Commonwealth Human Rights Initiative

Right to Information Act, 2005

A Snapshot View of the Developing Jurisprudence

- Venkatesh Nayak

Section 1 : GoI's Public Authorities in J&K

Delhi High Court:

'Even though the Central RTI Act does not apply to Jammu and Kashmir, public authorities under the Central Government based in that State are covered by it'

Union of India & Anr. vs Mrs. Veena Kohli, WP (C) 7604/2009, jjt dated: 28/07/2010 – (SB) [(2010) ILR 5 Delhi 723]

(After the enforcement of the Jammu & Kashmir Reorganisation Act, 2019 on 31st October, 2019, the Central RTI act, 2005 covers public authorities in the Union Territories of J&K and Ladakh)

Duty to confirm or deny the existence of records

Delhi High Court:

106. In the present case, the only information that was sought by the Respondent was whether such declaration of assets were filed by Judges of the ?Supreme Court and also whether High Court Judges have submitted such declarations about their assets to the respective Chief Justices in the States. The Respondent had not sought a copy of the declaration of the contents thereof or even the names, etc., of Judges providing the same. Release of this information would not amount to actionable breach of any confidentiality. The duty to confirm or deny would not amount to breach of confidentiality unless the request is so specific that the mere confirmation that the information is held (without a disclosure of the information) would be to disclose the gist of the information. Philip Coppel explains the legal position as follows:

"…The duty to confirm or deny does not arise if, or to the extent that, a confirmation or denial that the public authority holds the information specified in the request would… constitute an actionable breach of confidence. This is an absolute exclusion of duty." [In all other instances, a public authority must confirm or deny the existence of the information sought]

Secretary General, Supreme Court of India vs Subhash Chandra Agarwal, LPA No. 501/2009 jjt dated: 10/01/2011 – (DB) [AIR 2010 Delhi 159]

Section 2(f): Unrecorded Reasons

Andhra Pradesh High Court:

"17. The common feature of various categories, mentioned in the definition [of information in Section 2(f)] is that they exist in one form or the other and the PIO only has to furnish the same, by way of a copy or description. In contrast, the reason or basis as to why a particular state of affairs exists or does not exist cannot be treated as a source or item of information. However [the PIO] cannot be required to furnish the reasons as to why the licence was granted or not granted… Further, the basis for the decision of such an authority can be culled out from the order passed by him and he cannot be compelled to state as to why he passed an order in a particular manner through an application under the Act. It is only by instituting proceedings such as an appeal, revision or writ petition that the authority who passed the order can be required to justify it." [emphasis supplied]

Divakar S. Natarajan vs State Information Commissioner, A.P. State Information Commission and Ors, Writ Petition No. 20182 of 2008, jjt dated 27/1/2009 – (SB) [2009 (2) ALT 500]

Section 2(f): Unrecorded Directions

Supreme Court of India:

"34. Democracy requires an informed citizenry and transparency of information. Right to Information Act, 2005 (RTI Act) recognizes the right of the citizen to secure access to information under the control of public authority, in order to promote transparency and accountability in the working of every public authority. Section 3 of the Act confers right to information to all citizens and a corresponding obligation under Section 4 on every public authority to maintain the records so that the information sought for can be provided. Oral and verbal instructions, if not recorded, could not be provided. By acting on oral directions, not recording the same, the rights guaranteed to the citizens under the Right to Information Act, could be defeated. The practice of giving oral directions/instructions by the administrative superiors, political executive etc. would defeat the object and purpose of RTI Act and would give room for favoritism and corruption.

35. We, therefore, direct all the State Governments and Union Territories to issue directions like Rule 3(3) of the All India Services (Conduct) Rules, 1968, in their respective States and Union Territories which will be carried out within three months from today." [emphasis supplied]

TSR Subramaniam & Ors. vs UoI & Ors., Writ Petition (Civil) No. 82 of 2011, jjt dated 31/10/2013 [(2013) 15 SCC 732]

Recording Verbal Directions of Superiors on File

"3(3) (i) No member of the Service shall, in the performance of his official duties, or in the exercise of powers conferred on him, act otherwise than in his own best judgment to be true and correct except when he is acting under the direction of his official superior.

(ii) The direction of the official superior shall ordinarily be in writing. Where the issue of oral direction becomes unavoidable, the official superior shall confirm it in writing immediately thereafter.

(iii) A member of the Service who has received oral direction from his official superior shall seek confirmation of the same in writing, as early as possible and in such case, it shall be the duty of the official superior to confirm the direction in writing.

X X X X

Explanation II:— Nothing in clause (i) of sub-rule (3) shall be construed as empowering a Government servant to evade his responsibilities by seeking instructions from or approval of, a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities."

All India Services (Conduct) Rules, 1968

Recording Verbal Directions of Superiors on File

"2(2) (iii) The direction of the official superior shall ordinarily be in writing. Oral direction to subordinates shall be avoided, as far as possible. Where the issue of oral direction becomes unavoidable, the official superior shall confirm it in writing immediately thereafter;

(iv) A Government servant who has received oral direction from his official superior shall seek confirmation of the same in writing as early as possible, whereupon it shall be the duty of the official superior to confirm the direction in writing.

X X X X

Explanation II.- Nothing in clause (ii) of sub-rule (2) shall be construed as empowering a Government servant to evade his responsibilities by seeking instructions from, or approval of, a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities."

Central Civil Services (Conduct) Rules, 1964

Section 2(f): Information about inaction

Allahabad High Court (Lucknow Bench):

"The aforesaid provision defining information makes it clear that an inaction on a non-statutory representation filed by any person does not fall within the strict sense of definition of information. On a close scrutiny of the other provisions of definition clause, it is further seen that inaction on the part of the authorities cannot be construed to be an information unless and until there is a statutory obligation on the part of the competent authority to take a decision on any representation or complaint filed by an aggrieved person…

We have no hesitation to record that inaction on non-statutory applications/complaints filed by any person where the State Authorities are not obliged to take a decision would not fall within the definition of information giving rise to a cause under Section-6 of the Act. If all such inactions are construed to be cognizable under the Right to Information Act, the misuse of the Act would become rampant and the provisions of the Act in that view of the matter would result into an abuse of the process of law." [emphasis supplied]

[The Petitioner had sought fresh investigation of a criminal case against his brother under Section 173(8) of the CrPC & followed up with an RTI application about action taken on it. Such applications by accused or third party cannot be entertained under the CrPC.]

Subhash Chandra Vishwakarma vs CIC UP State Information Commission, Misc. Bench No.69 of 2016, order dated 14/01/2016 - (DB) [2016 (115) ALR 805]

Section 2(f): Missing Records

Delhi High Court:

"7. Since the Commission [CIC] has the power to direct disclosure of information provided, it is not exempted from such disclosure, it would also have the jurisdiction to direct an inquiry into the matter wherever it is claimed by the PIO/CPIO that the information sought by the applicant is not traceable/readily traceable/currently traceable. Even in a case where the PIO/CPIO takes a plea that the information sought by the applicant was never available with the government but, the Commission on the basis of the material available to it forms a prima facie opinion that the said information was in fact available with the government, it would be justified in directing an inquiry by a responsible officer of the department/office concerned, to again look into the matter rather deeply and verify whether such an information was actually available in the records of the government at some point of time or not." [emphasis supplied]

[Missing document was a report of the Govt. of Kerala sent to the Union Ministry of Tourism. PIO denied receipt of the report. Petitioner produced a copy of the report before the CIC. CIC may conduct the inquiry on its own or direct any officer of the concerned public authority to conduct an inquiry into the missing records.]

Union of India vs Vishwas Bhamburkar, W. P. (C) No. 3660/2012, jjt dated 13/09/2013 - (SB) [2013 ELT 500 (Del.)]

Section 2(f): FIR of Missing Records

Delhi High Court:

"3. The petitioner now wants FIR to be registered as into the missing project document.

4. Though the petitioner does not claim any particular interest in the aforesaid project but it intrigues us as to why the petitioner, who otherwise claims nothing to do with the project, would start making enquiry about a particular project and about a particular report. The petition appears to have been filed for some oblique hidden motives rather than in public interest. We are therefore not inclined to entertain the same." [emphasis supplied]

[The Court said: other remedies such as Section 154(3), 156 (3) or 200 of the CrPC must be used first.]

Vishwas Bhamburkar vs Union of India, W. P. (Crl) No. 1147 of 2014, jjt dated 01/07/2014 – (DB) [2014 VIAD (Delhi) 401]

Section 2(f): FIR for Missing Records

Bombay High Court:

"3. The case in hand is a classic example, as to how the Government officers for protecting their fellow officers tend to frustrate the basic intention of the legislature behind the enactment of the Right to Information Act, 2005."

'The Dy. Secretary, Urban Development Department, Mantralaya Mumbai filed an affidavit, stating amongst other things, as follows:

> **"6. I humbly submit that even though the efforts made so far have failed to trace the aforesaid file, the Department is still making every endeavour to locate the file…**
>
> **8. It is humbly submit [sic] in the light of circumstances explained above, it has been very difficult for this Department to fix responsibility on any member of the staff for the misplacing of the documents in question…**
>
> **9. I humbly say that since no deliberate attempt by any officer or employee of this Department to purposely misplace or destroy the record in question has been noticed, so the Department has not lodged any criminal complaint against any member of the staff under the aforesaid section."…**

"8. After reading the affidavit of Mr. Suresh Kakani dated 29th October, 2012 and the affidavit of Mr. S.K. Salimath dated 17th April, 2013, it appears that the said officers…

Section 2(f): FIR for Missing Records

Bombay High Court:

"… have given a clean chit to all the concerned without fixing the liability on anybody. Mr. S.K. Salimath instead of implementing the order passed by the State Information Commission in its true letter and spirit has proceeded to give a go-bye to the order of the Second Appellate Authority. Mr. S.K. Salimath on his own has come to a conclusion that it is very difficult for his department to fix the responsibility on any member of the staff for misplacing the documents in question. It clearly appears to us that while exhibiting over enthusiasm, Mr. Salimath has taken to himself the task of the investigator and the fact finding authority… We must observe that Mr. Salimath has exceeded his jurisdiction and has tried to overreach the order passed by the State Information Commission dated 18th August, 2011. Mr. Salimath has no authority to decide nor to register an offence. Mr. Salimath was expected to follow the order passed by the State Information Commission in its true letter and spirit….

9. Mr. Suresh Kakani and Mr. S.K. Salimath cannot be allowed to raise or take a spacious [sic] plea that the order passed by the State Information Commissioner dated 18th August, 2011 cannot be complied with. The State Information Commissioner has passed the said order which binds the Respondent No.3. Taking into consideration the directions given by the State Information Commission, it was mandatory firstly for Mr. Suresh Kakani and secondly for Mr. S.K. Salimath to set criminal law in motion and …

Section 2(f): FIR for Missing Records

Bombay High Court:

"… leave it to the investigating agency to find out the culprits. In view of the clear direction issued by the Second Appellate Authority, they were bound to set criminal law in motion as the documents could not be traced within the stipulated time.

13. In the circumstances, we pass the following order :-

i) We direct the Respondent No.3 to set the criminal law in motion as directed under the judgment and order passed by the Second Appellate Authority dated 18th August, 2011;

ii) We further direct that after the First Information Report is registered by the State of Maharashtra, the investigation shall be completed as expeditiously as possible and preferably within the period of six months from the date of registration of the First Information Report. The concerned Commissioner of Police shall consider of entrusting the investigation to an officer of a higher rank and not below the rank of a Deputy Commissioner of Police [sic];

iii) We direct the State to pay cost of Rs.15,000/- to the Petitioner." [emphasis supplied]

Vivek Vishnupant Kulkarni vs The State of Maharashtra & Ors., Writ Petition No. 6961 of 2012, oral jjt dated 27/02/2015 – (DB) [2015 (4) MhLj 63]

Section 2(f): Information of purely private entities

Orissa High Court:

"4. …_reliance on Sub-section-5 and Sub-section-6 of Section-13 of "the Temple Act" is wholly misconceived as Sub-section (5) of Section 13 of "the Temple Act" deals mainly with responsibility of the Secretary of the Committee which means Shri Jagannath Temple Managing Committee not the Committee of Pratihari Nijoga. This is clear from the definition of the "Committee" as contained in Sub-clause-(a) of Sub-section-1 of Section-4 of "the Temple Act". As per the above mentioned Sub-clause-(a), "Committee" means Shri Jagannath Temple Managing Committee only not a Committee like Pratihari Nijoga Palia Committee. The definition "Committee" does not include any Nijoga Committee. Sub-section-6 of Section-13 deals with the power of the State Government vis-à-vis Shri Jagannath Temple Managing Committee with regard to certain matters. Similarly, the Committee referred to under Sections 11 and 15 of "the Temple Act" relates to Shri Jagannath Temple Committee not to any Committee like Pratihari Nijoga Palia Committee or Palia Committee of Pratihari Nijoga. Thus Section-15 of "the Temple Act" does not deal with the duties to be discharged by Palia Committee of Pratihari Nijoga. Similarly, Sections-15(B), 21-A and 34 do not deal with any functions of Palia Committee of Pratihari Nijoga. It seems petitioner is labouring under a misconception that "Committee" referred to in Sections 11, 13 and 15 of "the…

Section 2(f): Information of purely private entities

Orissa High Court:

"…Temple Act" can take within its ambit a Committee like Pratihari Nijoga Palia Committee. In such background, this Court is not satisfied that under "the Temple Act" there exists any legal obligation for the Pratihari Nijoga Palia Committee to supply its resolutions to the Temple Administration. In absence of any such legal obligation, there is no question of opposite party nos.1 and 2 taking steps to collect the same from the Palia Committee of Pratihari Nijoga by using the powers under Clause-(j) to Sub-section-2 of Section-21 of "the Temple Act" and supply the same to the petitioner. Even otherwise under "the Temple Act" there is also no legal obligation on the Temple Administration to collect copies of all the resolutions of all the Nijogas operating inside the temple. In such background, the attempt by the petitioner to get a copy of resolution dated 11.6.2013 passed by the Pratihari Nijoga Palia Committee of Pratihari Nijoga through R.T.I. Act from Jagannath Temple Administration is wholly mis-conceived. The Temple Administration cannot be expected to supply a copy of the resolution which under law is not required to be in their possession." [emphasis supplied]

Raghunath Gochhikar vs Odisha Information Commission & Ors., WP (C) No. 23640 of 2015, order dated 15/02/2016 – (SB)

Section 2(f): Opinion & Advice

Supreme Court of India:

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

Section 2(f): Opinion & Advice

Supreme Court of India:

public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act." [emphasis supplied]

Central Board of Secondary Education & Anr. vs Aditya Bandopadhyay and Ors., Civil Appeal No. 6454 of 2011, jjt dated 09/08/2011– (2 Judges) [(2011) 8 SCC 497]

Section 2: High Court's Internal Minutes

Madras High Court :

"92. … In this regard, we relevantly point out that the notings, jottings, administrative letters, internal deliberations and intricate internal discussions etc. on the administrative side of the Hon'ble High Court cannot be brought under Section 2(j) of the Right to Information Act, 2005, in the considered opinion of this Court.

93…. If the copies of the Minutes dated…, are furnished, then, it will definitely make an inroad to the proper, serene function of the Hon'ble High Court being an independent authority under the Constitution of India…

94. That apart, if the copies of the Minutes dated…, are supplied to the 1st Respondent/Petitioner, then, the interest of the administration of the High Court will get jeopardised and also it will perforce the Petitioner/High Court to furnish the informations sought for by the concerned Applicants/ Requisitionists as a matter of usual course without any qualms or rhyme or reasons/restrictions. In effect, to uphold the dignity and majesty of the Hon'ble High Court being an Independent Authority under the Constitution of India, some self-restrictions are to be imposed as regards the supply of internal/domestic functioning of the -

Section 2: High Court's Internal Minutes

Madras High Court :

- Hon'ble High Court and its office informations … and as such, they are exempted from disclosure under Section 8(e)(i)(j) of the Right to Information Act.

95… In short, if the informations sought for by the 1st Respondent/Petitioner are furnished, then, it will prejudicially affect the confidential interest, privacy and well being of the High Court, in the considered opinion of this Court." [emphasis supplied]

The Registrar General vs R. M. Subramanian & The Registrar, W. P. No. 28643 of 2012, jjt dated 14/06/2013 – (DB) [(2013) 5MLJ 513]

Section 2(h): Govt. aided schools

Delhi High Court:

"24. That leaves the aided schools i.e. 95% of running expenses whereof are met by the GNCTD even though they have their own Management Committee and the schools established and owned by GNCTD. It has been held in *Municipal Corporation of Delhi Vs. Children Book Trust* AIR 1992 SC 1456 that under the Delhi School Education Act, 1973, a school does not have a specific juristic entity. Thus each school of the GNCTD, whether established and owned or aided, in my view would not be a public authority. The public authority is DoE [Dept. of Education] only."

The Public Information Officer Govt. of NCT of Delhi vs Saurabh Sharma & Ors., W.P. (C) No. 4675 of 2012, jjt dated 29/09/2015 – (SB)

Section 2(h): Govt. controlled body

Delhi High Court:

"33. The position of the Central Government is akin to the position of shareholders of a holding company. The influence of Central Government in controlling the affairs of NDDB cannot be disputed. By virtue of Section 8(3) of the NDDB Act, the entire Board of Directors of NDDB is to be appointed by the Central Government. Thus, in this aspect, the power of Central Government is similar to that of shareholders of a company. Viewed from this perspective, it can hardly be disputed that the petitioner [Mother Dairy] is a body that is under the control of the Central Government. The fact that the same is exercised by NDDB would not in any manner dilute the Central Government's control over the petitioner. There is no reason to assume that the control of the appropriate government as contemplated under Section 2(h)(d)(i) of the Act must be a direct control and not through any other incorporated body. A body which is owned or controlled by an appropriate government would not cease to be controlled by an appropriate government only because an intermediary corporate entity is introduced for better management." [emphasis supplied]

Mother Dairy Fruit and Vegetable Private Ltd. vs Hatim Ali & Anr. and another related matter
Appeal W. P. (C) 3110, jjt dated 02/05/2015 – (SB)

Section 2(h): Substantially Financed?

Substantial Financing =

- **Investment by a Government in a company (50% or lesser equity participation);**
- **Public funds or grants-in-aid provided to private bodies;**
- **Public funds provided for constructing buildings or infrastructure facilities;**
- **Lease of public land for use at concessional rates of rent;**
- **Permitting use of public buildings or infrastructure free of charge over long periods; or**
- **Exemption from payment of taxes.**

As interpreted in 21 jjts of the High Courts of:

- ✓ **Punjab and Haryana** – 5 judgements (2 DBs)
- ✓ **Kerala** – 5 judgements (2 DBs)
- ✓ **Allahabad** - 5 judgements (2 DBs)
- ✓ **Delhi** – 5 judgements (1 DB)
- ✓ **Bombay, Jharkhand, Karnataka** – 1 judgment each (all SB).

(up to September 2013 after which the Supreme Court changed the criterion)

Section 2(h): Reversal of Jurisprudence

Supreme Court of India:

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

40. The burden to show that a body is owned, controlled or substantially financed or that a non-government organization is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the applicant who seeks information or the appropriate Government and can be examined by the State Public Information Officer, State Chief Information Officer, -

Section 2(h): Substantially Financed

Supreme Court of India:

- State Chief Information Commission, Central Public Information Officer etc., when the question comes up for consideration. A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government." [emphasis supplied]

This jjt reversed the jurisprudential trend set by HCs and overturned the Kerala High Court jjt in the matter of *Mulloor Rural Cooperative Society Ltd. vs State of Kerala & Ors.,* W.A. No. 1688 of 2009, dated 10/4/2012 – (FB) [ILR 2012(2) Kerala 576

Thalappalam Ser. Coop. Bank Ltd. and Ors. vs State of Kerala and Ors., Civil Appeal Nos. 9020, 9029 & 9023 of 2013, jjt dated 07/10/2013– (2 Judges) [2013 (12) SCALE 527]

Punjab and Haryana High Court:

'Following *Thalappalam,* HC quashed the orders of SIC and SB of the HC declaring the Punjab Cricket Association as a public authority under the RTI Act.'

Punjab Cricket Association vs State Information Commission & Anr., LPA No. 1174 of 2011 (O&M), jjt dated 12/12/2013– (DB) [(2014) 174 PLR 249]

Section 2(h): Substantially Financed

Delhi High Court:

"35. The question whether a body is substantially financed by a Central Government has to be viewed in the facts of each case. …

37. … it would be seen that the undertakings of the petitioner had been funded, to a significant extent, by the Central Government. This cannot be considered as a case where assistance was granted by the Central Government under schemes for betterment of cooperative sector or as general subsidies, which are available to a specified class of entities. The undertaking of Mother Dairy, Delhi and other projects were special initiatives of the Central Government as a part of Operation Flood Programme… It is relevant to note that the expression "substantially financed" is suffixed by the words "directly" or "indirectly". Thus, the finances indirectly provided by an appropriate Government would also have to be considered while determining whether a body has been substantially financed by an appropriate Government. The test to be applied is whether funds provided by the Central Government, directly or indirectly, are of material or considerable value to the body in question. In the present case, the basic infrastructure of the petitioner's undertakings were promoted by funds provided by the Central Government; whether the said funds found their way through NDDB or otherwise-

Section 2(h): Substantially Financed

Delhi High Court:

- is not material. Thus, in my view, the petitioner would also be a public authority on account of being substantially financed by the Central Government." [emphasis supplied]

Mother Dairy Fruit and Vegetable Private Ltd. vs Hatim Ali & Anr. and another related matter Appeal W. P. (C) 3110, jjt dated 02/05/2015 – (SB)

Section 2(h): CJI as Public Authority

Delhi High Court :

'Chief Justice of India is a public authority under the RTI Act'

The CPIO, Supreme Court of India Etc. vs Subhash Chandra Agarwal and Anr., W.P. (C) 288/2009 jjt dated 02/09/2009– (SB) [162 (2009) DLT 135] and reiterated in:

Secretary General, Supreme Court of India vs Subhash Chandra Agarwal, LPA No. 501/2009, jjt dated 12/01/2010 – (DB) [AIR 2010 Delhi 159]

Supreme Court of India: (framed issues for CB in judges' appointment case)

"1. Whether the concept of independence of judiciary requires and demands the prohibition of furnishing of the information sought? Whether the information sought for amounts to interference in the functioning of the judiciary?

2. Whether the information sought for cannot be furnished to avoid any erosion in the credibility of the decisions and to ensure a free and frank expression of honest opinion by all the constitutional functionaries, which is essential for effective consultation and for taking the right decision?

3. Whether the information sought for is exempt under Section 8(i)(j) of the Right to Information Act?"

CPIO, Supreme Court of India vs Subhash Chandra Agrawal , Civil Appeal No. 10044 of 2010, order dated 26/11/2010 – (2 Judges) – **CB has not been constituted till date**

Section 2(h): Governor as Public Authority

Bombay High Court :

'Governor of a State is a public authority under the RTI Act. Report sent to the President of India must be disclosed.'

Public Information Officer Raj Bhavan Goa and Anr. vs Shri Manohar Parrikar and Anr., Writ Petition No. 478 of 2008, jjt dated 14/11/2011– (DB) [AIR 2012 Bom 71]

Supreme Court of India: (SLP Pending since 2012)

Grounds:

"1. Governor is a sovereign authority and does not perform routine functions of the Government which is carried out by other Departments.

2. Governor is only 'competent authority' under the Act, not a public authority and has no reporting duty to the State Information Commission under Section 25.

3. Governor is granted plenary immunity under Article 361 of the Constitution and is not answerable to any court for performing his functions. Governor is subordinate to none and only Constitutional Courts can review his actions, not statutory authorities.

4. Governor is in a 'fiduciary' position qua the President. So reports cannot be disclosed.

Section 2(h): Governor is Public Authority

CHRI's Intervention – Main Arguments:

1. **Entire text of Governor's report is cited *ad literatim* in the jjt of the Supreme Court in** *Rameshwar Prasad & Ors, vs Union of India and Anr.* W.P. (Civil) 257 of 2005 dated 24/01/2006 – (CB) [(2006) 2SCC 1]
2. **Even the President of India is a 'public authority' under the RTI Act and has been reporting to the CIC every year under Section 25. So Central Government must be made a party to this case.**
3. **All other Governors have appointed PIOs and FAAs to deal with RTI applications and first appeals under the Act. So all States must be made parties to this case.**
4. **Sovereignty arises and vests ultimately with the people and Governor's powers and functions are determined by the Constitution.**
5. **Governor performs discretionary functions under the Constitution and several statutes. Records of such actions and decisions may not be available with other public authorities,**
6. **If Parliament had intended to keep the Governor out of the RTI Act, it would have expressly said so under Section 24 or some other provision.**

No effective hearing since December 2012.

Section 2(h): AGI as Public Authority

Delhi High Court :

Attorney General of India (AGI) is a public authority under the RTI Act because:

a) The office of the AGI is established under the Constitution (Art. 76);

b) Under the Rules framed under Art. 307 of the Constitution the AGI is a Law Officer with specific duties and entitled to remuneration, leave, allowances and other perquisites. Specific restrictions are placed on a Law Officer while performing appointed functions;

c) The AGI can move the Supreme Court in a case of criminal contempt;

"19. …the AGI is a constitutional functionary and is also obliged to discharge functions under the Constitution as well as under any other law."

21. …The expression "authority" [in Section 2(h)] would also include all persons and bodies that have been conferred a power to perform the functions entrusted to them. Merely because the bulk of the duties of the AGI are advisory, the same would not render the office of the AGI any less authoritative than other constitutional functionaries.

Section 2(h): AGI as Public Authority

Delhi High Court :

22. …The expression "authority" as used in Section 2(h) of the Act would encompass any office that is conferred with any statutory authority or constitutional power.

24. …An office that is established under the Constitution of India would clearly fall within the definition of Section 2(h) of the RTI Act. Even in common parlance, the AGI has always been understood as a constitutional authority.

27. … It is not disputed that the functions of the AGI are also in the nature of public functions.

29. … This cannot be considered as a reason [AGI has skeletal office with only personal staff] for excluding the applicability of the Act on a public authority." [emphasis supplied]

Subhash Chandra Agrawal vs Office of the Attorney General of India & a related matter, W.P. (C) 1041/2013, order dated 10/03/2015 – (SB) – overturns a CIC Full Bench decision of 10/12/2012

Delhi HC reversed this decision holding that AGI was not a public authority under the RTI Act and that information held by that office is available in a fiduciary capacity:
Union of India Etc vs Subhash Chandra Aggarwal, LPA 168/2015 jjt dated 03/02/2017 – (DB)

Section 2: Village Headman under the RTI

Meghalaya High Court :

"21...The very fact that this institution acts as a tool of governance at the grass root level and is also being assigned an important role in implementing various programmes and schemes of the Central Government as well as the State, the office of the Headman also needs to be brought within the purview of the provisions of the Right to Information Act and thus we direct the authorities to frame necessary Rules in this regard for furnishing required information connected with the activities of the Headman and his office and also about the Schemes, he is assigned to implement, besides other duties which the headmen are obligated to perform under the customary laws, practices and usages prevalent in their area as well as under various provisions of the Central and State enacted Statutes. The State should also include the Headman in the definition of „Public Servant" for the purpose of prosecution under the provisions of Criminal Law, particularly, the Prevention of Corruption Act in the case of allegations of committing any financial irregularity or any other economic offences." [emphasis supplied]

Khasi Hills Autonomous Hill Development Council Etc. vs The State of Meghalaya & Ors., WA No. 2 of 2015, jjt. dated 13/01/2016 – (DB)

Section 2(h): Are Temples Public Authorities?

Kerala High Court :

'Temples are not 'public authorities under the RTI Act' Mere notification of some temples under Hindu Religious and Charitable Endowments Act, 1951 does not make them public authorities.'

Bhanunni vs Commissioner Hindu Religious and Charitable Endowments (Admn.) Dept., W.P. (C) No. 30470 of 2008, jjt dated 11/03/2011– (DB) [ILR 2011 (2) Kerala 237]

Madras High Court :

'Temples are substantially financed by the State Government, so they are not merely private institutions. Their activities cannot be kept secret. Hereditary trustee of a temple will be the PIO.' Bhanunni ratio was not accepted.

Premanand, Hereditary Trustee Etc. vs The Commissioner H. R. & C. E. Etc, W.P. No. 14692 of 2012 , jjt dated 11/06/2012– (SB) [(2012) 5MLJ 53]

Section 2(j): RTI under other Laws & Translation of Records Disclosed under RTI Act

Kerala High Court :

"The Right to Information Act does not in any way curtail the powers of the civil court under the Code of Civil Procedure. Proceedings under the Right to Information Act cannot be the subject matter of scrutiny before a civil court. Even if a party to the suit has a right to obtain copy of a document under the Right to Information Act, that does not take away that person's right to apply under the provisions of the Code of Civil Procedure for issuing summons to the officer or authority to produce the document." [emphasis supplied]

Eldhose vs Yacob and Ors., W.P. (C) No. 3998 of 2009, jjt dated 06/03/2009 – (SB) [AIR 2009 Ker104]

Uttarakhand High Court :

"If an order is written in English, then a copy of the order translated into the official language of the State must be provided to an RTI applicant'.

State Consumer Disputes Redressal Commission, Uttarakhand vs Uttarakhand State Information Commission & Ors., Writ Petition No. 2130 of 2009 (MS), jjt dated 27/03/2010 – (SB) [AIR 2010 Utr55]

Section 2(j): Giving Certified Copies & Certifying supply of information under the RTI Act

Kerala High Court :

"In the light of the provisions contained in Sections 2(f) and 2(j) of the Act, the stand taken by the respondent that the Act does not contemplate issue of certified copies of documents or records cannot be sustained. Likewise I also find no merit or force in the contention of the respondents that grant of certified copies may give authenticity to the documents which may not be genuine or even fabricated. In the event of an applicant's request for information being granted all that the Public Information Officer would have to do is to certify that the copy is one issued under the Right to Information Act, 2005. He is not called upon to certify that it is a copy of a genuine document." [emphasis supplied]

John Numpeli (Junior) vs Public Information Officer/Assistant Executive Engineer-1, Ernakulam and Ors., W.P. (C) No. 31947 of 2013, jjt dated 31/01/2014 – (SB) [2014 (1) KLT 1010]

Section 4: Strict Obligation

Supreme Court of India:

"37. The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption." [emphasis supplied]

Central Board of Secondary Education & Anr. vs Aditya Bandopadhyay and Ors., Civil Appeal No. 6454 of 2011, jjt dated 09/08/2011– (2 Judges) [(2011) 8 SCC 497]

Section 4: Publishing Rules & Regulations

Rajasthan High Court:

"4. It is noteworthy that as per Section 4(1)(b) of the Right to Information Act, 2005 (hereinafter referred to as 'the said Act'), every public authority is obliged to publish the Rules, Regulations, Instructions, Manuals and Records held by it, or under its control or used by its employees for discharging its functions. Section 4(2) of the said Act has also made it incumbent on the part of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo-motu to the public at regular intervals through various means of communications, including internet, so that the public have the minimum resort to the use of the Act to obtain information. It is also provided in sub-section (3) of Section 4 that for the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

5. Therefore, it is obligatory on the part of the State Government and the other public authorities like Municipal Corporation, Panchayat Raj Institutions and other statutory bodies to disseminate the information through various means of communications including internet…"

Section 4: Publishing Rules & Regulations

Rajasthan High Court:

"6. It is evident from the perusal of the reply and submissions of the learned Advocate General that all the Rules framed by the State of Rajasthan under Article 309 of Constitution of India have not been uploaded on the website of the Government and public authorities. If the rules, regulations and instructions issued by Government and public authorities are not made available to the public at large, it would defeat the purpose of the enactment of the Right to Information Act which is meant to bring transparency in the functioning of the Government and public authorities

7. We, therefore, direct the Chief Secretary, Government of Rajasthan to ensure that the Rules framed by the Governor of Rajasthan in exercise of power under proviso to Article 309 of the Constitution of India for various departments of State Government and other public authorities should be uploaded on the website of the State of Rajasthan or the concerned department within a period of four months. As and when any amendment is carried out in the Rules, the same shall also be incorporated in the Rules made available on the website so that a person requiring a copy of the Rules can have the updated version..."

Section 4: Publishing Rules & Regulations

Rajasthan High Court:

"…The Rules/Regulations/Instructions issued by various departments and public authorities shall also be uploaded on the website within the aforesaid period. The Chief Secretary of the State of Rajasthan shall also call a meeting of the Heads of the Boards/Corporations to direct them to do the same exercise namely, uploading of Rules/Regulations/Instructions issued by them on their concerned websites within four months.

8. We further direct that all these Rules/Instructions/ Regulations shall also be published in the Government gazette and be made available for sale at nominal rate to public at all the District headquarters within a period of four months." [emphasis supplied]

High Court of Judicature for Rajasthan at Jaipur Bench Suo motu vs State of Rajasthan, D.B. PIL Petition No. 14730/2014, order dated 08/09/2015 (DB)

Section 4: Publishing on websites

Calcutta High Court:

"To the extent of section 4(1)(b) there is an obligation on the respondent authorities to put it on the website the details contained in sub-Section (b) of Section 4(1). It is also pertinent to mention that if such website is not available, it is open to the applicant to make an application seeking specific details and not a general application. If such information which is required to be maintained in registers and official records is asked, the authorities are bound to furnish such information. If information is not furnished then an appeal can also be filed under the enactment in accordance with the procedure….

We also make it clear that respondent authorities are under an obligation so far as the Section 4(1)(b) to create a website and furnish the details as envisaged under Section 4(1)(b) of the Act within the time frame." [emphasis supplied]

The Petitioner had filed a PIL regarding non-compliance of Auqaf authorities vis-à-vis their obligations under Section 4 of the Act.

Tara Sankar Ghosh vs State of West Bengal & Ors., D.B. W.P. No. 29754(W)/2015, order dated 15/01/2016 (DB)

Voluntary disclosure of updated laws

Delhi High Court

"4. This Court is not an appellate Court of the CIC. Technical and procedural arguments cannot be allowed to come in the way of substantial justice. The directions given by the CIC in the impugned order are not only fair and reasonable but also promote the concept of rule of law. It is unfortunate that the petitioner did not take the initiative on its own to upload the latest amended bare Acts.

5. Public can be expected to follow the law only if law is easily accessible 'at the click of a button'. In fact, as rightly pointed out by the CIC, the RTI Act itself mandates the Government to place the texts of enactments in public domain."

Union of India vs Vansh Sharad Gupta, W.P. (C) 4761/2016, jjt dated 24/05/2016 – (SB)

Section 4: Manner of dissemination

Madras High Court (Madurai Bench)

"16. Maintenance of all the records, to be duly catalogued and indexed in a manner and the form, which facilitates the right to information under the Act and to ensure that all records that are completely computerised, would necessarily take considerable time. However, having regard to the mandate of the Right to Information Act, 2005, under Sections 4(1)(b)(xii)(xiii), 4(1)(c) and 4(2) to 4(4) of the Act, we are of the view that the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes, and the decisions affecting public, can be published in the Internet and other modes of communication, which would be helpful to the general public, and on the aspect of cost effectiveness, it would be less, when compared to other modes of communication, through notice boards, newspapers, public announcements, media broadcasts, so that, public may have a minimum resort to use the Right to Information Act, 2005, to obtain information. In a growing country like India, many may not have access to the information disseminated through Internet and hence the other modes of communication require to be continued, considering the mandate of the Right to Information Act, 2005, "as much information in public interest, be published in Internet." [emphasis supplied]

K K Ramesh vs The Chief Secretary state of Tamil Nadu, WP (MD) No. 4324 of 2016, order dated 07/04/2016 – (SB)

Voluntary disclosure of FIRs

Himachal Pradesh High Court:

"20. Now once it cannot be disputed that FIR is a public document, then why the same should be kept out from public domain. Notably, the FIRs are already uploaded on the official website of the Police Department, but with restrictive usage for intra departmental purpose only. Being a public document, the FIR cannot be withheld from public domain and would not only lend credence but would bring transparency in the working of the Police Department in case the same is put in public domain…

(iv) The copies of FIR, unless reasons recorded regard being had to the nature of the offence that the same is sensitive in nature, should be uploaded on the Himachal Pradesh Police website within twenty-four hours of lodging of the FIR so that the accused or any person connected with the same can download the FIR and file appropriate application before the court as per law for redressal of his grievances.

(v) The decision not to upload the copy of the FIR on the website of H.P. Police shall not be taken by an officer below the rank of Deputy Superintendent of Police and that too by way of a speaking order. A decision so taken by the Deputy Superintendent of Police shall also be duly communicated to the Area magistrate."

Voluntary disclosure of FIRs

Himachal Pradesh High Court:

"…The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR…"

Ramanand Rathore vs State of Himachal Pradesh, CR. MMO No. 276 of 2014, order dated 19/12/2014– (SB)

[The order refers to the regime of transparency established by the RTI Act since 2005. However this order has been stayed on 05/01/2015 to give the HP Police more time to study the practice in other States like Delhi, Punjab, Maharashtra and Odisha to overcome technical difficulties in proactively disclosing FIRs on the website.]

Kerala High Court:

"15. From the submissions made by the learned counsel for the parties and the pleadings on record, it is clear that there may be cases where uploading of FIR may not be in the public interest. Cases relating to communal harmony, cases relating to security of nation and international security and several other categories of cases may fall in this group. As noted above, the Legislature itself has narrated exemptions under Section 8 of the 2005 Act…"

Voluntary disclosure of FIRs

Kerala High Court:

"As noted above, police stations in the State of Kerala have been connected with website and online application under the 2005 Act are already been entertained on different police stations. As noted above, it has been pleaded on behalf of the State that the State has not yet taken a policy decision to upload all the FIRs in the website. Even if it has not taken a policy decision as to upload all FIRs in the website, it has to take a decision as to which category of FIRs have to be uploaded in the website for information to all and to permit easy access to all those who are concerned with crime registered and those who have to take further steps regarding the crime registered. As noted above, it is in the domain of authorities as to which category of the FIRs are to be put on website for information to the public in general. But there has to be a decision and appropriate categorization or norms for taking a decision as to in which case FIR be uploaded and in which it is not be uploaded. State of Kerala having taken steps towards technological advancement including e-governance, we are of the view that the State is also obliged to take decision on the above subject even if any such policy decision has not yet been taken as on date. The State can come with any such decision which may balance right of information available to the public in general and interest of the State….

Voluntary disclosure of FIRs

Kerala High Court:

"We are thus of the opinion that petitioner has made out a case for issuing directions to the State to consider all aspects of the matter and take appropriate decision regarding uploading of the FIR in the police website with all details regarding its operation and mechanism…

In the result, the Writ Petition is disposed of with the following directions:…
(4) For uploading of all or such category or nature of the FIR, in the official website with all concerned details, the State shall consider all aspects of the matter and take appropriate decision in that regard within a period of three months from the date a copy of this judgment is produced before the 1st respondent."

Jiju Lukose vs State of Kerala & Ors., WP (C) No. 1240 of 2015 (S), jjt dated 30/11/2015– (DB)

Section 4: Action taken on Grievances

Kerala High Court :

"The nature of information sought for by the petitioner as seen from Annexure-1 is regarding nature of disposal of his representation. It can be responded by either stating that this was considered/not considered/what transpired on the file. If nothing has been acted upon such representation, it can be stated so. However, instead of providing information as to the outcome of such representation, the reply was given by the Public Information Officer stating that the representation is beyond the scope of responsibilities of the Minister of State. It seems reply is given as though the Public Information Officer is responding to the representation. The petitioner has not sought redressal of his grievance under the Right to Information Act in respect of the representation submitted by him. It seems the authorities have not understood the very scope of seeking information under the Act. The Appellate Authority as well as the Central Information Commission failed to provide information sought for by the petitioner." [emphasis supplied]

Plea for imposing penalty on the PIO was refused. Rs. 3,000 awarded as costs to the RTI applicant. PIO and CIC's orders set aside.

Mannatil Kumar vs. The Central Information Commissioner &Ors., W. P. (C) No. 2261 of 2014, jjt dated 23/10/2014 – (SB)

Section 4: Grievance against Judicial Orders

Andhra Pradesh High Court :

[Petitioner] "can only ask for the information under the provisions of the Right to Information Act, but cannot question the correctness or otherwise of the order or judgement of a judicial officer under the provisions of this Act " [emphasis supplied]

Khanapuram Gandaiah Etc. vs. The Administrative Officer, Ranga Reddy District Courts and Ors., Writ Petition No. 28810 of 2008, jjt dated 24/04/2009 – (DB) [AIR 2009 AP 174]

Madras High Court :

"The petitioner cannot conduct any roving enquiry with reference to the information sought for. If he is aggrieved on the basis of the information furnished and if he has got grievance over the claim for the land, he has to file an appropriate civil suit claiming title to the property and not to make continuous correspondence with the Commission and seek for details which need not be furnished under the RTI Act. " [emphasis supplied]

M Subramaniam vs. The Tamil Nadu Information Commission and Ors., W.P. No. 15211 of 2012 , jjt dated 18/06/2012 – (SB) [2014 (1) KLT 1010]

Section 5: Application of PIO's Mind to the Information Supplied by Its Custodian

Delhi High Court :

"7. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information, the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

8. .. The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates. The PIO has to apply his own mind independently and take the appropriate decision and cannot blindly approve / forward what his subordinates have done. [emphasis supplied]

J. P. Agrawal vs. Union of India & Ors., W. P. (C) 7232/2009, jjt dated 04/08/2011 – (SB) [2011 VIIAD (Del.) 625]

Section 5: Staff and Time Constraints – conflicting views

Kerala High Court :

"22. It is pointed out that the PSC [KPSC] has to incur the huge expenses and administrative difficulties, including the deployment of staff exclusively to deal with such requests and this would result in undue hardship and clogging of its administrative setup. Once a piece of law is in place, inconvenience is no excuse to exclude adherence to it. The bounden has to obey and abide by it. This plea of P.S.C. also does not commend acceptance." [emphasis supplied]

Kerala Public Service Commission vs. State Information Commission, W. P. (C) 33718 of 2010, jjt dated 09/03/2011 – (DB) [2011 (2) KLT88]

Supreme Court of India:

"37. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. [emphasis supplied]

Central Board of Secondary Education & Anr. vs Aditya Bandopadhyay and Ors., Civil Appeal No. 6454 of 2011, jjt dated 09/08/2011– (2 Judges) [(2011) 8 SCC 497]

Section 6: Credentials of RTI Applicants

Himachal Pradesh High Court :

"20. It is evidently clear from the bare language of the aforesaid provision that no information is required to be supplied by the applicant except those that may be necessary for contacting him. It is thus clear that the credentials of the applicant i.e. petitioner are of no relevance and are not at all to be taken into account while giving the information. Truth remains the truth and it is not important who access it." [emphasis supplied]

While rejecting the second appeal the SIC had found that the Petitioner- RTI applicant, had concealed his identity as the Company Secretary of Ms. Continental Construction Corporation Ltd. Which had earlier sought information about the tender process through the High Court which the Court had dismissed as misconceived. The Court remanded the matter back to the SIC for reconsideration.

Shekhar Srivastata vs State Information Commissioner & Ors., CWP 1367 of 2015, jjt dated 26/05/2016 – (SB)

Section 6: Safeguards for RTI Applicants

Bombay High Court :

"6. On plain reading of the said provision [Section 6(2)] the question of giving any reasons or showing any nexus as to why such information is sought by a citizen is not at all sustainable." [emphasis supplied] PIO's order was quashed.

Kashinath Shetye vs Public Information Officer & Ors., Writ Petition No. 325 of 2009, jjt dated 14/12/2012 – (SB) [2013 (2) Bom CR191]

Punjab and Haryana High Court :

"10. Section 13 of the General Clauses Act, 1897 clearly provides that in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words in the singular shall include the plural and vice versa. In the present case, it cannot be denied that the appellants before the Commission individually being citizens of India were entitled to invoke the jurisdiction of the authorities under the Act for seeking information. Merely because more than one citizen had sought information by filing a joint application when their cause of action is same, it cannot be rejected holding that the same was filed by group of persons. The ultimate object is to avoid multiplicity. In case more than one individual can file separate application for same relief, they can always file a joint application." [emphasis supplied]

Ved Parkash & Ors. vs State of Haryana & Ors., C. W. P. 10981 of 2012, jjt dated 30/10/2012 – (SB) [(2012) 168 PLR 741]

Section 6: Identity of Applicants – conflicting views

Calcutta High Court :

" Looking into the said provision [Section 6(2)] we find logic in the submission of the petitioner. When the legislature thought it fit, the applicant need not disclose any personal detail, the authority should not insist upon his detailed whereabouts when post box number is provided for that would establish contact with him and the authority. In case, the authority would find any difficulty with the post box number, they may insist upon personal details. However in such case it would be the solemn duty of the authority to hide such information and particularly from their website so that people at large do not know of the details." [emphasis supplied]

Mr. Avishek Goenka vs State of West Bengal, W. P. 33290 (W) of 2013, jjt dated 20/11/2013 – (DB)

Rajasthan High Court :

'Rajasthan Information Commission was asked to issue instructions to public authorities to insist upon proof of identity of RTI applicants by way of copy of ration card, EPIC, PAN card, passport, DL etc to prevent misuse of the Act." [emphasis supplied]

Jaipur National University vs The Rajasthan Information Commission & Anr., S. B. Civil Writ Petition No. 7838 of 2012, jjt dated 03/12/2012 – (SB)

Section 7: Fee-related

Supreme Court of India:

"We are of the view that as a normal Rule, the charge for the application should not be more than Rs. 50/- and for per page information should not be more then Rs. 5/-. However, exceptional situations may be dealt with differently. This will not debar revision in future, if situation so demands."

Common Cause vs High Court of Allahabad & Anr., WP (Civil) No. 194 of 2012, Order dated 20/03/2018

Section 7: Additional Fee

Punjab and Haryana High Court :

'PIO does not have a duty to furnish the information if the requisite fee is not paid by the RTI applicant (for APL persons only).

SIC passed penalty order without ascertaining whether the applicant had deposited the fee or not. SIC orders must contain reasons as it minimises chances of arbitrariness. This is an essential requirement of rule of law.'

Satpal Singh vs State Information Commission, Haryana & Ors., Civil Writ Petition No. 5246 of 2009, jjt dated 27/05/2011 – (SB) [(2011) 163 PLR 683]

Orissa High Court :

'Proviso to sub-section (5) of Section 7 of the RTI Act, 2005 stipulates that no fee shall be charged from the persons who are below the poverty line. The petitioner having filed his BPL card showing that he comes under BPL category, no cost of information can be imposed on him.' Orissa SIC order quashed.

Kunja Bihari Patra Etc. vs Public Information Officer, O/o Assistant Engineer, National Highway Sub-Division, Nayagarh, W. P. (C) No. 4797/2013, jjt dated 02/07/2013 – (DB)
[2013 (II) OLR 546]

Sections 7(3): Additional Fee

High Court of Judicature at Hyderabad:

"10. The priced material is indicated as publications printed matter, text, maps, plans, floppies, CDs, samples, models or material in any other form, which are priced, the sale price thereof. A building plan of a particular premises is not open for sale and it is not priced. Hence, it cannot be called as a priced material. In respect of other than priced material, the actual cost of the copy has to be recovered from the party. Thus, the first respondent committed an error in coming to the conclusion that the information sought by the petitioner is a priced material and also upholding the demand made by the second respondent. If it is a priced material, the sale price should have been indicated. In case of other than priced material, the actual cost should have been calculated. Either way it has nothing to do with the calculation of the amount as done by the second respondent." [emphasis supplied]

(The Court did not go into the Petitioner's plea that the additional fee request was sent after the 30-day deadline and therefore he not be required to pay the additional fee of Rs. 44,787/- calculated under the Rules framed under the *Greater Hyderabad Municipal Corporation Act.*)

Sri O M Debara vs The AP State Information Commission, Writ Petition No. 3258/2008, jjt dated 06/12/2014 – (SB) [AIR 2015 AP56]

Section 8: How to Interpret

Supreme Court of India:

"33. Some High Courts have held that section 8 of the RTI Act is in the nature of an exception to section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech and that therefore section 8 should be construed strictly, literally and narrowly. This may not be the correct approach. The Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. Therefore when section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals."

40. … The Courts and Information Commissions enforcing the provisions of RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting section 8 and the other provisions of the Act". [emphasis supplied]

Central Board of Secondary Education & Anr. vs Aditya Bandopadhyay and Ors., Civil Appeal No. 6454 of 2011, jjt dated 09/08/2011– (2 Judges) [(2011) 8 SCC 497]

Section 8: How to Interpret

Supreme Court of India:

"18. … Therefore when section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals. Therefore in dealing with information not falling under section 4(1)(b) and (c), the competent authorities under the RTI Act will not read the exemptions in section 8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding other public interests". [emphasis supplied]

The Institute of Chartered Accountants of India vs Shaunak H Satya and Ors., Civil Appeal No. 7151 of 2011, jjt dated 02/09/2011– (2 Judges) [(2011) 8 SCC 781]

Section 8(1)(a): Foreign relations

Delhi High Court:

"16. The CIC had observed that "*the disclosure of the embassy files relating to the official communication with Saudi Govt. will impinge upon the friendly relations with a foreign country*". This observation is, plainly, unmerited. The question whether disclosure of any communication with a Foreign State would adversely affect the relationship with that Foreign State would depend on the nature of the information and whether the same is expected to be treated as confidential.

17. This is a case where the petitioner claims that he had been compelled to resign on account of a complaint. Nothing has been brought on record which would indicate that this information, if available with the Indian Embassy at Saudi Arabia, is required to be kept confidential or would have a material bearing on the relationship of India with the Saudi Authorities. In view of the above, the impugned order to the extent that it rejects the petitioner's second appeal arising from his request for information made on 01.11.2015… is set aside.

18. The respondents are directed to disclose the complaints received against the petitioner provided that the same are available with the Indian Embassy at Saudi Arabia. It is clarified that the Indian Embassy is not required to take any steps to…

Section 8(1)(a): Foreign relations

Delhi High Court:

"secure this information from other sources; in other words, the said complaint would be disclosed to the petitioner, only if the same is available with the Indian Embassy.

Dominic Simon vs Central Public Information Officer & Anr., WP(C) 8993/2017, Order dated 31/01/2018– (SB)

Section 8(1)(a): IT Scrutiny Guidelines

Delhi High Court:

"6.4. The expression, economic interest, thus takes within its sweep matters which operate at a macro level and not at an individual, i.e., micro level. In my view, by no stretch of imagination can [Income Tax] scrutiny guidelines impact economic interest of the country. These guidelines are issued to prevent harassment to assessees generally. It is not as if, de hors the scrutiny guidelines, the I.T. Department cannot take up a case for scrutiny, if otherwise, invested with jurisdiction, in that behalf. This is an information which has always been in public realm, and therefore, there is no reason, why the respondents should keep it away from the public at large. Thus, in my opinion, provisions of Section 8(1)(a) of the RTI Act would have no applicability in the instant case." [emphasis supplied]

Joginder Pal Gulati vs The Officer on Special Duty (ITA II) cum CPIO & Anr., W. P. (C) 6773/2011, jjt dated 02/04/2013 – (SB)

Section 8(1)(d): Access to Service Agreements

Bombay High Court:

"15. I am not in agreement with the Petitioners that the conclusion drawn is in any way contrary to Section 8(1)(d). The agreements may contain certain stipulations, so also, certain obligations, but what is sought is a copy of the agreement. It is not the case of the Petitioners that larger public interest does not warrant disclosure of this information. They tried to place the case more on the pedestal of security and safety, so also, confidentiality of interests of those to whom the Smart Cards have been issued. The information sought is not in relation to the individual Smart Cards or registration certificates or details thereof. The information sought is in relation to the decision taken and the policy framed for providing the Smart Cards and if the means to provide the same are by inducting private service providers, then, only details of the agreements executed with such service providers and the copies thereof have been sought. In my view, there was nothing in the information sought by the Respondent No. 4, by which commercial confidence, trade secrets or intellectual property is being disclosed, leave alone the disclosure of which would harm the competitive position of a third party or it would lead to incitement of an offence. Merely because the details of the service providers are to be disclosed and the copies of the agreements would be -

Section 8(1)(d): Access to Service Agreements

Bombay High Court:

- provided, that does not mean that their interests are harmed or their competitive position is affected. It has been rightly pointed out by the Respondent No. 4 that some other Transport Commissioners have been providing such details for such the respective territories and States, therefore, there was no need for the Transport Commissionerate for Maharashtra to withhold this information." [emphasis supplied]

Shonkh Technology International Ltd. Etc. vs State Information Commission, Maharashtra Konkan Region & Ors., Writ Petition Nos. 2912 and 3137 of 2011, jjt dated 01/07/2011 – (SB)
[2011(4) Bom Cr495]

Section 8(1)(d): Technical Bid Documents

Delhi High Court:

"15. What we find in the present case is that the tender process has been scrapped. The information which is being sought relates to the evaluation of the bids by the appellant. Though the Non Disclosure Agreement extended the obligation of confidentiality beyond the date of opening of the tenders also but only for a period of two years from the date of disclosure or to the completion of business purpose whichever is later. The business purpose stands abandoned with the scrapping of the tenders. More than two years have elapsed from the date when the information was submitted. Thus the said agreement now does not come in the way of the appellant disclosing the information. However, we are of the opinion that disclosure of such information which would be part of the evaluation process would still require the third party information procedure under Section 11 of the Act to be followed. As aforesaid, besides the bid price, there may still be information in the bid and which may have been discussed in the evaluation process, of commercial confidence and containing trade secret or intellectual property of the bidders whose bids were evaluated." [emphasis supplied]

The case was remanded back to the CIC.

Bharat Sanchar Nigam Ltd. vs Shri Chander Sekhar, LPA No. 900/2010, jjt dated 23/03/2012–(DB) [2012 VIIAD (Delhi) 342]

Section 8(1)(d): Annulled Tender Documents

Himachal Pradesh High Court:

"14. The procedure as contemplated under Section 11 of the Act has evidently not been followed and rather the respondents took it upon themselves and invoked the provisions of Section 8 (1) (d) of the Act to deny information to the petitioner…

17. Looking into the nature of the information sought for by the petitioner from the respondents, I really fail to understand as to how the same was exempted under any of the provisions of Section 8 much less under Clause (d) of sub Section (1) thereof. After all, the petitioner was not seeking any confidential or secret document and the same otherwise did not fall within any of the exceptions as contemplated under Section 8 (1) (d) of the Act. Once it was so, then there was no valid or justifiable reason why the respondents should have withheld the information." [emphasis supplied]

The RTI Applicant had sought a copy of the tender evaluation committee report, all file notings from invitation of bids stage to annulment stage and basis for annulment. The case was remanded back to the SIC as it had rejected the 2nd appeal holding the applicant to be a company secretary of a corporation that had earlier litigated for the tender documents in the High Court.

Shekhar Srivastata vs State Information Commissioner & Ors., CWP 1367 of 2015, jjt dated 26/05/2016 – (SB)

Section 8(1)(d): Taxa data of private entity

Kerala High Court (at Ernakulam):

"7. The right to information and right to privacy are not absolute rights. So, it is necessary to harmonise these conflicting interests while preserving the paramountcy of democratic ideals. The preamble of the Act itself says that it is an Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of Public Authorities. Thus, information under the Public Authority alone need be disclosed under the Act and no information so long as it remains in the private person need be disclosed. But, at the moment when it comes under the Public Authority, it shall be deemed to be in the public domain to which the public has the right to access. Here, the information sought for by the 4th respondent is one that remains in the public domain, because, at the moment when the assessee files turnover and pays monthly tax, that comes to the light of public domain. After the submission of return and payment of tax etc., it cannot be treated as confidential matters, as has been held above. In this case, there is no element of personal information.

8. In the instant case, the information sought for are related to the turnover of the textile business and the monthly tax paid by the petitioner, which are the contents of the returns filed every month as per the VAT Act; and such an information does not…

Section 8(1)(d): Taxa data of private entity

Kerala High Court (at Ernakulam):

"… affect his commercial confidence, in the absence of trade secrets or intellectual property in it. In short, the information sought for by the 4th respondent did not fall under any of the exemptions provided under Sections 8(1)(d) and 8(1)(j) of the Act." [emphasis supplied]

M/s Silky vs The State Information Commission & Ors., WP(C) 29188 of 2011, jjt dated 22/02/2016 – (SB)

Section 8(1)(e): Fiduciary Relationship

Supreme Court of India:

"58. In the instant case, the RBI does not place itself in a fiduciary relationship with the Financial institutions (though, in word it puts itself to be in that position) because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. In this case neither the RBI nor the Banks act in the interest of each other. By attaching an additional "fiduciary" label to the statutory duty, the Regulatory authorities have intentionally or unintentionally created an *in terrorem* effect…

62. The exemption contained in Section 8(1)(e) applies to exceptional cases and only with regard to certain pieces of information, for which disclosure is unwarranted or undesirable. If information is available with a regulatory agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship. As in the instant case, the Financial institutions have an obligation to provide all the information to the RBI and such an information shared under an obligation/ duty cannot be considered to come under the purview of being shared in fiduciary relationship. One of the main characteristic [sic] of a Fiduciary relationship is …

Section 8(1)(e): Fiduciary Relationship

Supreme Court of India:

… "Trust and Confidence". Something that RBI and the Banks lack between them.

60. RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of 'trust' between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy and the banking sector. Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks. It is duty bound to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein." [emphasis supplied]

Reserve Bank of India vs Jayantilal N. Mistry (batch matter of 11 cases) Transferred Case (Civil) No. 91 of 2015 jjt. dated 16/12/2015 [AIR 2016 SC1]

Section 8(1)(e): Fiduciary Relationship

Supreme Court of India:

'Relationship between examiners and examinee or examiners and authority conducting an examination is not fiduciary in nature. So evaluated answer scripts can be disclosed to examinee'.

Central Board of Secondary Education & Anr. vs Aditya Bandopadhyay and Ors., Civil Appeal No. 6454 of 2011, jjt dated 09/08/2011– (2 Judges) [(2011) 8 SCC 497]

"10. …the request of the information seeker about the details of the person who had examined/checked the paper cannot and shall not be provided to the information seeker as the relationship between the public authority i.e. Service Commission and the Examiners is totally within fiduciary relationship. The Commission has reposed trust on the examiners that they will check the exam papers with utmost care, honesty and impartially and, similarly, the Examiners have faith that they will not be facing any unfortunate consequences for doing their job properly." [emphasis supplied]

Kerala Public Service Commission & Ors. vs The State Information Commission & Anr., (along with another matter) Civil Appeal Nos. 823-854 of 2016 , jjt dated 04/02/2016 – (2 Judges)

Section 8(1)(e): Fiduciary Relationship

Delhi High Court:

'Question papers of multiple choice type may not be disclosed to non-examinees because the number of multiple choice questions which can be framed for a competitive examination for admission to a super-speciality course dealing with one organ only of the human body are limited' Knowledge of questions papers of all previous years with correct answers may lead to selection of a student with good memory rather than an analytical mind. So Section 8(1)(d) and (e) correctly invoked by public authority to deny access to information to non-examinee.'

All India Institute of Medical Sciences vs Vikrant Bhuria, LPA No. 487/2011, jjt dated 28/05/2012 – (DB)

Section 8(1)(e): Fiduciary Relationship

Delhi High Court:

"7. The exam conducted by NIA is essentially an exam for evaluating the candidates for promotion and to test their proficiency of the knowledge of the industry and the work involved.

8. I am inclined to accept that since the promotional exam is in a nature of trade test, the questions would be limited. In these circumstances, a disclosure of question papers along with the answer key (model answers) would inevitably place the entire question bank in public domain and thus, effectively reduce the efficacy of the tests. …

11. In my view, the aforesaid decision [AIIMS case] would squarely apply in the facts of the present case as the number of questions are limited and a disclosure of the same would affect the efficacy of the promotional exams conducted by the NIA. In this view, the impugned order passed by CIC insofar as it directs disclosure of question paper and answer key (model answers) is set aside." [emphasis supplied]

National Insurance Co. Ltd. vs MSH Beig, W. P. (C) Nos. 272, 332/2011, jjt dated 20/11/2014 – (SB) [2015 IIAD (Delhi) 547]

Section 8(1)(e): Fiduciary Relationship

Delhi High Court:

"14. … The candidates appearing for the MBBS entrance examination are students who have appeared in or have passed the Class XIIth examination held by the CBSE or other boards of examination. It can safely be argued that they cannot be tested beyond the curriculum prescribed for Class XIIth. To our knowledge, no secrecy is maintained with respect to Class XIIth board examination question papers which the examinees are allowed to carry away with them after the examination…. The course content for the MBBS entrance examination and the possible questions even if of multiple choice variety cannot fall in a narrow domain, as in an examination for a super specialty course in medicine…. We find it very hard to believe that the stock of questions even of multiple choice for testing the merit for admission to MBBS is limited. The same does not speak very well of the innovative powers of the setters of the said question papers….

15. … We do not think that the respondent no.1 University can prohibit its question papers setters also from beside setting the question papers, framing and publishing model question papers. If it is to be believed that stock of multiple choice of question is limited, then it will follow that the model question papers set up by other teachers/professors would also be the same as set by the question paper setter. …

Section 8(1)(e): Fiduciary Relationship

Delhi High Court:

" - If it were to be so, the questions which the respondent no.1 University is seeking to keep secret would no longer remain secret.

16. In today's day and time we have model question papers for nearly each and every examination... Not only so there are specialized coaching classes for each and every entrance examination with some of them having a very good success rate. Such coaching classes would certainly be coaching on the likely multiple choice questions in the entrance exam.

17. All this throws a lot of dust on the plea of secrecy taken by the respondent no.1 University.

18. As far as we are aware, there is no such restriction in the examinations held for entrance to the engineering colleges. We have also wondered that when the question paper setters of the said examination can year after year come up with new and different multiple choice questions to test the skill and merit of the examinees, what is the difference in the medical entrance examination." [emphasis supplied]

Master Rajat Mann vs Guru Gobind Singh Indraprastha University & Ors., LPA No. 543/2014, jjt dated 07/05/2015 – (DB)

Section 8(1)(e): Fiduciary Relationship

Rajasthan High Court:

"The Chief Information Commissioner while deciding the second appeal filed by the Respondent No. 1 has recorded a finding that the confidentiality clause of the university ordinance cannot come in the way of providing information under RTI Act, in view of the overriding effect of the RTI Act under Section 22. Section 8(1)(e) cannot be applied in this case as the information pertains to the applicant herself. The Chief Information Commissioner has fortified its findings by placing reliance upon the decision rendered by the Hon'ble Supreme Court in Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors. 2011 (8) SCC 497. In that view of the matter, there is no infirmity or illegality in the order passed by the Chief Information Commissioner and no interference whatsoever is called for by this Court."

Registrar, University of Rajasthan vs Ms. Manju Yadav, SB Civil Writ Petition No. 4287/2015, jjt dated 21/04/2015 – (DB)

Section 8(1): Exam related information

Supreme Court of India:

(3) The respondents-writ petitioners were unsuccessful candidates in the Civil Services (Preliminary) Examination, 2010. They approached the High Court for a direction to the Union Public Service Commission (UPSC) to disclose the details of marks (raw and scaled) awarded to them in the Civil Services (Prelims) Examination 2010. The information in the form of cut-off marks for every subject, scaling methodology, model answers and complete result of all candidates were also sought. Learned Single Judge directed that the information sought be provided within fifteen days. The said view of the Single Judge has been affirmed by the Division Bench of the High Court….

(10) Weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, we are of the view that information sought with regard to marks in Civil Services Exam cannot be directed to be furnished mechanically. Situation of exams of other academic bodies may stand on different footing. Furnishing raw marks will cause problems as pleaded by the UPSC as quoted above which will not be in public interest. However, if a case is made out where the Court finds that public interest requires furnishing of information, the Court is certainly …

Section 8(1): Exam related information

Supreme Court of India:

If rules or practice so require, certainly such rule or practice can be enforced. In the present case, direction has been issued without considering these parameters."

Union Public Service Commission Etc. vs Agnesh Kumar & Ors. Etc (Batch matter), Civil Appeal No. 6159-6162 of 2013, Order dated 20/03/2018

Section 8(1)(f): Confidential Information from Foreign Governments

Supreme Court of India:

"71. <u>The actions of governments can only be lawful when exercised within the four corners of constitutional permissibility. No treaty can be entered into or interpreted, such that constitutional fealty is derogated from</u>...

72. ... We do not find merit in its [Union of India's] arguments flowing from the double taxation agreement with Germany [that the treaty can be interpreted to forbid disclosure of information received from Germany to any third party outside of a tax-related court proceeding on the ground that it contains a non-disclosure provision]." [emphasis supplied]

Ram Jethmalani & Ors. vs Union of India and Ors., Writ Petition. (Civil) No. 176 of 2009 , jjt dated 04/08/2011 – (2 Judges) [(2011) 8 SCC 1]

GoI's Interim Application seeking certain clarifications about the ratio contained in this jjt in October, 2014 was rejected by the Apex Court.

Section 8(1)(g): Endangering life & safety

Supreme Court of India:

"30. ... <u>The disclosure of names and addresses of the members of the Interview Board would *ex facie* endanger their lives or physical safety. The possibility of a failed candidate attempting to take revenge from such persons cannot be ruled out</u>. On the one hand, it is likely to expose the members of the Interview Board to harm and, on the other, such disclosure would serve no fruitful much less any public purpose." [emphasis supplied]

So information was denied under Section 8(1)(g) and Patna High Court (DB) jjt ordering disclosure was set aside.

Bihar Public Service Commission vs Saiyed Hussain Abbas Rizwi & Anr., Civil Appeal No. 9052 of 2012 , jjt dated 13/12/2012 – (2 Judges) [(2011) 8 SCC 1]

"10. …the request of the information seeker about the details of the person who had examined/checked the paper cannot and shall not be provided to the information seeker as the relationship between the public authority i.e. Service Commission and the Examiners is totally within fiduciary relationship. The Commission has reposed trust on the examiners that they will check the exam papers with utmost care, honesty and impartially and, similarly, the Examiners…

Section 8(1)(g): Endangering life & safety

Supreme Court of India:

"…have faith that they will not be facing any unfortunate consequences for doing their job properly. If we allow disclosing name of the examiners in every exam, the unsuccessful candidates may try to take revenge from the examiners for doing their job properly. This may, further create a situation where the potential candidates in the next similar exam, especially in the same State or in the same level will try to contact the disclosed examiners for any gain by illegal means in the potential exam." [emphasis supplied]

So information was denied and Kerala High Court (DB) jjt ordering disclosure was set aside.

Kerala Public Service Commission & Ors. vs The State Information Commission & Anr., (along with another matter) Civil Appeal Nos. 823-854 of 2016 , jjt dated 04/02/2016 – (2 Judges)

Delhi High Court:

"27. In view of the dictum of the Apex Court in 'Bihar Public Service Commission' (supra) this court is conscious of the fact that the disclosure of such information may endanger the physical safety of an examiner/interviewer who under an apprehension of danger to his life may not be able to effectively discharge his…

Section 8(1)(g): Endangering life & safety

Delhi High Court:

"…duties. Further, such a disclosure could seriously affect the secrecy and confidentiality of the selection process.

28. In the result, the petition is partly allowed. The impugned order dated 20.07.2011 passed by the CIC qua Item No. 5 directing the disclosure of the names of the Selection Committee Members along with their designation and addresses is set aside." [emphasis supplied]

Union Public Service Commission vs Dr. Mahesh Mangalat, W. P. (C) 7431/2011 (SB)

Himachal Pradesh High Court:

"*21.* In my considered view, when the petitioner-Commission engages the services of an Expert or a Member to be a part of selection process, it expects such Expert or Member not to disclose the information regarding evaluation to anyone other than the Commission. Similarly, an Expert/Member also expects that his name and particulars would not be disclosed to the candidates who are being interviewed by him or to any other person. This is for the reason that in case such information is made known, disgruntled candidates who are not satisfied with evaluation may act to the prejudice of the Expert/Member by endangering the life or physical safety…

Section 8(1)(g): Endangering life & safety

Himachal Pradesh High Court:

"…of such Expert/Member. Further, any kind of apprehension on the part of such Expert/Member to the effect that there may be danger to his physical safety if his identity becomes known may come in his way to effectively discharge his duties and he may not be able to discharge his duties appropriately.

22. **Similarly, even with regard to the interview sheets, in view of the fact that such interview sheets usually contain the signatures and codes etc. of the Expert/Member, the information with regard to their names or their particulars shall become public if the same are made available under the Right to Information Act. Therefore, it is necessary that interview sheets are exempted from disclosure under Section 8(1)(g) of the Right to Information Act on the ground that if such information is disclosed, it may endanger the physical safety of the Expert/Member.**

25. **…the principle of severability cannot be applied to an interview sheet and, therefore, interview sheets are exempted from disclosure under Section 8(1)(g) of the Right to Information Act because disclosure of the same is obviously going to reveal the identity of the Expert/Member." [emphasis supplied]**

Himachal Pradesh Public Service Commission vs State Information Commission & Anr., CWP No. 96 of 2009, jjt dated 11/5/2016 (SB)

Section 8(1)(g): Safety of Informers

Calcutta High Court:

'Identity of the source of information on the basis of which CBI initiated a criminal case cannot be disclosed to the accused as there is no element of public interest in demanding such disclosure and CBI has rightly claimed the protection of Section 8(1)(g) of the RTI Act.'

Shri Hossain Sahid Abedin vs Union of India and Ors., W.P. No 5562 (W) of 2011, jjt dated 03/07/2012 – (SB)

Section 8(1)(g): Disclosure of FIRs

Kerala High Court:

"(1) On an application submitted by an accused for copy of the FIR, the concerned police station/office of Superintendent of Police shall make available copy of the FIR within two days from making the application.

(2) Copy of the FIR can also be obtained by an accused from the court of the concerned Magistrate where the report has already been sent within two working days from the date of making the application.

(3) Copy of the FIR has also to be made available on an application filed under the Right to Information Act, 2005 as per the provisions of the said Act unless a decision is taken by the competent authority that it is covered by any of the exemptions as provided under Section 8 of the 2005 Act."

Jiju Lukose vs State of Kerala & Ors., WP (C) No. 1240 of 2015 (S), jjt dated 30/11/2015– (DB)

Section 8(1) (e) & (h): Investigation-related information

Delhi High Court:

"13. ... It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information." [emphasis supplied]

Bhagat Singh vs. Chief Information Commissioner & Ors., WP(C) No. 3114/2007, jjt dated 03/12/2007 – (SB) [146 (2008) DLT 385]

"8. …Therefore when such information [file notings related to disciplinary proceedings] is sought by none other than the employee against whom disciplinary proceedings are sought to be initiated or are held, it would be difficult to accept the contention that there is a fiduciary relationship between the UPSC and the Department seeking its advice or that the information pertaining to such an employee is held by the UPSC in trust.

11. … officers of UPSC recording opinion can be protected by blocking their name, designation or any other indication which would disclose their identity."

Union Public service Commission vs G S Sandhu, WP(C) No. 4079/2013, jjt dated 10/10/2013 – (SB) [204 (2013) DLT 212]

Section 8(1)(h): Investigation-related information

Delhi High Court:

"6. A plain reading of the aforesaid provision [Section 8(1)(h)] indicates that information which would impede the process of investigation or apprehension or prosecution of offenders could be denied. In order to deny information, the public authority must form an affirmative opinion that the disclosure of information would impede investigation, apprehension or prosecution of offenders; a mere perception or an assumption that disclosure of information may impede prosecution of offenders is not sufficient. In the present case, neither the FAA nor the CIC has considered as to how the information as sought for would impede the process of investigation or apprehension or prosecution of the petitioner and other accused…

10. A bare perusal of the order passed by the FAA also indicates that the aspect as to how the disclosure of information would impede prosecution has not been considered. Merely, citing that the information is exempted under Section 8(1)(h) of the Act would not absolve the public authority from discharging its onus as required to claim such exemption. Thus, neither the FAA nor the CIC has questioned the Public Authority as to how the disclosure of information would impede the prosecution." [emphasis supplied]

Adesh Kumar vs. Union of India & Ors., WP(C) No. 3543/2014, jjt dated 16/12/2014 – (SB)

Section 8(1)(h): Investigation-related information

Delhi High Court:

"13. A careful reading of the provision would show that the holder of the information can only withhold the information if, it is able to demonstrate that the information would "impede" the process of investigation or apprehension or prosecution of the offenders.

14. In the present case, the facts, as set out hereinabove, clearly demonstrate that the investigation is over. The charge sheet in the case was filed, as far back as on 31.12.2010.

14.1 The question then is, would the information sought for by the respondent "*impede*" the respondent's apprehension or prosecution. The respondent is in court and he says that he has been granted bail by the competent court. Therefore, *prima faice,* [sic] the view of the competent court, which is trying him, is that there is no impediment in apprehending the respondent, and that he would be available as and when required by the court. The petition makes no averments as to how the information sought for by the respondent would prevent his prosecution." [emphasis supplied]

Union of India vs. Sh. O. P. Nahar, WP(C) 3616/2012, jjt dated 22/04/2015 – (SB)

Section 8(1)(h): Case diary

Karnataka High Court:

Challenged to the order of the Karnataka State Information Commission directing the Police to allow inspection of case diary relating to 3 FIRs filed to the accused, set aside on the grounds that the *Code of Criminal Procedure, 1973*, "prohibits the accused from looking into the case diary, till the prosecution makes use of it during the course of trial." The High Court quashed the order on the grounds that the trial was yet to begin and the even the Court had not looked into the case diary.

The Commissioner of Police, Mysore City & Ors., vs. Karnataka Information Commission & Anr., WP No. 25840 of 2010 (GM-RES), order dated 15/06/2011 – (SB)

Section 8(1)(h): Case diary & D.D. Entries

Delhi High Court:

"6. This Court is inclined to concur with the view expressed by the CIC that in order to deny the information under the RTI Act the authority concerned would have to show a justification with reference to one of the specific clauses under Section 8 (1) of the RTI Act... The mere fact that a criminal case is pending may not by itself be sufficient unless there is a specific power to deny disclosure of the information concerning such case. In the present case, the criminal trial has concluded. Also, the investigation being affected on account of the disclosure information sought by the Respondent pertains to his own case. No prejudice can be caused to the Petitioner if the D.D. entry concerning his arrest, the information gathered during the course of the investigation, and the copies of the case diary are furnished to the Respondent. The right of an applicant to seek such information pertaining to his own criminal case, after the conclusion of the trial, by taking recourse of the RTI Act, cannot be said to be barred by any provision of the CrPC. It is required to be noticed that Section 22 of the RTI Act states that the RTI Act would prevail notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force. [emphasis supplied]

Deputy Commissioner of Police, vs. D. K. Sharma, WP(C) 12428/2009, order dated 15/12/2010 – (SB)

Section 8(1)(h): Prosecution-related information

Delhi High Court:

Information sought: certified true copies of all order sheet entries/ note sheet entries/ file notings of U. Secy., Dir., Jt. Secy., Member, & Chairman CBDT, Secretary Revenue, Minister of State (Revenue), if any, Finance Minister, if any pertaining to prosecution sanction by the Central Govt. under Section 19(1)(a) *Prevention of Corruption Act, 1988* vide sanction order dated 09/04/2009 in F. NO. C – 14011/8/2008-VandL of CBDT. PIO and FAA denied under Section 8(1)(h) of the Act.'

"11.1 As rightly contended by the earned counsel for the Petitioner, a Single Judge of this Court in *Bhagat Singh* case has construed the said provision of the Act to mean that in order to claim exemption under the said provision, the authority withholding the information must disclose satisfactory reasons as to why the release of the information would hamper the investigation...

11.2 In the light of the aforesaid observations of the Single Judge.. One would have to see as to whether the affidavit filed on behalf of Respondent Nos. 2 and 3 disclose the reasons as to how information sought, would hamper the prosecution of the petitioner. A perusal of the affidavit shows that no such averment is made in the counter affidavit filed by Respondent Nos. 2 and 3... (contd.)

Section 8(1)(h): Prosecution-related information

Delhi High Court:

Undoubtedly the Petitioner here is seeking information with regard to the sanction accorded for his own prosecution...

11.3 I have no reason to differ with the view taken either in *Bhagat Singh* case or with the *prima facie* view taken in the order passed by my predecessor... It is trite that an accused can challenge the order by which sanction is obtained to trigger a prosecution against the accused. If that be so, I do not see any good reason to withhold information which, in one sense, is the underlying material which led to the final order according sanction for prosecution of the Petitioner. As a matter of fact, the trial court is entitled to examine the underlying material on the basis of which sanction is accorded when a challenge is laid to it. To determine for itself as to whether the sanctioning authority had before it the requisite material to grant sanction in the matter... Therefore the underlying material would be crucial to the cause of the Petitioner, who seeks to defend himself in criminal proceedings, which the State as the Prosecutor cannot, in my opinion withhold unless it can show that such information would hamper prosecution. ..

13. The burden in this regard [of proving that the denial of access is justified is on the State." [emphasis supplied]

Sudhirranjan Senapati Addl. Commr. Of Income Tax vs. Union of India & Ors., WP(C) No. 7048/2011, order dated 05/03/2013 – (SB)

Section 8(1)(i): Cabinet papers

Delhi High Court:

"10. … Preparation of a note with supporting material, to be put up before the Cabinet, takes a considerable time. In fact, a perusal of the file in the present case shows the same to have taken years. However the same would in my opinion not allow disclosure, once it is found that as per the rules or the procedure or the decision already taken, the matter has to be considered and decided by the Cabinet. The matter, in the present case, is found to be at the stage of "cooking" for consumption of the Cabinet. If it were to be held that the exemption is not available till the papers are before the Cabinet, it would amount to allowing access of information which is otherwise prohibited and defeat the purpose of the exemption.

11. Where however there is no rule or procedure or an already existing decision for the papers to be put up before the Cabinet, information cannot be denied indefinitely merely by mooting a proposal for putting up the same before the Cabinet and which proposal has no basis in any earlier decision or rules or procedure.

14. Supreme Court, as far back as in *S.P. Gupta Vs. Union of India* AIR 1982 SC 149 reiterated in *Doypack Systems Pvt. Ltd. Vs. Union of India* (1988) 2 SCC 299, though not in the context of RTI Act, held that there may be classes of documents which public interest requires should not be disclosed, no matter what the individual documents in those classes may contain—law recognises that there may be classes of documents…

Section 8(1)(i): Cabinet papers

Delhi High Court:

"…which in public interest should be immune from disclosure. It was further held that there is one such class of documents which for years has been recognised by the law as entitled in the public interest to be protected against disclosure and that class consists of documents which it is really necessary for the proper function of public service to withhold from disclosure; the documents falling within this class are granted immunity from disclosure not because of their contents but because of the class to which they belong—This class includes cabinet minutes, minutes of decisions between heads of departments, high level interdepartmental communications, papers brought into existence for the purpose of preparing a submission to Cabinet and indeed any document which relate to the framing of Government Policy at a high level. It was thus held that Cabinet papers including papers brought into existence for the purpose of preparing submission to the Cabinet are protected from disclosure, not by reason of their contents but because of the class to which they belong.

15. <u>The aforesaid, in my opinion is the genesis of the exemption contained in Section 8(1)(i) and applying the same, though of an era prior to coming into force of RTI Act, no case for directing disclosure of information sought is made out</u>." [emphasis supplied]

Vikas Verma vs. The Director (MRTS-I) & CPIO, MOUD, WP(C) No. 2927/2015, jjt. dated 02/03/2016 – (SB)

Section 8(1)(j): Officers' Transfer Details

Kerala High Court:

"8. The next exemption claimed by the petitioner is on the ground that the information sought for by the second respondent relates to personal information pertaining to the employees of the Bank, disclosure of which has no relationship with any public activity or interest of the Bank or its employees and it would cause unwarranted invasion of the privacy of the employees, details of whose transfers are requested for by the 2nd.

9. In fact, if that contention is accepted, then information relating to any person in respect of his illegal activities, especially corruption or misconduct could be withheld on the basis of the said section which is not what is contemplated by the Right to Information Act. I am of opinion that the information mentioned in Section 8(1)(j) is personal information which are so intimately private in nature that the disclosure of the same would not benefit any other person, but would result in the invasion of the privacy of that person. In the present case, without the information requested for the 2nd respondent would not be in a position to effectively pursue his claim for transfer in preference to others. On the other hand, the disclosure of such information would not cause unwarranted invasion of privacy of the other employees in any manner insofar as that information is not -

Section 8(1)(j): Officers' Transfer Details

Kerala High Court:

"- one which those employees can keep to themselves. If the 2nd respondent is to contest that the transfers made are in violation of his rights for preferential transfer, he necessarily should have the information which cannot be withheld from him by resort to Section 8(1)(j). More importantly, the proviso to the section qualifies the section by stating that information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. By no stretch of imagination can it be held that the information requested for the 2nd respondent are information which can be denied to the Parliament and a State Legislature." [emphasis supplied]

Treesa Irish w/o Milton Lopez vs The Central Public Information Officer & Ors., W.P. (C) No. 6532 of 2008 (C), jjt dated 30/08/2010– (SB) [2012 VIIAD (Delhi) 342]

Section 8(1)(j): Health and Bank records

Bombay High Court:

"17. … Normally records of a person sentenced or convicted or remanded to police or judicial custody, if during that period such person is admitted in hospital and nursing home, should be made available to the person asking the information provided such hospital nursing home is maintained by the State or Public Authority or any other Public Body. It is only in rare and in exceptional cases and for good and valid reasons recorded in writing can the information may be denied." [emphasis supplied]

Mr. Surup Singh Hrya Naik vs State of Maharashtra Etc., Writ Petition No. 1750 of 2007, jjt dated 23/03/2007 – (DB) – [AIR 2007 Bom 121]

Reserve Bank of India:

'Banker's obligation to maintain secrecy of customer-related information arises out of a contractual relationship with him/her and information may be divulged to third party only where required under compulsion of law, or if there is a duty to the public to disclose and where interest of bank requires disclosure or where disclosure is made with express or implied consent of the customer.'

RBI circular of 01/07/2014, No. RBI/2014-15/72 DBOD No.Leg.BC.21/09.07.006/2014-15

Section 8(1)(e) & (j): IT Returns

Gujarat High Court:

"8.2 Accounts of Respondent No. 4, being a Religious Charitable Trust, is statutorily audited, whose administration is subject to certain controls by the Charity Commissioner under the Bombay Public Trust Act. Its action of filing income-tax returns with the Income Tax Department cannot be, in the context of the R.T.I. Act, viewed as a fiduciary relationship...

8.5... The Trust engaged in public activities, disclosure of its statements of accounts and income tax returns and assessment orders cannot be withheld under Section 8(1)(e) or (j) of the R.T.I. Act." [emphasis supplied]

Rajendra Vasantlal Shah vs Central Information Commissioner and Ors., Special Civil Application No. 7538 of 2010, jjt dated 26/11/2010 – (SB) [AIR 2011 Guj 70]

Allahabad High Court:

'Income tax returns of third parties may be disclosed in public interest especially when RTI applicant wants to know whether candidates awarded LPG dealership met the eligibility criteria. Section 8(1)(e) and (j) are not applicable in this case.'

Smt. Arti Devi vs Central Information Commissioner & Ors., Civil Misc. Writ Petition No. 21379 of 2011, jjt dated 25/09/2012 – (SB) [2012(10) ADJ 491]

Section 8(1): IT Returns of individuals & corporates

Delhi High Court:

"33. … where the nature of income tax returns and other information provided for assessment of income is confidential and its disclosure is protected under the Income Tax Act, 1961 it is not necessary to read any inconsistency between the Act and Income Tax Act, 1961. And information furnished by an assesse can be disclosed only where it is necessary to do in public interest and where such interest outweighs in importance, any possible harm or injury to the assesse or any other third party. However, information furnished by corporate assessees that neither relates to another party nor is exempt under Section 8(1)(d) of the Act, can be disclosed….

35. In order to address this controversy, it is important to understand the purpose of the respondent in seeking such information…. In one case, it is contended that the Appellate Authorities have remanded the matter of assessment to the Assessing Officer. It is apparent that the assessment proceedings have thrown up contentious issues which are being agitated between the income tax authorities and the assessees. The respondent, essentially, wants to intervene in those proceedings by adding and providing his contentions or interpretation as to the information provided by the asseesees… The CIC arrived at this conclusion by noting that disclosure of information was in larger public interest in increasing…

Section 8(1): IT Returns of individuals & corporates

Delhi High Court:

"…public revenue and reducing corruption.

37. In the present case, there was no material to indicate that there was any corruption on the part of the income tax authorities which led to a justifiable apprehension that the said authorities were not performing their function diligently. In any event, the CIC has not found that the proceedings relating to assessment were not being conducted in accordance with law and/or required the intervention of the respondent…. The CIC had proceeded on the basis that the income tax authorities should disclose information to informers of income tax departments to enable them to bring instances of tax evasion to the notice of income tax authorities. In my view, this reasoning is flawed as it would tend to subvert the assessment process rather than aid it. If this idea is carried to its logical end, it would enable several busy bodies to interfere in assessment proceedings and throw up their interpretation of law and facts as to how an assessment ought to be carried out." [emphasis supplied]

Naresh Trehan vs Rakesh Kumar Gupta and related matters, W. P. (C) 85/2010 jjt dated 24/11/2014 – (SB)

Section 8(1)(j): IT Returns & Service Records

Supreme Court of India:

'Income tax returns, immovable property statements, show cause notices, chargesheet and service records of an employee are personal information whose disclosure has no relationship to any public activity or interest. They may not be disclosed unless there is a clear overriding public interest in disclosure.'

Girish Ramchandra Deshpande vs Cen. Information Commr. & Ors., SLP (Civil) No. 27734 of 2012, jjt dated 03/10/2012 – (2 Judges) [(2013) 1SCC 212]

Section 8(1)(j): 3rd Party's Caste Certificates

Delhi High Court:

'Copy of caste certificate of an employee is personal information and cannot be disclosed unless there is an overriding public interest and that too only if that employee consented to the disclosure as third party. Section 8(1)(j) is applicable.'

Harish Kumar vs Provost Marshal –cum-Appellate Authority & Ors., LPA No. 253/2012, jjt dated 30/03/2012 – (DB) [(2012) ILR 5 Delhi 41]

Section 8(1)(j): ACRs of 3rd Parties – conflicting views & other personal information

Kerala High Court:

'Annual confidential reports of other employees maintained by the public authority must be disclosed to an employee. Section 8(1)(e) and (j) are not applicable to such information.'

Centre for Earth Science Studies vs Dr. Mrs. Anson Sebastian Scientist EI & Anr., WA No. 2781 of 2009, jjt dated 17/02/2010 – (DB) [AIR 2010 Ker151]

Delhi High Court:

'Annual confidential reports of employees cannot be disclosed to third parties.'

Delhi HC refused to agree with the ratio of C*entre for Earth Science Studies* citing a decision of a coordinate Bench where access was not allowed.

R K Jain vs Union of India & Anr., W.P. (C) 6756/2010, jjt dated 08/12/2011 – (SB) [2012 (279) ELT 16 (Del.)

'Passport details, copies of birth certificate and copies of record of educational qualifications are personal information the disclosure of which would cause unwarranted invasion of the privacy of the individuals unless there is an overbearing public interest in favour of disclosure.'

Union of India vs R Jayachandran, W.P. (C) 3406/2012, jjt dated 19/02/2014

Section 8(1)(j) & 8(2): ACRs and demonstrating public interest

Delhi High Court:

'An employee has the right to obtain copies of his ACRs recorded before the date of the Supreme Court judgment in the matter of *Devdutt vs Union of India,* Civil Appeal No. 7631 of 2002, jjt dated 12/05/2008 – (2 Judges)

THDC vs Smt. T. Chandra Biswas, WP (C) No. 2506/2010, jjt dated 08/03/2013 – (SB)
[199 (2013) DLT 284]

'An RTI applicant seeking personal information of a third party has the obligation of proving that disclosure would serve the public interest better than keeping the information confidential.'

Union Public Service Commission vs R K Jain, LPA No. 618/2012, jjt dated 06/11/2012 – (DB)
[196 (2013) DLT 170]

Import of proviso under Section 8(1)

'Information that cannot be denied to Parliament or a State Legislature cannot be denied to a citizen' -

As interpreted in 18 jjts of various High Courts:

- ✓ **Bombay, Delhi, Madhya Pradesh and Patna** – 6 judgments: *proviso* applies to Section 8(1)(j) only]

- ✓ **Calcutta, Kerala and Punjab and Haryana** – 10 judgments: *proviso* applies to all clauses under Section 8(1)

- ✓ **Bombay and Delhi** - SBs and DBs have given conflicting judgments

(up to January 2013)

Section 8(3): Record Retention

Supreme Court of India:

"30. … The said sub-section [Section 8(3)] nowhere provides that records or information have to be maintained for a period of twenty years. …Section 8(3) provides that information relating to any occurrence, event or matters which has taken place and occurred or happened *twenty years before the date on* which any request is made under section 6, shall be provided to any person making a request. This means that where any information required to be maintained and preserved for a period beyond twenty years under the rules of the public authority, is exempted from disclosure under any of the provisions of section 8(1) of RTI Act, then, notwithstanding such exemption, access to such information shall have to be provided by disclosure thereof, after a period of twenty years except where they relate to information falling under clauses (a), (c) and (i) of section 8(1)… Where any record or information is required to be destroyed under the rules and regulations of a public authority prior to twenty years, section 8(3) will not prevent destruction in accordance with the Rules. Section 8(3) of RTI Act is not therefore a provision requiring all 'information' to be preserved and maintained for twenty years or more, nor does it override any rules or regulations governing the period for which the record, document or information is required to be preserved by any public authority." [emphasis supplied]

Central Board of Secondary Education & Anr. vs Aditya Bandopadhyay and Ors., Civil Appeal No. 6454 of 2011, jjt dated 09/08/2011– (2 Judges) [(2011) 8 SCC 497]

Section 11: Third Party

Delhi High Court:

'Third party cannot contest disclosure order of the CIC if he has consented to disclosure of information relating to him during appeal proceeding.'

DIG K.P.S. Raghuvanshi vs Union of India & Ors., W.P. (C) 2862/2013, jjt dated 07/08/2013 – (SB)

Section 11: DPC Minutes & 3rd Party

Delhi High Court:

"13. ….ACR grading/ratings as also the marks given to the candidates based on the said ACR grading/ratings and their interview marks contained in the DPC proceedings can be disclosed only to the concerned employee and not to any other employee as that would constitute third party information. This Court is also of the opinion that third party information can only be disclosed if a finding of a larger public interest being involved is given by CIC and further if third party procedure as prescribed under Sections 11(1) and 19(4) of the RTI Act is followed.

14. Accordingly, … the matter is remanded back to CIC for consideration of petitioner's defences under Sections 8(1)(e) and Section 8(1)(j) of the RTI Act and if the CIC is of the view that larger public interest is involved, it shall thereafter follow the third party procedure as prescribed under Sections 11(1) and 19(4) of the RTI Act." [emphasis supplied]

THDC India Ltd. vs R. K. Raturi, W.P. (C) 903/2013, jjt dated 08/08/2014 – (SB) [212(2014) DLT 683]

This jjt, in effect, reverses CIC's Full Bench decision (5 ICs) in the matter of *Shri Rakesh Kr. Singh vs Lok Sabha Secretariat* & related matters, Complaint No. CIC/WB/C2006/00223 decision dated 23/04/2007 without actually citing it.

Section 11: DPC Minutes & 3rd Party

Delhi High Court:

"12. … I find no reason to differ from the [*R.K. Raturi*] decision. I am also unable to agree with the contention that the matter be remanded back to the CIC for considering it afresh as the conclusion in the case of *R.K. Raturi* … is definite; DPC minutes cannot be disclosed except in public interest and that too after following the procedure specified under Sections 11(1) and 19 (4) of the Act.

13. …. The information relating to ACRs and grading of an employee are personal to him and in this respect other employees are, definitely, not entitled to share that information." [emphasis supplied]

THDC India Limited vs T. Chanda Biswas, W.P. (C) 7923/2013, jjt dated 21/11/2014 – (SB)

R.K. Raturi ratio is treated as exempting DPC from disclosure to third parties. This jjt and the *R. K. Raturi* jjt cite DHC's ruling in the matter of *Arvind Kejriwal where "*DPC minutes" was only mentioned in passing. It was not a specific query in the RTI application. (*Arvind Kejriwal vs Central Public Information Officer, Cabinet Secretariat*, W. P. (C) 6614/2008, jjt dated 30/07/2010 – (SB) [AIR 2010 Delhi 216])

Section 11: DPC Minutes & 3rd Party

Delhi High Court:

"8…. In view of the pronouncement of the Division Bench [in *Waris Rashid Kidwai vs Union of India & Ors., [*(1998) ILR Delhi 589**], there is no escape from the conclusion that the decision of the ACC in the matter of promotion of a Government servant does not constitute advice of the Ministers to the President within the meaning of Article 74 of the Constitution and, therefore, cannot be withheld if it is otherwise accessible under the provisions of the Right to Information Act.**

9. The information to be made available to the respondents shall also include the reasons for the decision taken by the ACC. The material on the basis of which the said decision was taken, however, need not be disclosed, if it was not sought by the respondents. If, however, they seek such material, it cannot be withheld, after a decision taken by the Council of Ministers is implemented…." [emphasis supplied]

Copies of DPC proceedings and notings of DPC proceedings leading up to ACC (Appointments Committee of the Cabinet) were sought in the RTI application.

Union of India vs Pramod Kumar Jain & related matters, W.P. (C) 14069/2009, jjt dated 19/11/2013 – (SB) [205 (2013) DLT 613]

Section 18: Complaint vs Appeal

Supreme Court of India:

'Information Commission cannot order disclosure of information in complaint proceeding under Section 18 of the RTI Act. Section 18 is only for supervisory purpose and for imposing penalty. Order of disclosure of information can be made only through appellate procedure.'

Chief Information Commr. & Anr. vs State of Manipur and Anr., Civil Appeal Nos. 10787 – 10788 of 2011, jjt dated 12/12/2011 – (2 Judges) [(2011) 15 SCC 1]

Section 19: Right of 2nd appeal

Calcutta and Patna High Courts:

'2nd appeal can be filed in the Information Commission even in the absence of an order of the First Appellate Authority. Information Commission has a duty to entertain and decide such appeals. First appeal may be filed even in the absence of an order from the Public Information Officer.'

Tata Motors Ltd. & Anr. vs State of West Bengal & Ors., W.P. No. 1773 of 2008, jjt dated 12/01/2010 – (SB)

Shiv Prakash Rai Etc. vs The State of Bihar Through the Chief Secretary, Etc., Civil Writ Jurisdiction Case No. 17616 of 2012, jjt dated 12/04/2013 – (DB)

Section 19: Right of 2nd appeal

Delhi High Court:

"3. As we could see, the only grievance of the appellant is that before passing the order dated 06.01.2015, he was not given an opportunity of personal hearing by the CIC. The order itself shows that the appellant was not heard by the CIC. It is no doubt true that a notice was issued to the appellant requiring him to be present on 06.01.2015 for hearing. However, the specific case of the appellant is that he could not be present on the date of hearing for genuine reasons and, therefore, a request was made for adjournment, but the same was not considered by CIC.

4. Having regard to the fact that the statute itself provides for an opportunity of hearing and the appellant sought for an adjournment explaining the reasons therefor, it appears to us that the respondent No.1 ought not to have proceeded to decide the appeal on merits without hearing the appellant." [emphasis supplied]

Central Information Commission was directed to hear the 2nd appeal matter afresh and give an opportunity of being heard to the appellant.

Shanti Prakash vs Central Information Commission & Ors., LPA 724/2015, order dated 19/10/2015 – (DB) [Air 2008 Guj 2]

Section 19: Illegal orders passed by Info Comms

Gujarat High Court:

"II. … At the most, information may be supplied or denied, but further order for removal of encroachment" [of road] "cannot be passed by Chief Information Commissioner."

State Information Commission does not have the power to pass orders other than on RTI-related matters.

Gokalbhai Nanabhai Patel vs Chief Information Commissioner & Ors., Spl. Civ. Appln. No. 16770 of 2007, jjt dated 31/08/2007 – (SB) [Air 2008 Guj 2]

Section 19: Challenging /superseding CPIO/FAA orders

Andhra Pradesh High Court:

'7. … in the opinion of this Court, the PIO cannot dawn the role of the Officer of the Public Authority in relation to the orders passed by the appellate authorities against the orders passed by him. If his order is reversed by the appellate authority, he cannot be treated as aggrieved party giving rise to a cause of action for him to question such Orders. It is only either the public authority, against whom the directions are given, or any other party, who feels aggrieved by such directions, that can question the orders passed by the appellate authorities.'

Public Information Officer , Under RTI Act, Syndicate Bank, Regional Office, Mugulrajapuram, Vijayawada vs Central Information Commissioner under Right to Information Act, Etc., Writ Petition No. 28785 of 2011, jjt dated 02/11/2011 – (SB) [2012 (2) ALT 348]

Delhi High Court:

'An order issued by the CPIO and/or the First Appellate Authority cannot be set aside by any other officer of the same public authority by issuing an administrative order. It is open for the public authority to contest such orders before the Central Information Commission.'

R K Jain vs Chairman Income Tax Settlement Commission & Ors., W.P. (C). No. 2939/2014, jjt dated 05/12/2014 – (SB)

Section 19(8): Compensation & Costs

Delhi High Court:

'CIC has to first record a finding as to how much loss was suffered by an RTI applicant due to unreasonable denial of information. Compensation may be awarded only if loss or detriment occurs due to denial of the requested information.'

NTPC Ltd. vs Mohd. Samad Khan, W.P. (C) 5403/2008, jjt dated 09/03/2010 – (SB) [(2010) ILR 6 Delhi 55]

Punjab and Haryana High Court:

'As public authority had destroyed information sought during the pendency of the case costs to the tune of Rs. 10,000 was awarded to the RTI applicant.'

Raju Sharma & Anr. vs Haryana State Agriculture Marketing Board & Anr., Civil Writ Petition No. 12375 of 2008 (OM), jjt dated 13/03/2012 – (SB) [(2012) 167 PLR 50]

Patna High Court:

'Court upheld order of compensation to the tune of Rs. 2 lakhs to woman RTI applicant for harassing her by unreasonably refusing to supply information.'

The State of Bihar & Ors. vs The State Information Commission and Ors., Civil Writ Jurisdiction Case No. 17727 of 2008, jjt dated 12/12/2012 – (SB)

Section 19(8): Compensation & Costs

Delhi High Court:

"6. This Court also take judicial notice of the fact that in challenging the imposition of costs of Rs.10,000/-, the Government of India would have spent more money in filing the present writ petition. Consequently, this Court is of the view that the costs of Rs.10,000/- which was directed to be paid by the CIC, should be recovered from the salary of the Government officials who authorized the filing of the present writ petition."

Union of India vs Vansh Sharad Gupta, W.P. (C) 4761/2016, jjt dated 24/05/2016 – (SB)

Costs imposed on the RTI applicant

Delhi High Court:

'As the RTI applicant was shown to have sought voluminous amounts of information through multiple RTI applications containing scores of queries. So the DHC dismissed the petition terming the RTI queries "general, irrelevant and vague. Petitioner was directed to pay Rs. 25,000 as costs to the Lok Nayak Jayaprakash Narayan Hospital, Delhi within 3 weeks.'

Shail Sahni vs Smt Valsa Sara Mathew & Ors., W.P. (C) 406/2016 jjt. dated 19/01/2016 – (SB)

Section 20: Penalty Powers & non-compliance

Delhi High Court:

"10…The Act does not provide for the CIC to hear the complainant or the appellant in the penalty proceedings, though there is no bar there if the CIC so desires. However the complainant cannot as a matter of right claim audience in the matter of penalty proceedings which are between the CIC and the erring Information Officer"

Ankur Mutreja vs Delhi University, LPA No. 764 of 2011, jjt dated 09/01/2012 – (DB)

'Appellant has no role in a penalty proceeding launched under the RTI Act.' He cannot demand to be present in hearings relating to penalty proceedings.'

Anand Bhushan vs R. A. Haritash , LPA No. 777/2010, jjt dated 29/03/2012 – (DB)
[(2012) ILR 4 Delhi 57]

"13. Respondent no.1/CIC shall, thereafter, take a decision as to whether or not it wishes to involve the petitioner in the penalty proceedings contemplated under Section 20 of the RTI Act. Though the matter is left, as per the observations of the Division Bench, to the discretion of the CIC, the CIC will take into account the circumstances which obtained in this matter, one of which, is that, what was brought to light, before this court, could not have got revealed but for the intercession of the…

Section 20: Penalty Powers & non-compliance

Delhi High Court:

"…petitioner.

13.1 For this limited purpose, the petitioner may appear before the CIC, which would then decide as to whether it would like the petitioner to participate in the penalty proceedings.

13.2 In case the CIC is of the view that the petitioner should participate in the proceedings, it will supply to the petitioner a copy of the reply filed by the delinquent officer to the show cause notice."

Mani Ram Sharma vs Central Information Commission & Anr., WP(C) 8041/2014, order dated 27/04/2015 – (SB)

Section 20: Penalty Powers & non-compliance

Delhi High Court:

'Penalty imposed on the PIO was ordered to be paid by the public authority as it was responsible for the inordinate delay in furnishing the information.'

Damodar Valley Corpn. & Ors., vs Modh. Rafique Ansari and Anr. LPAs 288 and 646 of 2011, jjt dated 17/4/2012 – (DB) [190 (2012) DLT 307]

Karnataka High Court:

'State Information Commission can invoke its penalty powers to secure compliance wit its orders.'

G. Basavaraju vs Smt. Arundhati & Anr., Contempt of Court Case No. 525 of 2008, jjt dated 27/01/2009 – (DB) [2009 (2) KarLJ 465]

Section 20: Penalty Powers & non-compliance

Patna High Court:

"Even where fine is imposed or disciplinary action is ordered, it is no part of the duty of the officials who passed the order to ensure that fine is recovered and disciplinary action is taken. At the most, it is a case for a person at whose instance fine was imposed; to insist on the recovery thereof; and third party has no right to seek a general direction for recovery of the fine. It is as good as a Civil Court being placed under obligation to recover the amount covered by a decree."

Baidyanath Prasad Singh Etc vs The State of Bihar & Ors., Civil Writ Jurisdiction Case No. 10919 of 2014, jjt dated 05/01/2015 – (SB)

Section 20: Penalty on predecessor PIO

Karnataka High Court:

"4. That in view of the facts and circumstances noticed supra, the petitioner being not the Public Information Officer on the date the 2nd Respondent submitted the application dated 11.10.2010, the 1st Respondent has acted arbitrarily and illegally in imposing penalty of Rs. 5,000 on the PIO... In the result… the impugned order … to the extent of the penalty imposed by … the Commission is quashed. However, liberty is reserved the (Commission) to issue notice under Section 20(1) of the Act to the predecessor/s of the Petitioner who failed to act in accordance with the law in the matter of furnishing of information / copies sought, to the 2nd Respondent – complainant, pursuant to the request made…"

Sr H N Gopalkrishna vs The Karnataka Information Commission & Anr., Writ Petition No. 18059 of 2012 (GM-RES), order dated 16/12/2013 – (SB)

Section 20: No penalty for reasoned judgement

Delhi High Court:

"6. The CIC has accepted the explanation rendered by the respondent that information was bonafidely not provided and the action was taken in good faith. The CIC has further accepted the explanation that there was no malafide intention on the part of the respondent to deny or obstruct the flow of information to the complainant.

7. The information was withheld as the respondents were of the view that disclosure of information could have endangered the physical safety of the person/enquiry officer, who had prepared the enquiry report. The Respondent had interpreted the provisions of the Act and declined to provide information in order to prevent any danger to the physical safety of the person/enquiry officer, who had prepared the enquiry report.

8. I am of the view that the view taken by the CIC is a plausible view... The CIC has rightly decided not to take any further action and the view taken by the CIC is a plausible view. "

Harkishandas Nijhawan vs Satyavir Kartar Delhi Police Licensing Unit & Ors., W.P. (C) No. 1882/2017 oral jjt dated 24/04/2017 – (SB)

Section 20: Penalty Reduction & *audi alteram partem* under Section 20(2)

Kerala High Court:

'Quantum of penalty reduced from Rs. 25,000 to Rs. 5,000 taking into consideration the fact that this was the first instance of contravention of the law by the PIO and also because he is not a highly paid officer.'

Janilkumar, Tahsildar, Kozhikode vs State Information Commission, Kerala & Ors., W.A. No. 1553 of 2008, jjt dated 11/06/2012 – (DB)

Supreme Court of India:

'PIO must be given an opportunity of being heard before the Information Commission recommends disciplinary action against him for persistently violating the provisions of the RTI Act.'

Manohar s/o Manikrao Anchule vs State of Maharashtra & Anr., Civil Appeal No. 9095 of 2012, jjt dated 13/12/2012 – (2 Judges) [(2012) 13 SCC 14]

Section 22: RTI Act vis-à-vis other laws

Delhi High Court:

17. The RTI Act is aimed at bringing within its ambit the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto. This, however, in the Court's opinion does not necessarily mean that any other legislature, which aims to ensure access to information with respect to a private body (as per the RTI Act), is overridden by Section 22. The answer will have to be in the negative. The RTI is with respect to Public Authorities. Section 139 makes a separate distinct provision with respect to transactions of a cooperative society. The applicability of the RTI Act does not exclude the operation of the DCS Act," [Delhi Cooperative Societies Act] "insofar as it enables access to information that is possessed by a cooperative Society. The latter can clearly be sourced by the person concerned from the Society, in view of Section 139.

18. In view of the above discussion this Court is of opinion that the information which is in the possession of the Cooperative Society is accessible to its members and those interested, in Section 139 of the DCS Act. The absolute nature of this…

Section 22: RTI Act vis-à-vis other laws

Delhi High Court:

… obligation to furnish information to those entitled to apply and receive is reinforced by the consequences which are spelt out in Section 139(2). However, information which the Society may not possess, but pertaining to it, in the form of records with the Registrar of Cooperative Societies, have to be provided by the latter, under the RTI Act, as there is no doubt that such official - who discharges statutory functions- is a "public authority". However, the grounds of exemption spelt out under the RTI Act too would be attracted, wherever applicable."

Ms. Eliamma Sebastian vs Ministry of Home Affairs & Ors., WP(C) 6532/2007 jjt. dated 17/03/2016 – (DB)

Section 22: RTI Act vis-à-vis other laws

Delhi High Court:

"23.There can be no doubt that the documents kept by the Registrar, which are filed or registered by him, as well as the record of any fact required or authorized to be recorded by the Registrar or registered in pursuance of the Companies Act qualifies as 'information' within the meaning of that expression as used in Section 2(f) of the RTI Act. However, the question is – whether the mere fact that the said documents/record constitutes information, is sufficient to entitle a citizen to invoke the provisions of the RTI Act to access the same?"

....

39. Therefore, if another statutory provision, created under any other law, vests the right to seek information and provides the mechanism for invoking the said right (which is also statutory, as in this case) that mechanism should be preserved and operated, and not destroyed merely because another general law created to empower the citizens to access information has subsequently been framed."

Registrar of Companies & Ors. vs Dharmendra Kumar Garg & Anr., WP(C) 11271/2009, jjt dated 01/06/2012 – (SB) [2012 SCC OnLine Del 3263]

Section 22: RTI Act vis-à-vis other laws

Madras High Court (Madurai Bench):

"I am unable to persuade myself that RTI Act can be invoked for all purposes regardless of the fact that there is existence of alternative effective mechanism provided under the respective departments for seeking information. If such recourse is encouraged and entertained it will destroy the very frame work of the respective mechanism which provides for furnishing information under the respective department. I do not see any merits in the contentions of the learned counsel for the petitioner that in view of the overriding provisions provided under Section 22 of the RTI Act any kind of information can be obtained. Such an interpretation would run contrary to the other provisions of the Acts of similar nature and would make such acts otiose and nugatory. The framers of the Act and the object behind the Act would not have envisaged that any information to be sought can be made available only under the RTI Act and not at all through other Acts. Such an interpretation would not advance the letter and spirit of the RTI Act. In the above circumstances, I am inclined to accept the submissions made on behalf of the first respondent and more so I am bound by the decisions passed by the Hon'ble Division Bench of this Court…" [emphasis supplied]

[RTI applicant had sought copies of sale deeds from the office of the Sub-Registrar]

S Robinson vs Tamil Nadu State Information Commission & Ors., WP(MD) No. 4309 of 2014 jjt. dated 13/04/2017 – (SB)

Section 22: RTI Rules Override other Rules

Rajasthan High Court:

"Fee regulations of the University cannot override the fee Rules notified under the RTI Act. Executive guidelines cannot override Rules notified via exercise of powers of delegated legislation."

Alka Matoria vs Maharaja Ganga Singh University & Ors., D.B. Civil Writ Petition No. 12471/2012, jjt dated 21/12/2012 – (DB)

Delhi High Court:

"It is trite that an executive instruction if in violation of a statutory rule or a regulation must yield to the statutory rule or regulation."

Paras Jain vs Institute of Companies Secretaries of India, LPA 275/2014, oral order dated 22/04/2014 – (DB)

Section 23: RTI matter is not consumer dispute

National Consumer Disputes Redressal Commission:

"15. It would thus be seen that the RTI Act is a complete code in itself, which provides an adequate and effective remedy to the person aggrieved from any decision/inaction/act/omission or misconduct of a CPIO/PIO….

16. It is settled legal position that when a right is created by a Statute which also provides for an adequate and satisfactory remedy for the enforcement of the said right, that person seeking to enforce such a right must necessarily take recourse to the redress mechanism provided in the Act by which the said right is created a Civil Court, cannot be approached for enforcement of such a right. Of course, the jurisdiction of the Civil Court is not excluded in a case where the provision of the Act are not complied or the order is passed in contravention of the fundamental principles of judicial procedure…

18. In our opinion… to permit a consumer forum to intervene while excluding the intervention of a Civil Court "(under Section 23 of the RTI Act) "in the matter of enforcement of a right created by a special statue… would result in defeating the very purpose behind providing a special mechanism for such enforcement and ousting the jurisdiction of the Civil Court…" [emphasis supplied]

Sanjay Kumar Mishra vs The Public Information Officer (PIO), State Information Commission (SIC), Punjab and related matters, Revision Petition No. 3146 of 2012, jjt dated 08/01/2015

Section 23: Non-Interference by Courts

Karnataka High Court:

"4. If the petitioner is of the opinion that either the documents sought by the 2nd Respondent [RTI applicant] from the petitioner cannot be furnished by the petitioner or that the Information Commissioner, cannot direct the petitioner to furnish such documents or if the petitioner is of the opinion that the provisions of the Act are not applicable to the petitioner-Bank based on the complaint lodged by the 2nd Respondent, it is always open for the petitioner to file detailed objections before the Information Commissioner and if any such objections ae filed, it is for the Information Commissioner to adjudicate the contentions urged by the petitioner.

5. This Court is of the opinion that Annexure-L is only a notice calling upon the petitioner to appear before the 1st Respondent pursuant to the complaint lodged by the 2nd Respondent. Therefore it is premature for this Court to quash the Notice issued by Respondent-1…

Section 23: Non-Interference by Courts

Karnataka High Court:

6. …<u>if such contentions are raised by the petitioner it is for the 1st respondent – Commissioner to consider the same and decide the case of the parties on merits and in accordance with law</u>." [emphasis supplied]

The Grain Merchants Cooperative Bank Ltd. etc. Vs Chief Information Commissioner, Karnataka Information Commission & Ors., Writ Petition No. 18532 of 2007 (GM-Res), order dated 28/02/2008 (SB)

Sections 24: Exempt Organisations

Allahabad High Court:

'State Government's notification exempting the operation Unit and Maintenance, Security and General Administration Unit of the Civil Aviation Department is bad and per se illegal being grossly in violation of the provisions of the Act.'

National Alliance of People's Movements & Anr. vs Sate of U. P. & Ors., Writ Petition No. 6993 (M/B) of 2009 PIL, No. 320 of 2010, jjt dated January 2012 – (DB)

Madras High Court:

'Central Government's notification placing the Central Bureau of Investigation under Schedule 2 of the Act, upheld as valid because it is not arbitrary or *ultra vires* of Section 24 of the RTI Act or violative of the provisions of the Constitution of India.'

S. Vijayalakshmi vs Union of India, Rep. by Its Secretary to Government, Ministry of Personnel, PG & Pensions Etc. & Anr., W. P. No. 14788 of 2011, jjt dated 09/09/2011 – (DB)
[AIR 2011 Mad 275]

Sections 24: Exempt Organisations

Madras High Court:

'Information about corruption-related complaints against police officers must be disclosed even if they are held by exempt organisations.'

The Superintendent of Police vs R. Karthikeyan, W. A. No. 320 of 2010, jjt dated 06/04/2011 – (DB) [AIR 2012 Mad 84]

'Vigilance Manual of Directorate of Vigilance and Anti-Corruption must be disclosed despite it being an exempt organisation.'

Superintendent of Police vs M. Kannappan, W. P. No. 805 of 2012, jjt dated 28/11/2012 – (SB) [(2013) MLJ 348]

Delhi High Court:

'Service matters do not amount to allegations of violation of human rights of an officer. Such information cannot be sought from an exempt organisation.'

Directorate General of Security & Anr., vs Harender, W.P. (C) 5959 of 2013, jjt dated 16/09/2013 - (SB)

Sections 24: Exempt Organisations

Calcutta High Court (Port Blair Bench):

"… There is no reason why there should be any opposition to furnish the information sought in point (a), especially when the case is not pending and the final report has been submitted. As regards points (b) and (i) with respect to the visitors register, and details of CBI officers against whom the complaints were registered or contemplated and inquiry conducted or in progress, do not in any manner fall within the exemptions carved out under section 8 of the RTI Act.

The query (b) with regard to the visitors register is with respect to certain dates. It has been argued by Mr. Das that informants could also have met the SP and their names would be in the register. The information sought is not with respect to the reason why a person had visited the SP but only the names. Providing such information would not throw any light on whether a person who visits the SP is an informant. It would not put the person's life or his physical safety in danger.

The reluctance of the CBI to supply the requisite information is palpable. The exemption claimed under section 8 is unjustified and has no bearing on the information required. As a last attempt to avoid furnishing the information it was argued that the CBI does not fall within the clutches of the RTI Act in view of the notification issued on 9.6.2011 amending the second schedule to the Act...

Sections 24: Exempt Organisations

Calcutta High Court (Port Blair Bench):

…This submission is without merit. The application was filed under the RTI Act before the amendment and therefore, it would not be governed by it." [emphasis supplied]

The Central Bureau of Investigation vs The Central Information Commission & Anr., W. P. No. 1360 of 2011, jjt dated 15/12/2014 – (SB)

Punjab & Haryana High Court:

"As mentioned above, the expression pertaining to allegation of corruption cannot be exhaustively defined. The Act is to step-in-aid to establish the society governed by law in which corruption has no place. The Act envisages a transparent public office. Therefore, even in organizations which are exempt from the provisions of the Act, in terms of the notification issued under Section 24(4) of the Act, still information which relates to corruption or the information which excludes the allegation of corruption would be relevant information and cannot be denied for the reasons that the organization is exempted under the Act.

The information sought in the present case is in respect of the number of vacancies which have fallen to the share of the specified category and whether such posts have been filled up from amongst the eligible candidates. If such information is disclosed, it will lead to transparent administration which is antithesis of corruption.

Sections 24: Exempt Organisations

…If organization has nothing to hide or to cover a corrupt practice, the information should be made available. The information sought may help in dispelling favoritism, nepotism or arbitrariness. Such information is necessary for establishing the transparent administration. Therefore, we do not find any illegality in the order passed by the State Information Commissioner, Haryana and affirmed by learned Single Judge in the orders impugned in the present appeals." [emphasis supplied]

First Appellate Authority cum Additional DGP & Anr. vs Chief Information Commissioner Haryana & Anr., LPA Nos.744 &745 of 2011, jjt. dated 28/04/2011 – (DB) [AIR 2011 P&H 168]

Manipur High Court:

"[9] Thus, a reading of the aforesaid provisions of the Act would clearly show that what had been taken out from the purview of the Right to Information Act, 2005 by the main part of sub-Section 4 of Section 24 of the Act, has been brought back by the proviso as far as information pertaining to allegations of corruption and human rights violation are concerned…

[10] In the present case, the information sought for relates to the marks obtained by the successful candidates as well as the petitioner and it is the case of the petitioner that the information sought for before this Court is to dispel any doubt over…

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"...corruption. Therefore, it can be said that the information sought for by the petitioner in the present case also pertains to the allegations of corruption. In this respect, it may be observed that the expression used in this provision is about "information pertaining to the allegations of corruption" and not "information pertaining to corruption". The earlier expression is of wider import. As per the earlier expression which has been used in the statute, the allegation need not be about a proven corruption or clearly shows existence of corruption. Allegation of corruption may or may not result in proving existence of corruption but there must be indication of the possibility of existence of corruption. However, it does not mean that anybody can seek information by making an allegation of corruption. There must be some proximity or nexus with the information sought and possibility of a corruption. In the present case, if it is found on the basis of the information sought by the petitioner that persons who do not otherwise qualify in terms marks obtained by the candidates have been included in the select list, obviously, the charge of corruption can certainly be validly raised. To that extent such information sought for by the petitioner can be said to be pertaining to allegations of corruption. It is not necessary that the information so furnished would prove an instance of corruption. It would be sufficient if the information so provided leads to a genuine complaint or allegation about the existence of corrupt practice…

Sections 24: Exempt Organisations

"…. Therefore, this Court would hold that if the information sought for has a proximate link with the charge of corruption, such information would be covered by the expression "information pertaining to allegations of corruption". Similar position is with the case where there is allegation of human rights violation. The information sought for so provided per se may not establish corrupt practice or violation of human rights but it forms a valid and reasonable basis for making allegations of corrupt practice or violation of human rights, such information would come within the scope of the expression "information pertaining to allegations of corruption and human rights violation". This Court would hold that if any such information has the potential to raise a serious question of the existence of corruption or violation of human rights, it can be certainly considered to be "pertaining to allegations of corruption and human rights violation". In that event, such information cannot be withheld, if sought for.

[11] One may look at this issue from another perspective. The exclusion of certain organisations under the main provisions of Sub sections(1) and (4) of Section 24 is to ensure efficient functioning and operations of the Government, optimum use of limited fiscal resources, preservation of confidentiality of sensitive information and as such other public interest and to protect such other public interest as clearly mentioned in the Preamble to the Act. It is a well established principle that …

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"…. provisions of preamble could be invoked for a proper construction of the statute if the language used is too general. As already discussed above, the expression used in the proviso i.e., "information pertaining to allegations of corruption and human rights violence" is of too general and of wide amplitude which has not been defined in the Act or any cognate Act. However, giving a too wide interpretation may defeat the very purpose of ensuring preservation of the public interests as clearly mentioned in the Preamble. Therefore, a balanced and reasonable interpretation of the said expression can be done by referring to the Preamble as mentioned above. The Preamble is a key to open the mind of the Legislative and proves the board parameters of the enactment which impelled the lawmakers to craft such statutes. Therefore, in the context of the Preamble, what is evident is that these organisations referred to in Section 24 of the Act have been specifically sought to be taken out of the purview of the Right to Information Act, 2005 in order to protect certain public interests including efficient operations of Government, optimum use of limited resources and preservation of confidentiality of sensitive information. However, an exception has been made to this exclusionary provision by inserting the said proviso where the "information pertaining to allegations of corruption and human rights violence" will be subject to the provisions of the Right to Information Act, 2005. This Court is of the view that if any information sought for does not relate to any of…

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… these areas referred to in the Preamble which the Act seeks to protect and preserve and thus keep away from public domain but are also relatable to any allegation of corruption and violence of human rights, there is no reason why such an information should be withheld, if sought for.

[12] This issue can be viewed from another perspective. The legislature in their anxiety to keep certain organisations which are engaged in activities involving sensitive information, secrecy of the State, have sought to keep these organisations away from the purview of the Act by including such organisations in the Second Schedule of the Act as far as Central Organisations are concerned and in the official gazette in respect of State organisations. It does not, however, mean that all information relating to these organisations are completely out of bound of the public. For example, even though the Central Bureau of Investigations is one of the organisations included in the Second Schedule to the Act, it does not mean that all information relating to it are out of bound of the public. If one looks at the website of the Central Bureau of Investigation which is in the public domain, there are so many information about the organisation which are already voluntarily made open to the public. This is for the simple reason that disclosure of these information does not in any way compromise with the integrity of the organisation or…

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… confidentiality of the sensitive nature of works undertaken by this organisation. The purpose of excluding all these organisations from the purview of the Act as provided under Section 24 is to merely protect and ensure the confidentiality of the sensitive works and activities undertaken by these organisations. Therefore, if there are any information which do not impinge upon the confidentiality of the sensitive activities of the organisation and if such information is also relatable to the issues of corruption or violation of human rights, disclosure of such information cannot be withheld."

We may further clarify this position by borrowing the concept of doctrine of "pith and substance". The doctrine of "pith and substance" was evolved by the courts primarily to determine whether a particular law relates to a subject mentioned in one list or the other and while doing so, the Court looks into the substance of the enactment. Thus, if the substance of the enactment falls within the Union List then the incidental and encroachment by the enactment on the State list would not make it invalid. Thus, the essence of this doctrine centred round the substantive part of the enactment or the core subject of the enactment. Though this doctrine cannot be invoked to decide the issue raised in this petition, the principle behind it may be referred to while deciding the issue at hand. By doing so, this Court will hold that…

Sections 24: Exempt Organisations

"… if any information relates to the core activity of the organisation because of which such an organisation has been excluded from the purview of the Act, any such information can be withheld except which relates to allegation of corruption and violation of human rights. Therefore, if there be any information which does not relate to the principal or the core function of the organisation which is sought to be protected by including in Section 24 of the Act, but if it can have some reference or relatable to corruption or violation of human rights, such an information cannot be withheld.

Ym. Md. Abid Hussain Etc vs The State of Manipur & Ors., W.P. (C) No. 880 of 2014, jjt & order dated 13/10/2015 – (SB)

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Manipur High Court:

"7… To comprehend the intent of the Legislature while enacting the RTI Act specially as regards the said expression, the provisions of the Act, as a whole, are to be read keeping in mind the purpose for which the RTI Act is enacted and it may further be noted that the exemptions cannot be construed so as to defeat the very objective sought to be achieved in the RTI Act, 2005. Therefore, it has been rightly held by this court in the said case of Md. Abid Hussain Vs. State of Manipur, W.P. (C) No. 880 of 2014 that any information which does not touch upon any of the sensitive and confidential activities undertaken by the Police Department, Government of Manipur cannot be withheld at all. In other words, access to such information cannot be denied to the citizens. It can be seen from the facts of the present case that the information sought for by the petitioner have nothing to do with the sensitive and confidential activities undertaken by the Police Department, Government of Manipur and therefore, the same cannot be denied to him.

8. In view of the above, the instant writ petition is allowed and consequently, the decision/order dated 26-06-2015 passed by the State Chief Information Officer, Manipur Information Commission, Imphal … is quashed and set aside with the…

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Manipur High Court:

"… direction that the respondent No. 4 shall provide the information sought for by the petitioner within a period of three weeks from the date of receipt of a copy of this judgment and order." [emphasis supplied]

Shri Phairembam Sudesh Singh vs The State of Manipur & Ors., W.P. (C) No. 642 of 2015, jjt & order dated 02/02/2016 – (SB)

Sections 25: Powers of IC

Delhi High Court:

"13. CIC, vide Section 25 of the RTI Act, has been constituted as the Monitoring Agency for implementation of the provisions of the RTI Act and empowered by sub-section (5) thereof to, upon finding the practice of a public authority in relation to the exercise of its functions under the Act to be not in conformity with the provisions or spirit of the Act, to make recommendations to such authority specifying the steps which it ought to take for promoting such conformity. CIC is thus amply empowered, even without exercising the power of review, to issue directions, as issued in the impugned order dated 12th March, 2012, if were to be entitled under the Act to issue such directions.

[However the Delhi High Court set aside the CIC's order directing Dept. of Education, GNCTD to allow the Respondents to inspect the premises of schools under its jurisdiction to ascertain compliance with the *Right of Children to Free and Compulsory Education Act, 2009*. NCPCR had also sought directions from the CIC to allow physical verification of infrastructure facilities under the RTI Act. The Court also held that 100% govt. aided schools not being juristic entities will not be public authorities under Section 2(h) of the RTI Act.]

The Public Information Officer Govt. of NCT of Delhi vs Saurabh Sharma & Ors., W.P. (C) No. 4675 of 2012, jjt dated 29/09/2015 – (SB)

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Thank you