

Right to Information and Good Governance

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Lecture No 52

Exempted Information-6

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Relationship with foreign State,
economic Interest

- Anuj Dhar v. Ministry of External Affairs,
CIC/OK/A/2006/00671 dated 23rd March, 2007
- Ms. Suchitra J.Y., Bangalore v. Bharatiya
Nabhikiya Vidyut Nigam Ltd. 2008 CIC
- Delhi Metro Rail Corporation Ltd. v. Sudhir
Vohra Delhi HC 2011
- Reserve Bank of India Vs. Jayantilal N. Mistry
2015 SC



Now in this the Reserve Bank of India case, the arguments were very, very interesting. The arguments were that the Reserve Bank of India is a statutory authority, constituted under the Reserve Bank of India Act of 1938. And the purpose was to regulate and control money supply in the country. The Reserve Bank of India also acts a statutory banker under the account of India to the state governance and manages their public data.

In addition, it regulates and supervises commercial bank and cooperative banks in the country. The Reserve Bank of India exercises controls over the volume of credit, the rate of interest chargeable on the loans, and advances and deposits in order to ensure economic stability. So, it is in the economic interest of the state that the Reserve Bank of India functions in a transparent and a undoubtable manner.

The Reserve Bank of India is also vested with the power to determine banking policy in the interest of the banking system, monetary stability and the sound economic growth. The Reserve

Bank of India is also exercising powers conferred under, under Section 34 of the Banking Regulation Act. And the Banking Regulation Act of 1949 and conducts inspection of the bank in the country. Now, in its capacity as the regulator and supervisor of the banking system of the country, there is acts to varies information that the Reserve Bank has.

And the inspecting team and the officers carry out inspection of different banks and much of the information that is access by the inspecting officers that are RBI are actually confidential. And interestingly the RBI referred to Section 28 of the Banking Regulation Act, to actually state that it is such a confidential information. Now, these were some of the arguments that were made by the Reserve Bank of India so that the said information can be denied.

Now on the other hand you will notice, that when you look at a lot of banks that are unfortunately, you know entering into issues like non-performing assets. Lot of banks are unfortunately getting into liquidation there is an issue of merger, there is a lot of public money and public interest involved in the functioning of the Banks. And if we look at that the preamble of the RTI Act. There is definitely the aspect about what information is necessary in public interest and what is that reason for ensuring transparency in confidentiality.

And I think there must be a harmonizing of conflicting interest, the harmonization of conflicting interest is between what information requires confidentiality, and what information should be provided under the Right to Information Act. I think that kind of harmonization is something that is very, very important as we go forward in the implementation of the Right to Information Act.

Now, what the court noted in this case is that, they looked at the Constitution of India, they noted Section 8, they looked at the Official Secret Act, they looked at the scope of the relationship of fiduciary because I think that is what the banks and the backing institution often rely on. They looked at the term fiduciary in some of these following manners. They said that the scope of fiduciary relationship consists of the following rules first; no conflict rule.

A fiduciary must not place himself in a position where his own interest conflicts with that office customer or the beneficiary, there must be a real sense of possibility of conflict. Second,

fiduciary relationship consists in the no profit, a fiduciary must not profit from his position at the expense of his customer, the beneficiary. Third rule is, the undivided loyalty rule; a fiduciary owes undivided loyalty to the beneficiary not to place himself in a position where his duty towards one person conflicts with a duty that he owes to another customer.

The fourth rule of fiduciary is, the duty of confidentiality. This is where the RBI says that, in the fiduciary capacity the duty of confidentiality benefits not only to the other person but benefits the advantage of the RBI as well. Also, the RBI is supposed to uphold public interest and not the individual interest of the bank. And hence, you will notice that being a statutory body, being an organization of the government, being a body that is withholding the trust of the people and the government together.

I think there is a larger public interest in terms of the deposits the citizens and the country's economic system that the Reserve Bank of India acts in a very transparent manner and does not hide information, specially just because that information may embarrass individually. Because I think, while banks have their right of commercial confidence, I think the public interests to know how these banks are functioning is a larger public interest. And the Reserve Bank of India ought to way in the larger public interest in disclosing the said information.

You know the, the court was, came down pretty heavily on the Reserve Bank of India, they said that the Reserve Bank of India is making baseless and unsubstantiated arguments that the disclosure of the inspection report would injure or harm the economic interests in the state. They said this is totally misconceived. They said that the public have the right to know it just about an inspection report about the functioning of the bank, whether the bank is functioning in an adequate manner or in a manner that is prejudicial to the interest of its depositors.

And hence, the Supreme Court said that it is the duty of Reserve Bank of India to disclose the inspection report and while they can, probably appreciate the information as applicable in terms of Section 10, they can apply severability in case that is required. However, I think the economic interest of the state and the national objective is in bringing about transparency.

And I think the Reserve Bank of India should be like a spectacle, it must try and disclose as much information as possible so that there is a clear transparency in the functioning of the banks and that would mean that the government is efficiently regulating the institution of the banks. And this would bring about a different kind of a legal system, and hence it was necessary for the Reserve Bank of India to be as transparent as possible and not hide the said information.

So, I think this is what the Supreme Court said, and I think they did lay down the enforces that it is important that the RBI circular which promotes non-disclosure must be read down. And it was duty of the Reserve Bank of India to actually promote transparency and accountability in all its function and there is a larger public interest that is served. And hence, the inspection reports should be made annually. So, these were some of the observations of the Supreme Court in this case. And hence, the plea of economic interest was not accepted by the Supreme Court.

And they actually weighed in terms of disclosure of such report.

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Sec. 8 (1)(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence

- Sovereignty
- Integrity
- Security of State
- SC Sharma v Ministry of Home Affairs, CIC 2006
- Venkatesh Nayak, CHRI
 - Case study 1: MHO
 - Venkatesh Nayak v PMO 2017 CIC
- Incitement of Offence: Union of India v. Central Information Commission July 2012 Delhi HC

