.337/SIC-Gen2/2007): Sri.T.K.Sathyanathan Vs. Assistant Sessions Court, Quilandy and High court , Kerala: Order dated 9 May 2007

Appellant had requested for copies of the judgment in Sessions Case No.731/2003 and depositions of five witnesses. The request was rejected under Rule 12 of the High Court Rules framed in relation to the Right to Information Act in respect of courts subordinate to the High Court and Motor Accident Claims Tribunal. Notification had notified the Rules to be called as the "Right to Information Subordinate Courts and Tribunals Rules 2006. rule 12 of the notification says, "no application for information or document relating to any judicial proceedings shall be entertained under these Rules". The request was rejected under Rule 12 of the High Court Rules framed in relation to the Right to Information Act.

The contention of the appellant is that the rule framing powers of the High Court under the RTI Act originates under section 28 of the RTI Act because the High Court is the competent authority to make the Rules. He also contended that while the new rules framed should have been in conformity with the RTI act, Rule 12 had negated the entire letter and spirit of the RTI Act, 2005.

The State Information Commission cannot sit upon judgment of the propriety of the rules framed by the High Court under section 28 of the RTI Act. Challenging the veracity, propriety, and conformity of the rules framed under a statute is an entirely different procedure and cannot be inducted into the limited scope of disposal of a second appeal.

The limited question now before the Commission is whether the rejection of the request of the appellant by the PIO was justifiable or not? The PIO had rejected the request under Rule 12 of the High Court Rules for Subordinate Courts and Tribunals. In the circumstances, this Commission has to agree with the position taken by the PIO.

The Registrar General of High Court of Kerala is not the Appellate Authority in respect of the Subordinate Courts and Tribunals, but the Sheristadar of the Dist Court and hence the 'appeal' as submitted to have been preferred cannot be taken as a statutory appeal.

Ref: AP. No.167/2006/SIC No.1337/SIC-Gen2/2007: Shri. Joe I. Mangaly Vs. Commercial Taxes, Palakkadu, Kerala: Order dated 22 June 2007

Appellant's request was rejected on the grounds that in an identical case filed by the same Appellant, the State Information Commission had ordered to furnish the information sought for and that in the Writ Petition filed by the department against the order of State Information Commission, the Hon'ble High Court of Kerala had granted an interim stay for four months. The Appellate Authority argued that issue under consideration was subjudice; and, asked for time until the disposal of the above-cited Writ Petition.

The Commission decided to continue its practice of considering each case on merit. The fact that the High Court has granted an interim stay in respect of one case does not bar cases, even of identical character, being taken up for consideration by the Commission. And, the Commission decided to instruct the Public Authority to furnish the information asked for within 10 days.

Maharashtra State Information Commission

Appeal no. 2007/908/02

If any application filed under Right to Information Act, 2002 comes for appeal it is time barred. This Act is repealed by the Right to Information Act, 2005, which has come into effect on 12.10.2005. There is no provision in the present Act to hear the time barred appeals against the order issued under the earlier Act.

Appeal No.2007/1243/02 (mobile phone tapping)

Supreme Court in its judgment in respect of Writ Petition No. 256 of 1991 filed by People's Union for Civil Liberties v/s Union of India has outlined the principles in respect of telephone tapping by the State Authorities.

The Supreme Court had clearly stated that section 5(2) of Indian Telegraph Act, 1885 clearly indicate that in the event of the occurrence of a public emergency or in the interest of public safety the Central Government or the State Government or any officer specially authorised in this behalf, can intercept messages if satisfied that it is necessary or expedient so to do in the interest of: i) The sovereignty and integrity of India; ii) The security of the State; iii) Friendly relations with foreign states; iv) Public order v) For preventing incitement to the Commission of an offence."

Since the safeguards for misuse of such authority by the State have been very well provided, it is not necessary to inform the person concerned whether his telephone is being tapped or otherwise.

Appeal No.2009/1893/02 (CM's relief fund)

Appeal No.2008/2310/02
Appeal No.2008/779/02

Disbursement under Chief Minister Relief Fund is now accessible to the general public under Right to Information Act.

Appeal No.2008/417/02 (second appeal)

The second appeal is permissible only when appellant has approached the PIO and then the First Appellate Authority and then to the commission if he is not satisfied with their order or responses.

Appeal No.2008/353/02 (one issue at a time in the application)

The appellant had sought information regarding minutes of the Gram Sabha Meetings, Public Works taken up by the Gram Panchayat and distribution of utensils to beneficiary of backward classes. This information pertained to village Panchayat Walawal, taluka Kudal, district Sindhudurg. When the range of information is not very specific, it is possible that some irrelevant information might have crept in. It can go a long way if information sought is more specific and pointed.

In some cases people raise such large number of issues that it becomes difficult for the public authority especially at the lowest level to handle. The State Information Commission of Karnataka has framed rules to ensure that one application should contain only one information.

Appeal No.2008/985/02 (one issue at a time in the application)

In fact the Karnataka Information Commission has made regulation to prescribe that one application can have only one point of information. It is necessary to save public money and energy and to ensure that the whole system does not go out of gear in responding to spontaneous flashes of appellants.

Appeal No.2008/2272/02 (separate application for information sought from different departments)

Information sought from so many agencies but application addressed to one agency is something not clearly understood. This kind of information seeking is not expected under the RTI Act. The appellant should seek information from each department individually.

Appeal No.2009/2607/02 (Chief Secretary)

The Chief Secretary is not expected to directly intervene in subjects allotted to different departments. The subjects are assigned as per rules of business and every department has been assigned the functions.