

## CASE LAW

The following decisions were issued by the CIC which will further brief the provisions of section 8(1)(j) of RTI Act in general and the issue of "Personal Information" in particular . The gist of such decisions-

### 1. ACR to retired employee:

The PIO has amongst the various RTI applications of the appellant (retired employee ) refused to give him copies of his ACR. The Commission directs the PIO to give copies of all his ACRs to the appellant.

[Decision No. CIC/WB/A/2008/00172/SG/2409 Appeal No. CIC/WB/A/2008/00172/SG]

### 2. Annual confidential report:-

In regard to the annual confidential report of any officer, it is our view that what is contained therein is undoubtedly 'personal information' about that employee. The ACRs are protected from disclosure because arguably such disclosure seriously harm interpersonal relationship in a given organization.

[CIC/AT/A/2006/00069-13 July,2006]

### 3. Employees' personal information

The information which the appellant has solicited in respect of a third party, is clearly of a very personal nature. There is no reason why any person should get information about a Government employee in respect of the family members listed on the CGHS Card, the name of the Dispensary, whether that employee is married, the name of his wife, the date of his informing the public authority about his marriage, the names of his nominees for the GPF and CGEIS and other documents, the dates on which the forms have been filled, and whether any disciplinary action is pending against him. Apart from being personal information, disclosure of such information serves no public purpose. It is quite possible that disclosure of such information may lead to unwarranted harassment and intimidation of the employee by other parties. The Commission has to exercise utmost caution in authorizing disclosure of personal information of employees of public authorities. Except when dictated by overwhelming public purpose, such information is better left undisclosed under the provision of exemption Section 8(1)(j) of the Act.

[CIC/AT/A/2006/00311-3.11.2006]

### 4. Leave records without names

..... personal information, unconnected with the government affairs of an official, i.e., information relating to personal affairs of officials, need not be disclosed. However, information, which are purely official could be disclosed to the appellant. Therefore, the CPIO will furnish only the number of officials who had been granted leave without names etc;

.....information sought (Pendency left out against the receipt, while proceeding on leave) being general in nature, need not be furnished;regarding other issues , be given without names;

[174/ICPB/2006-4.12.2006]

### 5. LTC claim details:-

The details about the amounts claimed as LTC, the block years for which the claim was made, number of persons for whom claim made, dates of filing the claim and disbursement, advance taken and adjustment if any, and the sanction for using the LTC should be disclosed to the appellant. However, other personal details such as the names of the family members, their age, etc. which are personal in nature should be barred from disclosure [CIC/AT/A/2006/00317-10.10.2006]

#### 6. Personal information:-

In this particular case, the AA and the CPIO have not analyzed the nuances of disclosure of the information as requested by the appellant principally because they had concluded that such information need not be disclosed under Section 8(1)(j) of the RTI Act. What they ought to be examining is whether disclosure of this information, if authorized, will jeopardize the functioning of the public authority in a manner that would attract provisions of Section 8(1) of the RTI Act.

The Commission, therefore, while holding that the matter in this RTI-application cannot be said to be 'personal', that would attract the exemption under Section 8(1)(j), is not inclined to authorize disclosure straight away, before other aspects of such disclosure are fully examined (i.e. under sub-sections of Section 8(1)).

The matter is, therefore, remitted back to the AA, with a direction that he shall examine whether, given the nature of the disclosure sought, it would attract any of the sub-sections of the Section 8(1) of the RTI Act, other than Section 8(1)(j). The AA should also examine whether Section 10(1) (severability provision) can be invoked to disclose that part of the information which may not come within the bar of any of the exemption sub-sections of the RTI Act. [F.No.CIC/AT/A/2007/01105 Dated, the 21st January, 2008.]

#### 7. Personal Information-defining:-

....We have no clear definition of what is meant by "invasion of privacy" within the RTI Act. We have no equivalent of UK's Data Protection Act, 1998, Sec.2 of which, titled Sensitive Personal Data, reads as follows:

In this Act "sensitive personal data" means personal data consisting of information as to:

- a) The racial or ethnic origin of the data subject
- b) His political opinions
- c) His religious beliefs or other beliefs of a similar nature
- d) Whether he is a member of a Trade Union
- e) His physical or mental health or condition
- f) His sexual life
- g) The commission or alleged commission by him of any offence
- h) Any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

.....On the other hand, the US Restatement of the Law, Second, Torts, § 652 define the Intrusion to Privacy in the following manner:

"One, who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person".

[Appeal No.CIC/WB/A/2007/01460 dated 27.11.2007]

8. Roster/vacancy position of employees

Information related to the Roster/vacancy position of employees, which are neither confidential nor personal information. [196/IC(A)/2006-23 Aug, 2006.]

9. Tour Travel Expense:-

The information sought is required by the appellant to defend his case properly. The information sought by the appellant relate to the tour programme and travel expenses of a public servant, which cannot be treated as personal information.

[Appeal No. 07/IC(A)/CIC/2006 Dated, the 6th March, 2006]

"No relationship to any public activity or interest":-

The gist of decisions issued by the CIC which will deals with the provisions of section 8(1)(j) of RTI Act and the issue of "No relationship to any public activity or interest"-

1. I.T. Returns

Income Tax Returns filed by an assessee are confidential information which include details of commercial activities and that it relates to third person. These are submitted in fiduciary capacities. There is no public action involved in the matter. Disclosure is exempted under s.8(1)(j). [22/IC(A)/2006 - 30 March.]

2. Leave records

It was purely a personal matter with no public interest involved. Hence, the information need not be disclosed. However, if the Appellant could prove to the satisfaction of the Commission that public interest was involved in the matter, then the Commission could re-examine the matter. [CIC/OK/A/2006/00189-3 November, 2006]

3. Misuse of RTI Act :-

The Commission is in possession of letters which the appellant, Mr. Kishur J. Aggarwal, Editor-in-Chief of a number of Daily Papers / Magazines has written to almost all the PSUs for eliciting their support for promotion of his business interests. His Company, named as NUURRIE Media Ltd. has launched thirty nine (39) websites covering the activities of all sections of the society. He has been asking for the favour of carrying out advertisements in his magazines / websites. Clearly, his modus operandi is to use RTI for influencing PSUs for promotion of his business, rather than serving the social interests such as ensuring transparency and efficiency in functioning of PSUs. This is indeed a blatant misuse of RTI Act which ought to be discouraged. As an enlightened citizen, every information seeker should resort to RTI Act responsibly, as most people are doing and reaping the benefits of this powerful Act.

[Appeal No. 24/IC(A)/2006 F.No.11/78/2006/CIC, Dated, the 10th April, 2006 ]

4. PAN Number:-

..... PAN is a statutory number, which functions as a unique

identification for each tax payers. Making PAN public can result in misuse of this information by other persons to quote wrong PAN while entering into financial transactions and also could compromise the privacy of the personal financial transactions linked with PAN. This also holds true for TAN. Information relating to PAN and TAN, including the dated of issue of these numbers, are composite and confidential in nature under Section 138 of Income Tax Act. The appellant has not made a case of bonafide public interest for disclosure of PAN/TAN Numbers of 26 companies on grounds of submissions of their application for above purposes or filing of tax returns [Appeal 05/IC(A)/CIC/2006 Dated, the 3rd March, 2006]

"unwarranted invasion of the privacy":-

The gist of decisions issued by the CIC which will covers the provisions of section 8(1)(j) of RTI Act as well as the issue of "unwarranted invasion of the privacy" were compiled as List 3:

1. Bio-Data : -

when a candidate submits his application for appointment to a post under a P.A., the same becomes a public document and he cannot object to the disclosure on the ground of invasion of privacy and directed the PIO to provide copies of the bio-data. [ ICPB/A-9/CIC/2006-3 April,2006.]

2. Customer details:-

The complainant asked for certain information relating to a customer of the respondent. The information sought was denied u/s 8(1)(j) of the Act, after obtaining concurrence of the third party u/s 11 of the Act.

.....The respondent is expected to maintain confidentiality of the details of information of its customers. There is no public interest in disclosure of such information. The CPIO has therefore correctly denied u/s 8(1)(j) of the Act, the disclosure of information relating to its customers. [Decision No.815/IC(A)/2007F.No.CIC/PB/C/2007/00041, Dt. 8th June, 2007]

3. Medical Report:-

As far as medical reports are concerned, they are purely personal to the individuals and furnishing of the copies of medical reports would amount to invasion of privacy of the individuals and need not be furnished. However PIO will disclose to the requester the information whether all the four candidates had been declared medically fit or not . [ ICPB/A-9/CIC/2006-3<sup>rd</sup> April,2006.]

"larger public interest":-

The decisions issued by the CIC which broadly deals with the issue of "larger public interest" under the section 8(1)(j) of RTI Act-

1. Educational Records:-

.....One CPIO refused to provide copies of educational records submitted by the employee, whose details have been solicited. Thereafter the appeal was considered unnecessary on the background that the appellant could not explain as to how he is affected in the matter or what was the public interest in disclosure of personal and official details of the respondent's employee.

[Decision No.3807/IC(A)/2009 F. No.CIC/MA/A/2009/000135 Dtd, 26/03/2009]

## 2. File Noting:-

.....the plea taken by respondents is that the disclosure does not justify "larger public interest". However, respondents have been unable to cite the clause u/s 8 (1) (j) in which the larger public interest has been cited as a permissible ground for refusing information, whereas in most sub sections of 8 (1) which allows exemption from disclosure of information, public interest is repeatedly cited as a reason for disclosing information otherwise considered exempt except in the case of information falling u/s 8 (1) sub section (j), but even in that case only if it has "no relationship" to any public interest, which in this case is nobody's argument..... "

.....Having examined the records and heard the respondents, we find nothing in pages 3 to 16 of the note-sheet of File No. 7/6/2002-EIII to be exempt from disclosure under any of the provisions of the sec. 8(1).

.....The noting is in fact, record of a very public activity of direct concern to public interest.

[Adjunct to Appeal No.CIC/WB/A/2007/01015 dated 20.10.2007; Decision on 26.3.2009]

### General:-

The decisions issued by the CIC in which combinations of various issues of section 8(1)(j) of RTI Act were dealt by the commission-

#### 1. Annual property returns

The information in the annual property returns is retained by the public authority in sealed covers / or in some other mode under proper "secrecy" classification and used only when the public servant, whose return it may be, faces a charge or an enquiry. It is not held as a public information, but rather a safety valve - a deterrent to public servants that investments or transactions etc. in properties should not be done without the knowledge of the public authority. While there may be an arguable case for disclosing all such information furnished to the various Public Authorities by the public servants, till such time the nature of this information remains a confidential entrustment by the public servant to the Public Authority, it shall be covered by section 8 (1) (j) and cannot be routinely disclosed. It will also attract the exemption under Section 8 (1) (e) and in certain cases the provisions of Section 11(1), being an information entrusted to the public authority by a third person, i.e. the public servant filing property return. On the whole, property returns of public servants, which are required to be compulsorily filed by a set date annually by all public servants with their respective public authorities, being an information to be used exceptionally, must be held to serve no general public purpose whose disclosure the RTI Act must compel. [CIC/AT/A/2006/00134-10 July, 2006.]

#### 2. Bank Loan details:-

The appellant has sought the details of loans already sanctioned and disbursed to a particular Company. He has however not indicated the bonafied public interest in seeking the information. The appellant authority of the Bank has contended that the details of properties and securities submitted by the borrowers are in the nature of commercial confidence, the disclosure of which is exempted under

Section 8(d) of the RTI Act. Also, the information sought relate to collateral and securities taken by the concerned Company and its directors, which are personal information. This has no relationship with any public activity or interest. Disclosure of such information would cause unwarranted invasion of privacy of individual / third party, as per Section 8(1) (j). [Appeal No. 19/IC(A)/2006 F.No. CIC/MA/A/2006/00057 Dated, 29/03/2006]

### 3. CBI investigation report:-

.....the appellant has asked for copies of correspondence exchanged between the respondent and the CBI. He has also asked for a copy of CBI investigation report, which is about 20 years old, in respect of his father. The CPIO has replied and refused to furnish the information u/s 8(1)(j) of the Act.

.....Since the information asked for relate to an action taken by the respondent in 1988, i.e. over 20 years old, there is no justification for invoking section 8(1)(j) of the Act, for denial of information. The CPIO is, therefore, directed to furnish the information asked for. [Decision No.3796/IC(A)/2009 F.No.CIC/MA/A/2009/000145 Dated, the 23/03/2009]

### 4. Commission paid to an LIC agent

The information sought relate to the commission paid to the appellant herself, as per her entitlement in accordance with the norms and guidelines of the LIC. The information about her own entitlements cannot be treated as confidential. [CIC/MA/A/2006/00505-6.10.2006]

### 5. Copy of complaint:-

The Appellant had requested the for a copy of the complaint made by one JWO ..... which the welfare section had forwarded to the SSP, Allahabad. The CPIO, in his reply denied the information on the ground that the information sought related to the domestic problems of the said JWO and this was personal information which had no relations with any public activity or interest and was exempt from disclosure under Section 8(1)(j) of the Right to Information (RTI) Act.

..... The Respondent showed us the original complaint filed by the JWO which had been forwarded by the welfare section to the police. The Respondent submitted that the disclosure of this complaint to the Appellant could expose the JWO to further harassment and vengeful action in the hands of the Appellant and thereby jeopardise the life and security of the said JWO and his family. We tend to agree with the submissions of the Respondent. Since this complaint has been forwarded to the local police, the police should be allowed to continue with the investigation, if any. The complaint being a purely personal one and having no relationship to any public activity or interest, there is no case for disclosing it to the Appellant. [Appeal No.CIC/WB/A/2008/00485-SM dated 23.11.2007]

### 6. Copy of disciplinary proceedings of others:-

The appellant, an ex- employee of the bank, sought for copies of various documents connected with the initiated against him and had also asked for

copies of memos issued/disciplinary proceedings initiated against some other officials. The CPIO while furnishing copies of all documents connected with the disciplinary proceedings against the appellant, declined to furnish the information sought for in respect of other officials applying the provisions of Section 8(1)(j) of the RTI Act.

.... in so far as those relating other officials, I am in agreement with the decision of CPIO/AA that the same is exempt under the provisions of Section 8(1)(j) of the RTI Act.

[Appeal No.550/ICPB/2007 F.No.PBA/07/310, Dated 6/06/2007]

#### 7. Document related to investigation:-

The complainant had asked for certain documents connected with an investigation relating to fraud and corrupt practices, including sexual harassment case, in which the complainant was alleged to have been involved. The information sought was denied u/s 8(1)(j) of the Act.

.....the denial of documents pertaining to the corrupt practices and investigations into such matters, as above, are justified u/s 8(1)(j) of the Act.

[Decision No.803/IC(A)/2007 F. No.CIC/PB/C/2007/00007 Dated, the 7/06/2007]

#### 8. Funds in PF accounts:-

As regards disclosure of information relating to the accumulation of funds in PF accounts of the identified members, the CPIO has correctly applied exemption u/s 8(1)(j) of the Act, from disclosure of information.

#### 9. Information about his own case:-

The CPIO has indicated in respect of item nos. 1 to 6 he is not in a position to provide information since the information is of personal nature and it does not relate to any public activity or interest hence he denied to provide this information under section 8(1)(j) of the Act. This stand of the CPIO is totally wrong for the simple reason the Complainant is requesting information about his own case. Under these circumstances the application of section 8(1)(j) is not relevant. Section 8(1)(j) can be applied only when one seeks information of third party. This Commission has given a number of decisions in this regard including the full Bench decision in Appeal No. CIC/WB/A/2006/00469 & 00394 in the matter of Mr. R.K. Singh Vs. Lok Sabha Secretariat. As per section 8(1)(j), there should be an element of invasion of privacy of individual. Whereas one seeks about information about his own case, there is no invasion of privacy, hence, section 8(1)(j) cannot be applied. I, therefore, direct the CPIO to provide information with reference to paras 1 to 6, if they do not fall under any other exemptions provided under section 8(1) of the RTI Act. In respect of item no.7, the CPIO has stated that this information is relating to third party and hence he has not provided the same. I agree with the stand taken by the CPIO. I also agree with the CPIO in respect of item no.8.

[Appeal No.1457/ICPB/2008 F.No.PBC/07/396 February 8, 2008]

#### 10. Loan sanctioned by bank:-

.....the appellant has sought for information in a tabular form of the loans sanctioned by him and the AA has applied the provisions of Section 8(1)(j) and 13(1) of Banking companies Act. In the normal course, the

decision of the AA is fully justified but not in the present case, as the appellant has sought for details of only the loans sanctioned by him and on which basis he has been charged in the disciplinary as well as criminal proceeding. Therefore, the CPIO is bound to furnish the information and cannot seek exemption either under RTI Act or the Banking companies Act.

..... In case the information sought cannot be given in a tabular form, the same may be furnished in such form as the CPIO finds it convenient. [Appeals No.376-382/ICPB/2006 F.No.PBA/06/440, 476 to 481 ; March 5, 2007]

#### 11. Own personal case:-

The information sought by the appellant has been denied applying the provisions of Section 8(1)(j) as he has sought information about his own personal case.

"Section 8(1)(j) reads - "information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information".

This Section has to be read as a whole. If done so, it would be apparent that that "personal information" does not mean information relating to the information seeker, but about a third party. That is why, in the Section, it is stated "unwarranted invasion of the privacy of the individual". If one were to seek information about himself or his own case, the question of invasion of privacy of his own self does not arise. If one were to ask information about a third party and if it were to invade the privacy of the individual, the information seeker can be denied the information on the ground that disclosure would invade the privacy of a third party. Therefore, when a citizen seeks information about his own case and as long as the information sought is not exempt in terms of other provisions of Section 8 of RTI Act, this Section cannot be applied to deny the information." Thus when a citizen seeks information relating to his own affairs, the same cannot be denied under Section 8(1)(j) of the Act. [Appeal No.374/ICPB/2006 F.No.PBA/07/17 March 5, 2007]

#### 12. Pension paid by Post Office:-

A request was received by the Department of Posts for addresses, amount of pension paid of postal pensioners from post offices under Gaziabad H.P.O., which was rejected. CIC held that the P.I.O. has rightly applied s.8(1)(j). [ICPB/A-18/CIC/2006- 10 May, 2006.]

#### 13. Reasons for rejection of requests

The PIO has to give the reasons for rejection of the request for information as required under Section 7(8)(i). Merely quoting the bare clause of the Act does not imply that the reasons have been given. The PIO should have intimated as to how he had come to the conclusion that rule 8(1)(j) was applicable in this case . [CIC/OK/C/2006/00010 - 7 July, 2006.]

#### 14. Terms and conditions of appointment:-

The appellant had asked for a copy of the terms and conditions of appointment of Sh. Raha, ex CMD, ONGC. The CPIO refused to furnish the information u/s 8(1)(j) of the Act, on the ground that the information sought relates to personal information, disclosure of which has no relationship with any public activity or interest.

U/s 4(1)(b)(ii) of the Act, public authorities are required to disclose "the powers and duties of its officers and employees". And, u/s 4(1)(b)(x) "the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations" should also be put in public domain. Accordingly, there is no reason as to why the terms and conditions of appointment of officers, which incorporate duties and responsibilities as well as the compensation, including other service benefits, as asked for by the appellant, should not be disclosed. In view of this, the orders passed by the appellate authority is untenable.  
[DecisionNo.600/IC(A)/2007 F. No.CIC/MA/A/2007/00048 Dated, the 19/03/2007]

#### 15. Traveling expenses :

The traveling expenses were charged to the public account, disclosure of the information can not be denied on the ground of 'personal information', 'not a public activity' and 'no public interest' etc. Travel had been performed as a part and in discharge of official duties and the records related to the same are public records and therefore, a citizen has the right to seek disclosure of the same.

[63/ICPB/2006- 4 August, 2006]

#### 16. Work allocation:-

.....The Appellant had requested the CPIO for information regarding the work allocated to one labourer. The CPIO replied and denied the information under Section 8(1)(j) of the Right to Information (RTI) Act.

....We carefully considered the contents of his appeal and we also heard the submissions of the Respondent. We do not at all agree with the decision of the CPIO and the first Appellate Authority that the information sought is exempt from disclosure under any of the provisions of the Right to Information (RTI) Act. In fact, section 4 of the Right to Information (RTI) Act mandates every Public Authority to publish, on its own, details of the work assigned to the employees of that Authority. We, therefore, direct the CPIO to provide the information.

[Appeal No.CIC/WB/A/2008/01005-SM dated 11.03.2008]

The appeal was filed by CA P. S. Bhansali, a Chartered Accountant from Jodhpur. Extract from the Order dated 26.12.2007:

"The short-point for disposal in this case is whether the representations made by the ICAI to the Union Finance Minister and other authorities regarding withdrawal of service tax notification No.2/2006/Service Tax dated 1.3.2006 and restoration of notification No.59/98/Service Tax dated 16.10.1998 relating to granting of exemption to practicing Chartered Accountants on services rendered other than audition (sic), Accounting & Certification, be disclosed as requested in the RTI application of the appellant dated 12.9.2007. The respondents have taken the plea that this information is covered by the exemption section 8(1)(e) of the RTI Act.

On examination, it was found that the exemption-claim of the respondents is invalid. The information requested is neither secret nor confidential. It is also known to exist in the hands of the respondents as it originated from there. There is no reason why such information cannot be disclosed. The reasons advanced by the respondents are specious. It is, therefore, directed that the information requested may be disclosed to the appellant within 3 weeks from the date of the receipt of this order".

(Order in case No.CIC/AT/A/2007/00835 of 26.12.2007)

Sections 11 and 8(1)(d) of the RTI Act

The case is of Shri Anil Kumar Sharma v. Office of the Registrar of Companies, M.P. & C.G.( Ministry of Company Affairs)

The appellant had sought certain information about a company of which he was a shareholder. He had alleged that the Company, as identified in his application, has been conducting its business activities in an illegal manner and has thus earned profit through corrupt practices. In this context, he had sought inspection of the relevant documents, which was allowed. But, the identified documents had not been furnished to him.

In response to his application for information, the CPIO sought concurrence of the Company (the third party) u/s 11 of the Act, which did not permit the disclosure of information asked for by the appellant.

Not being satisfied, in his appeal before CIC, appellant pleaded that information sought should be furnished.

In its decision, CIC stated:

"A major concern of the RTI Act is to contain corruption. The disclosure of information relating to corrupt practices of public/private companies is, therefore, largely in public interest. The allegations made by the appellant about the illegal activities of the Company in question should have been investigated by the competent body, mainly the respondent. It does not seem to have been done. The appellant is, therefore, advised to approach the competent authority to investigate the allegations made by him so as to find the facts in the matter or to establish that allegations, as above, are motivated for promoting personal interest of the appellant".

"As the matter pertains to alleged corruption, disclosure of information is largely in public interest. Denial of information u/s 8(1)(d) of the Act, after having shown the entire records to the appellant is, therefore, untenable".

Based on above, CIC directed the CPIO to acquire the information asked for u/s.2(f) of the Act and furnish the same to the appellant within 15 working days from the date of issue of its' decision.

(Decision No.1739/IC(A)/2007 F. No.CIC/MA/A/2007/00783 of 26/12/2007)

- Section 8(1)(h) & 8(1)(j) of the RTI Act

Request for information by Shri Y.S.N. Rajput of Vadodara was made to CIT, Baroda (Shri K.K. Tripathi).

The queries of the appellant were focused on the investigation conducted on Sweatamber Steel Ltd. by the respondents. The reason for turning down the information requested was principally on holding that information pertained to a third party and being personal to that third party, it was barred by the exemption u/s.8(1)(j) of the RTI Act and on the finding that no public interest could be invoked to override the exemption.

As the CIT (CPIO) and CCIT (AA) had not stated whether the investigation was still continuing and if so, what stage it was at then. Hence, CIC considered that it is necessary to first examine the implication of the exemption

u/s.8(1)(h) of the RTI Act. It decided that "In case it is noted that the investigation proceedings had been completed and, therefore, exemption Section 8(1)(h) was not attracted, it would be necessary to examine the entire request by invoking the provisions of Section 11(1) of the Act".

CIC also noted that it was not clear from the Orders of the CPIO and the AA whether there was application of mind with regard to the above two alternatives. In view of this, it was necessary that the matter be examined once again by the Appellate Authority for a proper conclusion.

Accordingly, it remitted back the appeal to the AA, Mr. R.B. Sinha (CCIT) for de-novo enquiry and disposal within 4 weeks from the date of the receipt of the Order.

(F.No.CIC/AT/A/2007/00553 dated 31<sup>st</sup> October, 2007)

- Appointment of Information Commission for Delhi

An interesting complaint came before CIC from Ms. Shruti Singh Chauhan against the Chief Minister of Delhi, GNCT of Delhi. Ms. Chauhan had sought the information on appointment of Information Commissioners. Same was not responded to at all.

CIC decided to admit Ms. Chauhan's complaint u/s.18(1)(c) of the Act and directed the PIO, at the office of the Chief Minister of Delhi to respond to the request for information within 10 working days from the date of receipt of this decision to the complainant Ms Chauhan. However, CIC also clarified that because GNCT Delhi is a Union Territory falling within the jurisdiction of the Central Information Commission, the GNCT is not competent to constitute an Information Commission either u/s.12 (1) or u/s.15(1) of the RTI Act.

CIC also ruled that in spite of the above facts, PIO is not exonerated from his obligation to respond to an RTI application u/s 6 (1) of the RTI Act. He was therefore directed to show cause as to why a penalty of Rs.250 per day from the date when the information fell due i.e. 09.03.2007 to the date when the response is actually given to complainant Ms Shruti Singh, not exceeding

Rs.25,000 should not be imposed on him/her under Section 20(1) of the RTI Act. The PIO was asked to submit his/her written submission on or before 21.1.2008.

(Complainant No.CIC/WB/C/2007/00228 dated 3.4.2007 decision dated 8.1.2008)

- **Ex-minister also runs against a wall for information**

Leader of the opposition in Rajya Sabha, Jaswant Singh sought information on privy purses that princely states in India were entitled to till late 1960's. He made RTI application on June 4. He got the reply around 40 days after saying that since the records were more than 35 years old they were transferred from Ministry of Home Affairs (MHA) to at National Archives of India. Singh complained to CIC. When even CIC did not respond he asked on September,28 "Sir, are we now to presume that there is no time limit to the retrieval of these files? Are then we to wait endlessly? The impression created by the reply from MHA is that the petitioner is at fault, probably one crucial reason why the government brought the RTI Act in the first place". CIC Wajahat Habibullah heard the case in December 2007 and then directed the MHA to show him the three available files immediately, make renewed efforts to trace the remaining files and report to Singh as well as the CIC within the next 20 days. It may be noted that Section 4(a) mandates every public authority to "maintain all its records duly catalogued and indexed in a manner and the form that facilitates the right to information under this Act. However, very few public authorities have complied on this mandate.

Given below is a decision which comes from a division bench of the Allahabad High Court. This decision is landmark in the sense that it will contribute immensely to the RTI law getting settled eventually at the Supreme Court level - as and when that happens. Will just list the key issues settled at this level at least.

1. No need for a citizen to give reasons why he seeks information, his background is no reason for information to be denied to him under RTI
2. PIO cant take a plea that its third party info while denying info u/s 8.(1).(j), without first referring it to the third party
3. PIO to hear the third party and then to decide where is the larger public interest - in disclosure or non-disclosure
4. The MOST important issue: It has ruled in favor what we have always

believed- Section 18 to 20 are all interlinked and can't be looked at in isolation. Therefore a complaint against denial / deemed denial of information u/s 18 which empowers a SIC / CIC with powers vested in a civil court under the code of Civil Procedure, can't be held hostage with section 19 of 1st appeal. The CIC has been guilty of holding this stand since the Act coming into effect. This decision views all these 3 sections and their respective sub-sections as having one objective - securing access to information and keeping truant officers in check.

5. A SIC / CIC can hearing a complaint can require a public authority to provide information at the same time penalize him to ensure that it is done

Writ Petition No. 3262 (MB) of 2008

Public Information Officer

Vs.

State Information Commission, U.P. and others.

Hon'ble Pradeep Kant, J.

Hon'ble Shri Narayan Shukla, J.

(Delivered by Hon'ble Pradeep Kant, J.)

Following two questions arise for determination in the present writ petition:

(1) Whether the information disclosing the names of the persons including address and amount, who have received more than Rs.1 lac from the Chief Minister

Discretionary Fund, can be given to the information seeker or it is an information, which stands exempted under Section 8 (j) of the Right to Information Act.

(2) Whether the Chief Information Commissioner while considering the complaints under Section 18 of the Right to Information Act, 2005 is competent only to

award the prescribed punishment, in case of failure of information being given as per the provisions of the Act or while dealing with the said complaints, any direction can also be issued for furnishing the information which has not been provided, though it is not found to be exempted under the provisions of the Act.

Needless to mention that the Act is not meant for creating a new type of litigation or a new forum of litigation between the information seeker and the information giver, but may be that some of the information asked for, be inconvenient to the persons to whom it relates and, therefore, every effort would be made to refuse divulgence of such an information and for that matter either to refuse the information by delaying the process or passing a specific order of refusal, may be some time by taking shelter under the provisions of Sections 8 and 9 of the Act, which are the exemption clauses.

The information covered by the aforesaid provisions is either completely exempted or it has been given limited protection i.e. though the information is otherwise exempted but can be disclosed on the satisfaction of the Public Information Officer, if he is satisfied that the disclosure of such an information is in larger public interest.

Our Constitution establishes a democratic republic. Democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. The revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information and, therefore, with a view to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal, the Parliament enacted the Act of 2005 to provide for furnishing certain information to citizens who desire to have it.

Right to information or right to know is an integral part and basic tenet of the freedom of speech and expression, a fundamental right guaranteed under Article 19(1)(a) of the Constitution. It also flows from Article 21 as enunciated by the apex court in the case of \*Reliance Petrochemicals Ltd. vs. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd. And others, (1988) 4 SCC 592. The apex court in this case while dealing with the issue of freedom of press and administration of justice, held that "we must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform".

It is thus, a fundamental right, which cannot be denied, unless of course it falls within the exemption clause or otherwise is protected by some statutory provisions.

The functioning of the State and its instrumentalities and functionaries under the cover of darkness leave the citizens ignorant about the reasons and rationale of any decision taken by the authorities or any policy made and the implications thereof, whereas the citizens have a guaranteed 'Right to Know'. The legal and consequential corollary of the aforesaid right will be that a person getting the required information may move for redressal of the wrong done or any action taken, order passed or policy made by approaching the appropriate forum, as may be permissible under law. The purpose and object of

the act is not only to provide information but to keep a check on corruption, and for that matter confers a right upon the citizens to have the necessary information, so that appropriate action may be initiated or taken against the erring officers and also against the arbitrary and illegal orders.

The Supreme Court even before the advent of the Right to Information Act, 2005 had stressed upon the importance of transparency in administration and governance of the country and for that matter time and again has entertained writ petitions requiring the State to disclose the information asked for. Reference can be made to the case of State of U.P. vs. Raj Narain, (1975) 4 SCC 428\*\*. \*A Constitution Bench of the apex court in this case, considered the plea of privilege of not disclosing the information with respect to the tour arrangement of Smt. Indira Nehru Gandhi for her tour programmes of Raebareli and also the information disclosing any general order for security arrangement during the general elections alongwith disclosure of all correspondence between the Government of India and the State Government, and between the Chief Minister and the Prime Minister, and held unanimously that the informations asked for, are to be disclosed. The appeal against the judgement of the Allahabad High Court was allowed. His Lordship Justice Mathew, in a separate concurring judgement, in Para-74 observed as under: "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."

As a result of constant demand of disclosure of information and to make the people know about the functioning of the Government, its authorities and functionaries and the manner in which, decisions are taken or even policy made, including their implementation and to uproot corruption, redtapism and delay in functioning of the State functionaries, apart from decisions taken in individual cases the central legislation in the shape of Right to Information Act, 2005 has been enacted, which prescribes the substantive as well as procedural provisions for securing the information by any person, who

seeks that information, without requiring him to disclose the reason as to why this information is being asked for.