

Right to Information and Good Governance

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Lecture 75

Landmark Judgements Under the RTI Act-2

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- SUBHASH CHANDRA AGARWAL V. LOK SABHA SECRETARIAT. DELHI HIGH COURT JULY, 2, 2019
 - QUESTION INVOLVED - WHETHER THE CONSULTATIONS AMONG THE LEADER OF OPPOSITION, LEADER OF THE HOUSER AND SPEAKER OF LOK SABHA ABOUT EXTENSION OF TENURE OF LOK SABHA SECRETARY GENERAL CONSTITUTES BREACH OF PARLIAMENTARY PRIVILEGE?
 - DUTY OF CIC TO DECIDE WHETHER ANY INFORMATION SOUGHT IS PRIVILEGED OR NOT.
 - EXTENSION OF TENURE OF SECRETARY GENERAL T K VISHWANATHAN AND THE CONSULTATIONS BETWEEN THE MEMBERS CONCERNED.
 - CIC PLACED MAGTTER BEFORE THE SPEAKER TO DECIDE WHETER RELEASING INFORMATION WOULD CONSTITUTE BREACH OF PRIVILEGE UNDER ARTICLE 105 OF CONSTITUTION OF INDIA.
 - APPEAL TO HIGH COURT - FRAMED FIVE ISSUES AND DECIDED THAT THE INFORMATION WAS NOT EXEMPT FROM DISCLOSURE.



Moving on to the next case which is filed by the Central Public Information Officer in the Supreme Court versus the noted RTI activist Shubash Chandra.

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- CENTRAL PUBLIC INFORMATION OFFICER V. SUBHASH CHANDRA AGARWAL.
 - SC AGARWAL FILED 3 APPLICATIONS SEEKING INFORMATION REALTING TO APPOINTMENT, ASSETS OF JUDGES AND COPY OF CORRESPONDENCE RELATING TO A HIGH COURT JUDGE.
 - THREE APPEALS FOLLOWED BASED ON THE REJECTION OF INFORMATION BY THE PUBLIC INFORMATION OFFICER.
 - RELATING TO APPOINTMENT OF JUDGES - CIC DIRECTED TO PROVIDE INFORMATION
 - RELATING TO ASSETS OF JUDGES - PIO REFUSED, CIC ORDERED FOR PRODUCTION, HIGH COURT UPHELD THE ORDER OF CIC.
 - RELATING TO LETTERS - PIO REFUSED TO, CIC ORDERED.
 - APPEAL TO HIGH COURT AND DECISION OF THE HIGH COURT.
 - APPEAL TO SUPREME COURT AND THE COURT PARTLY ALLOWED THE APPEAL.



The present case arises out of the three appeals filed by the Central Public Information Officer of the Supreme Court of India against the three applications of Mister Shubash Chandra Agarwal. He had filed three applications seeking information from the Central Public Information Officer about the correspondences related to the three basic points the first one was with regard to the appointment of judges.

The second one was with regards to the information on the declaration of assets from the judges and the third one was with regard to the copy of a letter with the then chief justice of India about a news item published in prominent newspaper about an allegation of union minister to have reached out to a judge to influence his decisions. In all these three applications the CPIO rejected to furnish the information but the Central Information Commission directed the CPIO to inform, to furnish the information.

Different court of appeals followed in these three applications the present appeal was filed by the CPIO and could considering the appeals came up with the issues. The first issue was whether Shubash Chandra Agarwal had the right to seek the information under section 2(j) of the Right to Information Act. Second whether the information sort is exempted under section 8(1)(j) of the Right to Information Act.

The third one is whether the information sort is in the interest of the public or does it hamper the privacy. Fourth whether the information was held by the judges in the fiduciary capacity. Fifth one by the disclosure of information would result in hampering the independence of the judiciary. Looking at the issues raised the parties in the case raise their respective contentions.

And appellant contended that the disclosure of information would impede the independence of judiciary, the are this side argued that the disclosure of information would strengthen the independence of judiciary and promotes transparency and openness. The second contentions are raised by the appellant was that it. They contended that the right to information is not an exclusive right and there are many exceptions to it as provided under section 8 of the Right to Information Act.

The contentions of the responded was that the disclosure of information would serve as a larger public interest and due to the nature of information sought, as it will out way the privileges of exemption granted. Appellant also contended that the information is declared by the judges in fiduciary capacity and the consultations made between the chief justice of India and the constitutional functionaries or on made on the bases of trust which are meant to be protected and confidential and it not for the public consumption.

The other side contended that there exists no fiduciary relationship as a public servant is not to act for the benefit of another. And the judges are meant to discharge their constitutional duties and not to act as fiduciary of anyone. The applicability of the SP Gupta case was also discussed by the parties and appellants mentioned that the SP Gupta case does not have a direct bearing on the present matter.

The responded contended that the SP Gupta case had a direct bearing all though the facts are slightly different but new to the decision of the court with respect to the disclosure of information in respect of the appointment process of the judges. Based on the contentions the court decided based on the reasoning that for answering whether the Shubash Chandra Agarwal had the right to information or not.

The court had to analyze clauses of section 2 at is clause (f), (i) and (j) and along with other sections upon reading the definition of the word information the court concluded that the information is defined as broad and width and it includes material in any form. Further they said that such information should be accessible by the public authority, and held by the or under a control public authority.

The meaning of the term 'hold' and 'under the control of the public authority' was also discussed. And how section 22 of the helps of the act helps to remove the prohibitions in any prior. Reliance was placed on Aditya Bandopadhyay case and to under what information falls and what not under the right to information reign. The information is of three types. Firstly that promotes transparency and accountability which means it relates the information under section 4(1)(b).

Secondly the information that is held by the public authority as classified under section 4(1)(c) and lastly that information which is not held by or under the control of the public authority and it is only the last kind information that is excluded from the right to information. All though such information is restricted and it is not absolute such restrictions are led down under section 8 to 11 of the Right to Information Act.

But despite some restrictions the information may be furnished if it serves the greater public interest. The decision has to be made in such a position by applying the doctrine of public interest that is, the test of public interest has to be propounded and it has to be understood. It is important that the public interest should outweigh any possible harm or injury to the interest of third party if the disclosure has to be made.

Issue of such fiduciary relationship was also discussed and decided based on the case of Aditya Bhandopadhyay there as I have already mentioned about it. Fiduciary relationship flows from section 8(1)(b) of the Right to Information Act and it means a person who act in fiduciary capacity with reference to a specific beneficiary or beneficiaries who are expected to be protected or benefited by the action of such fiduciary relationship.

The court reason in this case that the relationship between the chief justice and judges is not of fiduciary relationship the court reason is based that the relationship between the chief justice and judges is not for fiduciary and beneficial as they may not satisfy the four conditions set out to classify the relationship as a fiduciary relationship which are the first one should be the no conflict rule the second should be the no profit rule the third one is the undivided loyalty rule and the fourth one is the duty of confidentiality.

Another competing issue that the court resolved with the right law was the right to privacy and the court the opined that the right to know has to be harmonized with the need for personal privacy and confidentiality of information section 8(1)(j) and section 11 of the right to information with restriction on the information that may result into invasion of privacy of the

individual and when information has been supply by the third party has been treated as confidentiality by such third party.

But if you look at the present case the court applied the test of proportionality and said that the RTI act also defined the legitimate in that is one of the requirements led down in the Puttaswamy judgement. The legitimate aim in the Right to Information Act is the public interest in the dissemination of such information which can be private or confidential. But the larger public interest should always out way any possible harm or injury to the third party.

So, the right to protect identity or anonymity is subject to the public interest test as the public concern relates to matters as an integral part of the freedom of speech and expression. Then how should we understand term public interest. As has been perceived under the right to information access to any information to something that is in the interest or for the benefit of the public even the independence of judiciary is a matter of public concern and it is directly related to the public welfare.

So, the public interest has to be applicable based on these reasons amongst other reasons the court is decided that the test of public interest would have to be applied in order to decipher whether the information has to be furnished or not. The court also upheld the judgements of the High Court regarding the declaration of assets and it was only restricted to that which reasoned out that it does not infringe upon the right to privacy of the judges and the fiduciary relationship is not applicable.

With regard to the other appeals that was filed with regard to the appointment or with regard to the correspondences as mentioned about influencing judicial officer. The Supreme Court of India allowed the matter and remanded the matter back to the information commission after following the procedure under section 11 of the right RTI Act

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- CHIEF INFORMATION COMMISSIONER V. HIGH COURT OF GUJARAT, SUPREME COURT OF INDIA 04.03.2020.
- RTI APPLICATION SEEKING RELEVANT DOCUMENTS AND CERTIFIED COPIES OF A JUDGMENT.
- FOLLOWING RULES 149 AND 154 OF GUJARAT HIGH COURT RULES, THIRD PARTY AFFIDAVIT HAS TO BE FILED.
- INCONSISTENCY BETWEEN THE TWO LAWS I.E., RTI AND GUJARAT HC RULES.
- SEEKING INFORMATION CANNOT BE CURTAILED BY THE RULES IN CONTRAVENTION TO RTI ACT.
- COURT HELD TO ACCESS THE INFORMATION/OBTAIN THE CERTIFIED COPIES OF DOCUMENTS, ORDERS AND OTHER PROCEEDINGS.
- COURT COCLUDED THAT THERE IS NO INCONSISTENCY BETWEEN THE RTI ACT AND HC RULES.



The next case which I would like to discuss is about the Chief Information Commissioner versus the High Court of Gujarat. This is the case that was decided by the Supreme Court of India on the fourth of march 2020. The facts of this case are something like this, an RTI application was filed seeking information putting into some of the cases with all the relevant documents.

And certified copies in reply to the RTI application the public information officer of the Gujarat High Court informed that for obtaining required copies the applicant should file an application personally or through his advocate by affixing the required court stamp fees and with the requisite fee address to the deputy register. The applicant who is not a party to the case had to go through a special procedure wherein he had to separately file an affidavit mentioning the reason why such application has to be maintained and the judgement is required.

His application should be accompanied by the affidavit stating the ground for which the certified copies are required and on making such application he will be supplied with the certified copies of the documents as per the rules prevailing under the respective High Court rules and in this case being the Gujarat High Court rules of 1993.

The Supreme Court considering these issues framed few issues and the issues are putting into the applicability or whether the rule 151 of the Gujarat High Court Rules stipulating that providing

copy of documents to the third parties. And the requirement to file an affidavit stating the reasons suffers from any inconsistencies with the provisions of the Right to Information Act. Secondly when there are 2 machineries to provide information or certified copies, one under the High Court rules and another under the Right to Information Act in the absence of any inconsistency whether the provision of the RTI act can be resorted to for obtaining the certified copy. The parties in this case argued vehemently and they also contended several positions and also they cited several cases. I will mention some of the contentions that were advanced by the parties.

The appellant contended that under section 6 of the Right to Information Act, it provides specifically that an applicant making a request for information shall not be required to give a reason for requesting the information and whereas the Gujarat High Court rule made the parties to seek information only by filing an affidavit stating the reason as to why the judgement or the copy of the court order has to be supplied.

There is a direct inconsistency between the provisions of the Right to Information Act and the Gujarat High Court rules of 1993. The inconsistency between the provisions of the Right to Information Act and the Gujarat High Court rules cannot be harmoniously constructed between the two. And in the event of conflict the provision of the Right to Information Act or any other law made by the parliament or the state legislature has to prevail.

The appellant also submitted that section 22 of the Right to Information Act specifically provides that the provision of the Right to Information Act will have an overriding effect over any other laws which are prevailing. Further, if you read section 6 of the Right to Information Act, it grants a substantive right and the person who is seeking information or copies is not required to give any reason and this right cannot be curtailed by the procedural laws framed down by the high courts.

The power to frame rules has been derived from article 225 of the constitution of India and the high courts as the constitutional authorities have been granted this power. While looking at the contentions raised by the respondent the application procedure as stipulated under the Gujarat

High Court rules and since the respondent or the party owe us seeking application was not the party to the proceedings.

He was informed that the application shall be accompanied with an affidavit stating the ground for which the certified copies are required. If you look across, an efficacious remedy is already available under rule 151 of the Gujarat High Court rules which is consonance with the provisions of the Right to Information Act.

The provisions of the Right to Information Act cannot be invoked and the High Court rightly held that there is no question of making an application under the RTI Act and rightly quashed the order of the appellant, who is the Chief Information Commissioner. The assistance of the amicus curiae was also taken in this case and there was some arguments which was also advanced by the amicus curiae which I will make a mention of.

The first contention that was mentioned was that third parties, that is one persons or parties not, not a litigant in the case is also or can also apply for seeking copies from the high courts or the lower courts provided he files an affidavit that is the third party affidavit mentioning the reasonable grounds as to why the information is required. He also stated that there is no inconsistency between the Right to Information Act and the rules framed by the high courts.

If you look at section 22 of the Right to Information Act, it has an overriding effect over any other laws in case there are inconsistencies section 22 of the RTI Act does not contemplate to override those legislations which aim to ensure access to information. Information on the judicial side of the High Courtland the rules framed by the High Court provide for dissemination of information and not that there are any conflicting provisions about the requirements.

The only requirement is that the applicant who is not party to the case has to file with requisite fees and with appropriate reasons as to why he is seeking the information. And so far, as furnishing the certified copies to the third parties, the rules framed by the high courts stipulate that the certified copies of the documents orders or judgments or copies of proceedings would be furnished to the third parties only on the orders passed by the court register.

And upon being satisfied about the reasonable cause or bonafide of the reasons seeking the information certified copies of the documents will be supplied. Based on the contentions raised and arguments of the parties the Court also held that the information under categories so as fought by the applicant on the judicial site you can be accessed by way of seeking certified copies of the documents and orders could be obtained by the parties to the proceedings in terms of the High Court rules.

And the parties to the proceedings are also entitled to the same. Inso far as the third parties are concerned, as of right they are not entitled to seek information about a judgement which they are not the party but there is a provision that is there in the High Court rules which provides that a third party can also obtain the certified copies of the documents, orders or judgements and can have access to information upon filing an application or affidavit by stating the reason for which the information or copies or documents are required.

One can access the information or copies of the documents through the rules framed by the high courts or under the rules framed by the high courts under the Right to Information Act. While if you see the information held by the right to, by the High Court relating to the parties to the litigation proceedings, pleading documents another materials are supposed to be confidential documents which is submitted to the court. Orders and judgements passed by the court or specifically the High Courts the matter of record is a public record and is already available in public domain.

In exercise of the power of superintendence over the courts, tribunals and information receive in the records submitted or called for by the courts and tribunal. The high courts can seek information and can also procure some of the documents which are relevant to it. Information on the administrative side of the High Courts pertaining to the appointments transfers and posting of the judicial officers, staff members and of the district judiciary, the actions taken against judicial officers and stuff members such other information relating to judicial work has to be kept confidential.

Via information again on the administrative side, as to decisions taken by the collegium of the High Court in making recommendations of the judges to appointed to the High Court information as accept of the sitting judges held by the chief justice of the High Court and other information can be classified under the personal information.

And it can called for the exemptions and any applicant, any applicant seeking information may be refused to be granted such information as per the clause mention under section 8. Well, the information held by the court on the judicial site is the personal information of the litigants like cases and the family court matters et cetera under the guides of seeking information under the Right to Information Act the process of the court is not to be abused, and the information must not be misused.

Based on these contentions and the arguments the Supreme Court held that the rule framed by the high courts to have information obtaining certified copies by the third parties which requires the parties to mention the reasons for seeking information is not consistent with the provisions of the RTI act. But merely lays down a different procedure as the practice or payment of fees et cetera for obtaining information.

In the absence of the any inherent inconsistencies between the provisions of the Right to Information Act or any other law, the RTI Act would not become applicable the information of certified side, a certified copy which can be accessed on the judicial side has to be obtain through a proper mechanism as prescribed under the rules. And it also concludes that there is no inconsistency between the Right to Information Act and the court rules.

This is actually incorrect because the Gujarat High Court rules unlike the RTI Act require the submission of affidavit stating the purpose seeking copies of the pleadings and the right to information requires no reason provided to seek information. The other point which has to be noted here that the court considered that a special enactment or rule cannot be held to be over written by a later general enactment simply because the later open up with a non-abstained clause and unless there is a clear inconsistency between the 2 legislations the latter legislations cannot just prevail.

The other important point that has to be noted here is that the rules framed by the High Court under article 225 is a special rule and it is a special law which provides for the right to information and does not take away the right person. Whereas the Right to Information Act is more of a general law. And it has certain exemptions already curved in to protect some of the confidentiality information, and exemptions as provided under section 8.

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- UNION PUBLIC SERVICE COMMISSION V. ANGESH KUMAR, SUPREME COURT OF INDIA, 2018.
 - WRIT PETITIONERS CONSIST OF CANDIDATES THAT WERE UNSUCCESSFUL IN CLEARING THE UPSC (PRELIMINARY) EXAMINATION, 2010.
 - PETITIONED HC SEEKING DISCLOSURE OF INFORMATION AND HC DIRECTED THE UPSC TO DISCLOSE THE INFORMATION WITHIN 15 DAYS.
 - UNDER THE RTI ACT, A CLEAR DISTINCTION OF MARKS, CUT-OFFS AND OTHER RANKINGS SHOULD BE MADE EASILY AVAILABLE TO PROMOTE TRANSPARENCY IN THE EDUCATION SYSTEM.
 - CENTRAL BOARD OF SECONDARY EDUCATION AND ANR. V. ADITYA BANDOPADHYAY AND ORS (2011) 8 SCC 497 THROUGH WHICH IT STATES THAT IT IS DIFFICULT TO DIFFERNCIATE BETWEEN INFORMATION THAT IS IN PUBLIC INTEREST OR NOT



The next case which I would like to discuss is of the Union Public Service Commission versus Angesh Kumar which was decided by the Supreme Court of India on 28th of February 2018. The facts of this case is simple and this is how it goes, Angesh Kumar filed several applications seeking information about the UPSC preliminary examination that is conducted and to release the of unsuccessful candidates and also with regard to some other details of the unsuccessful candidates of the UPSE preliminary examination.

He approached the High Court for a direction to the UPSC to disclose details of the marks awarded to them in the civil service examination. This included information in the form of cut off marks for every subject, scaling methodology, model answers and complete result of all candidates. Based on these applications and the petitions, the High Courtd irected the Union Service Commission to disclose the marks within a period of fifteen days.

Aggrieved by this order the UPSC decided to appeal the present case and it approach the Supreme Court. It is contended that the High Court has not correctly appreciated the scheme of Right to Information Act and the other prevailing decisions that are binding. Though section 3 and 6 of the Right to Information Act confers the right to seek information there are certain exemptions provided under section 8, 9, and 11 from giving information as stipulated under that.

Where information is likely to conflict with the other public interest including efficient operation of the government, optimum use of physical resources and preservation of confidentiality some sensitive information can be excluded from being provided. Whereas, Anghesh Kumar who is the respondent in the present case contended that a clear distinction of marks cut off and other rankings should be made easily available to promote transparency in the education system.

The court, based on these contentions, held that the third recital of the preamble of the act you can clearly see that, it is important to strike balance between the transparency and accountability. Whereas the requirements of optimum use of physical resources and maintenance of confidentiality of sensitive information has to be also balanced. This is being provided under section 8 of the Right to Information Act where it balances the 2 conflicting rights.

The court also relied on the case of Central Board of Secondary Education versus Aditya Bhandopadhyay which was decided in the year 2011. And it stated that it is difficult to differentiate between the information that is in the public interest or not.

It was also observed in the judgement that in discriminate and impractical demands or directions under the Right to Information Act or disclosure of all and sundry information which are not related to the transparency and accountability in the functioning of the public authorities and eradication of the corruption would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with non-productive work of collected and furnishing the information.

The court refers to certain problems that can be caused out of releasing the evaluated answer sheets. The court also specifically cited where that the integrity of the education system will be questioned due to several process a single mark sheet goes through. There is a certain cycle which a mark sheet goes through and the award given by the initial examiner can be struck down and re-evaluated due to several reason such as totalling errors as relative merit looked at and not absolute merit system of feeling of the initial marks being good and being relatively badly quoted the prost in the education system that will be in danger in coaching institute collecting copies through several read petitions. Masking of all the initial of any examiners will be

logistically extremely difficult but without which there will be rift created between the education board and the examiners.

The court was of the strong believe that mechanically producing UPSC marks would create a larger problem of confidentiality and there are chances of the sensitive personal information being released to the inform to the public. Furnishing of information in general is not considered in public interest. The court however pointed out that if a case is made where such marks can be seen as in the public interest then the marks shall be revealed through the RTI Act.

There are also several other reasons why the reasons for the UPSC to not disclose such marks of the unsuccessful candidates subsequent of the examinations. Well, all this has to be looked at and the interest of the public should be considered. and it is the paramount in all cases.

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- SHRI RAKESH KUMAR GUPTA V. THE PUBLIC INFORMATION OFFICER, LIFE INSURANCE CORPORATION LIMITED AND ORS. CIC MANU/CI/2237/2011
- APPLICATION FILED SEEKING INFORMATION ABOUT KEY MAN POLICIES IN A SPECIFIC ZONE OF THE LIFE INSURANCE CORPORATION.
- SOUGHT INFORMATION OF OVER 20 YEARS AND INFORMATION ABOUT SIPHONING OF MONEY AND EVASION OF TAXES.
- REFINED SOME OF THE INFORMATION WHICH SIEVED FROM TENS OF LAKHS TO FEW LAKHS.
- STAND OF LIC IN A FIDUCIARY CAPACITY.
- DISCLOSURE OF INFORMATION DENIED BY THE COMMISSION.



Next case which I would like to discuss to understand the present context of exemption information is of Rakesh Kumar Gupta versus the Public Information Officer, Life Insurance Corporation of India. The pre facts of the case are something like this the applicant filed an RTI application in the year 2011 before the regional manager at the life insurance corporation seeking details about the keyman insurance policies taken in the northern zone.

And the relate with assignment of such policies in favour of keyman or other people in specify excel sheet in a DVD or as well as in the email. The applicant for this also further specified the need for the information of over 20 years. And relied on section 8 clause 3 of 2005 Act for the same. The applicant clearly also claimed the public interest based on references drawn about an audited balance sheet of escort limited for the year 2002 and 3 alleging that such scheme and insurance policies led to tax fraud and also siphoning of money by the management to the detriment of the shares holders.

This information that was sought by the applicant was denied by the chief information public officer stating that the information asked for this in fiduciary in nature as it relates to contacts between the organizations and the life insurance corporation. He also pointed out that the bulkiness of the information letting to key man insurance policies and there are more than four crore insurance policies and collating them would result in disproportionate divergent of resources and therefore it shall stand exempted under section 7 clause 9 of the Right to Information Act. Aggrieved by the refusal of the information being granted. The applicant filed the first appeal and the same appeal also got upheld and the order of the information officer was upheld.

The second appeal was also filed to the Central Information Commission while placing reliance on Bhagat Singh for the interpretation of the exception clauses. It has to seem that during the hearing both the parties agreed to refine the searches. And the number of information that was sort was reduced to lakhs. The appellant also alleged that at the point of assignment the key man insurance policy what taxes are paid on the difference between the surrender value and the fair value at the time of assignment.

This leads to the tax evasion and at this juncture the appellant also was agreeable to all of this data which have sought at this stage if the respondent furnishes in the form of a CD. Similar, another similar application was filed with the regional manager. Seeking detail information of the southern zonal officers the applicant sought the same conditions and the CPIO. Once again denied the information again in the first appeal the order of the CPIO was upheld and the second hearing also was undertaken.

In this case the respondent was able to justify the task of being enormous and difficult one also raised the contention of the information being exempted under section 8(1)(d) of the Right to Information Act. Thereafter, the applicant once again filed to another right to information application, this time will the central zone officer. The same information was again sort from the office and the CPIO again once again denied the information and it was stated that the policy holder data base is not any provisions of identification for key man policies.

The CPIO also sort information invoking section 8(1)(e) stating the fiduciary relationship with the policy holders. The first appeal followed with the contention that the CPIO had wrongly invoke section 8(1)(e) and section 7 clause 9 of the Right to Information Act. However, the appellate authority also upheld the order in this case as well. This time Rakesh Kumar Gupta approaches the Central Information Commission and in the second appeal he relied on the Bhagat Singh case.

And the enactment of the act is to basically to promote transparency and arrest corruption and to hold the government liable for its actions. And therefore, access to information under section 3 of the Right to Information Act. And the exemption shall be moved up section 8 being restriction on this fundamental right must therefore be strictly construed and it should not be interpretate in a manner to the shadow very right itself.

The applicability of the aforesaid decision has not been established in the case. The appellant further reiterated that his contention as for provision or exemption contained in 8 clause 3 of the Right to Information Act and he should be allowed to access the information since some of the information may relate to the policies which may have comments 20 years before the date on which any request is made under section 6.

He further argued that the information that should be provided to him is in the greater interest of the public and the disclosure out ways the harm of the protected interest. The authority that is the public information officer of the Life Insurance Corporation sought exemption from disclosure

of information has information belongs to the third party namely the companies or organization. Since LIC student fiduciary relationship with the companies or organizations.

Thus, the information was debarred from disclosure on both accounts as it is belonging to the third party. The aspect of fiduciary relationship was brought in because LIC was standing as in the fiduciary capacity to the other companies. The commission held that the information sort after is generated by the public authority. And are therefore public information but it cannot be called inform confidential information that is been supplied to the life insurance corporation.

The commission in order to get out the picture of the key man policies explored the meaning of the term. And noted key man is describe as insurance policy taken out by business policy to compensate that business for the financial losses that would arise from the death or extended incapacity of the member of the business specified in the policy. Key man insurance does not indemnify the actual losses incurred but compensate with a fixed monitory some specified in the insurance policy.

An employer may take out a key insurance policy on the life or health of any employee with knowledge work overall contribution is considered uniquely valuable to the company. Anybody with specialized skills whose lose can cause a financial strength to the company or key man insurance.

The commission believed that it is imperative that all efforts are made by the companies or organizations to ensure that the key intellectual capabilities technical expertise skills knowledge and other entrepreneurial vision of the key man are to retain by that. The commission held by that no stretch of imagination can this commercially confident information sort about key man policies by the appellant be considered as disclosable by LIC as it is a public authority under the Right to Information Act.

This commercially confident information is accept from the disclosure under section 8 clause E as the Supreme Court observation is that the relationship between LIC and the companies

organizations is held to be fiduciary in nature and beneficiaries have trusted the company to protect the commercially confident information being held by LIC.

It cannot become a part of the public domain however it was also contended that the section 8 clause 3 negates the functions of section 8 clause (1)(e) of the Right to Information Act and therefore exemption of fiduciary relations cannot be sought by the respondent to deny information which is above the 20 years ago. The respondents also agree to share the close accounts which have matured 20 years ago. But they also explain that the information about policies which had matured 20 years ago, if indeed they still exist has to be compiled manually from course of records and this was literally not feasible.

Further there was also a contention that invoking section 8 clause 2 of the RTI act that in the instant case LIC should allow him to access information since the public interest in this disclosure outweighs the harm to the protected interest. The commission believe that the arguments of the appellants away and not substantial enough.

That further the information that is sought need not be disclosed since the public interest in world in disclosure the of information has not being convincingly established. And it also relied on the new case the freedom of information act. The commission decided that the respondent agreed during the hearing that duly notarised affidavit on non-judicial stamp paper containing the format being used for the computer-generated information as available on the official website of the response has to be provided to the authority. Based on this the matter got dismissed and the information that was sort by the applicant was refused from being disclosed.

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- SHRI RAKESH KUMAR GUPTA V. THE PUBLIC INFORMATION OFFICER, LIFE INSURANCE CORPORATION LIMITED AND ORS. CIC MANU/CI/2237/2011
 - APPLICATION FILED SEEKING INFORMATION ABOUT KEY MAN POLICIES IN A SPECIFIC ZONE OF THE LIFE INSURANCE CORPORATION.
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 - DISCLOSURE OF INFORMATION DENIED BY THE COMMISSION.
- BIHAR PUBLIC SERVICE COMMISSION V. SAIYED HUSSAIN ABBAS RIZWI AND ANOTHER 2012.
 - APPLICANT SOUGHT INFORMATION SEEKING THE DETAILS OF THE MEMBERS OF THE BOARD WHO DID THE VIVA VOCE FOR THE BPSC.



The next case that I would like to discuss is another interesting one with regard to Bihar public service commission versus Syed Hussain Abbas Rizwi another. Let me explain the background and the facts in brief of the case the Bihar public service commission published an advertisement to fill up certain post with government of Bihar. The advertisement stated that the return examination would be held if are adequate number of applications.

As they were very limited number of applications the commission in terms of advertisement deciding against holding of returning examination. It excised the option to select the candidate for appointment to the set post on the bases of the viva test alone. The commission also recommended and completed the process of selection and recommended the panel for selected candidates to the state of Bihar.

One applicant or in the present case the applicant was Syed Hussain Abbas Rizwi filed an application before the Bihar public service commission under the right to information act seeking information in relation to provide the name designation and addresses of subject expert present in the interview board the PPSC did not supply the information by invoking the provisions of section 8 clause 1 G of the right to information act.

The respondent file an appeal as he was agreed by the decision and before the state information commission who directed the Bihar public service commission to make available names designation. And addresses of the subject expert present in the interview board agreed from the order of the state information commission BPSC again challenge the same before the high court single bench patna who dismissed the rig petition.


Aggrieved by the set order of the single judge Bihar service commission challenger order of the single judge before the division mentored patna high court. The division bench also took a view that a provision of section 8 of the RTI act are not attracted. And it directed the Bihar public service commission to provide the names of the interview board. The Bihar public service commission challenged the legality and correctness of this side judgement.

And filed an appeal before the honorable supreme court the honorable supreme court also held that the disclosure of names address and the members of the interview board would primacy in danger the life or safety of those persons. The possibilities of failed candidate attempting to take revenge from such persons cannot be ruled out. On the one hand it likely to expose the members of the interview board to harm and on the other hand.

Such disclosure would serve no truthful much less any purpose. The view of the high court judgement under appeal that element of bias can be traced and would be crystalized. If only the names or addresses of the examiners are furnished is without this substance the honorable supreme court also set aside the individual bench judgement of the patna high court. And held that the Bihar public service commission is not bound to disclose the names designation and addresses of the subject expert present in the interview board.

The supreme court set aside the judgement of the division bench and held that Bihar public service commission is not bound to disclose the names and addresses of the subject expert in the interview board.

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• UNION OF INDIA V. PRAMOD KUMAR JAIN, 2013.

- APPLICATIONS SOUGHT INFORMATION FROM CPIO OF THE DEPARTMENT OF PERSONNEL AND TRAINING.
- COPIES OF DPC PROCEEDINGS AND NOTINGS OF DPC PROCEEDINGS FROM THE STAGE OF DPC UPTO THE STAGE OF ISSUE OF PANEL BRINGING OUT THE CAUSE OF OMISSION OF CERTAIN NAMES INCLUDING THE NAME OF THE RESPONDENT FROM THE APPROVED PANEL.
- INFORMATION NOT DISCLOSED ON THE GROUND THAT THE INFORMATION IS EXEMPTED AND CANNOT BE DISCLOSED.
- QUESTION AS TO WHETHER THE INFORMATION SOUGHT WAS CLASSIFIED AS CONFIDENTIAL AND ADVISE TO THE PRESIDENT WITHIN THE MEANING OF ARTICLE 74 OF THE CONSTITUTION OF INDIA.

• NARESH KUMAR TREHAN V. RAKESH KUMAR GUPTA, 2015.

- DISCLOSURE OF INCOME TAX RETURNS IN AN RTI APPLICATION.



The next case which I would like to discuss is of Union of India versus Pramod Kumar Jain. The facts of the case is something like this. The respondent by way of application sort information from the chief, chief information officer of the Department Pf Personnel and Training. The information that was sort by the applicant was regarding the copies of proceedings and notings of from the stage of constitution DPC up to the stage of issue of panel bring out the cause of mission of certain names including that of the applicant from the approved panel for promotion from chief engineer, from the additional chief engineer to the grade of chief engineer.

This was in the vacancies as arose in the MES of the ministry of defence against the vacancies for the year 2007 and 2008. The other issue was the question or the query that was raised was why the panel consisted of only 7 officers whereas the vacancies were only for 10. Further out of the 7 officers included in the main panel only 3 officers are retiring during the year 2007 and 8.

Then why the panel was extended for five officers? The query raised by the applicant was declined by the CPIO and because on the ground that the privilege of exemptions under section 8 clause 1 of the Right to Information Act. The respondent prefer the appeal first appellate authority and it pass the order also upholding the order CPIO to not furnish the information by giving the reason that the papers pertaining to the deliberation on the appointment committee of the cabinet of the issue of promotion are cabinet papers.

and they cannot be treated as materials for decisions of council of ministers under proviso to section 8 clause 1 of the RTI act. The applicant who being aggrieved preferred the first appeal and also preferred the second appeal before the Chief Information Commission The Chief Information Commission directed the disclosure of information had relied on the case of PE Khandelwal versus Union of India. Union of India being aggrieved by the order of Chief Information Commission filed the case before the Delhi High court and the matter was decided accordingly.

The High Court dismissed the petition and directed the appellant disclose the information and said that the information that would be made available to responce should include the reasons for the decision taken by the committee further the material on the basis of which the decision

was taken need not be disclosed. But if the respondent seeks some information, it disclosed only after the decision taken by the council of ministers is implemented.

And if such decision constitutes advice of ministers to the president it cannot be accused under the Right to Information Act. The reason for passing this decision are basically on the grounds that the prohibitions for a limited time for non-disclosure of any information is only restricted it is it last only to till a decision is taken by the council of ministers till the matter is complete or over.

If you look across a proviso removes the ban on disclosure after the decision are taken by the council of ministers before the decision in committee of the matter of promotion of a government servant does not constitute as an advice (to the ministers), to the president within the meaning of article 74 of the constitution of India. And therefore, there was an order by the High Court Delhi to release or disclose such information.

The last time the final case which I have taken up for discussing is of the disclosure of information relating to the income tax filed by an individual. This is the case pertaining to disclose of such information whether or not it constitutes as personal information. It was in this case of Naresh Trehan versus Rakesh Kumar Gupta that the applicant sought information who is also stated be an informer to the income tax department had filed an application under the Right to Information Act with the public information officer.

Seeking information and all records of the nine assesses for different years with doctor Naresh Trehan who is the petitioner being one of them upon receiving the information or the query the central public information officer sent noticed to this assesses and directed them to make the representation and adhere to the application. But the respondents objected to the disclosure of such information.

Thereafter the information officer also rejected the application on the ground that the applicant was not able to assert the public interest involved in revelation of the information related to the third party. The applicant appealed before the Central Information Commission and it was held

by the Central Information Commission that the revelation of information of income tax return and also related information of the assessment of the income is in the public interest as it would substantiate or could increase the public revenue.

And will also be helpful in reducing corruption and the information commission subsequently directed for the disclosure of the information. The assesses challenge in this judgement before the Delhi High Court on the ground that the income tax return. And the other related information which is provided by the assesses during the course of assessment would be protected under the Right to Information Act.

And the relevant applicable provision would be section 8(1)(d) and 8(1)(e) and 8(1)(j) of the information of the information act. The court in this case analyzed the issue that whether the Chief Information Commissioner had misdirected itself incoming to the decision of making portioner to disclose the information of the income tax filing and other related information. Further such information was in the public interest or the judge in this case concluded that the CIC had itself misled as there was no substantial proved to indicate that portioner or the authorities.

Who are not performing their work diligently the court also concluded that the disclosure of the information has no direct bearing or discernible element of public interest. And this had to be set aside and the order of the CIC was eventually set aside. The court also rejected that their existed any fiduciary relationship between the parties. Income tax returns of a persons of any person, is held to personal information.

And (this cannot be exempted,) this is an exempted information to the third parties thus attracting the clauses under section 8(1)(j). However, exemption could be also neglected as per section 11 clause 1 and section 8 clause 2 of the information if it is in the greater public interest. But in the present case the appellant to established the larger public interest and assessment proceedings are not public proceedings. CIC that is the Chief Information Commission, had wrongly directed the portioner to disclose the information and on this ground itself.

The application or the case was allowed therefore the information that was that was directed to be allowed was held to be personal information and is classified as protected under the section 8 clause (1)(j) of the Right to Information Act. Thank you.