REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

TRANSFERRED CASE (CIVIL) NO. 91 OF 2015
(Arising out of Transfer Petition (Civil) No. 707 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
Jayantilal N. Mistry .....Respondent(s)

With

TRANSFERRED CASE (CIVIL) NO. 92 OF 2015
(Arising out of Transfer Petition (Civil) No. 708 of 2012)

I.C.I.C.I Bank Limited ..... Petitioner(s)
versus
S.S. Vohra and others .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 93 OF 2015
(Arising out of Transfer Petition (Civil) No. 711 of 2012)

National Bank for Agriculture
and Rural Development .....Petitioner(s)
versus
Kishan Lal Mittal .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 94 OF 2015
(Arising out of Transfer Petition (Civil) No. 712 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
P.P. Kapoor .....Respondent(s)

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TRANSFERRED CASE (CIVIL) NO. 95 OF 2015
(Arising out of Transfer Petition (Civil) No. 713 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
Subhas Chandra Agrawal .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 96 OF 2015
(Arising out of Transfer Petition (Civil) No. 715 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
Raja M. Shanmugam .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 97 OF 2015
(Arising out of Transfer Petition (Civil) No. 716 of 2012)

National Bank for Agriculture
and Rural Development .....Petitioner(s)
versus
Sanjay Sitaram Kurhade .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 98 OF 2015
(Arising out of Transfer Petition (Civil) No. 717 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
K.P. Muralidharan Nair .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 99 OF 2015
(Arising out of Transfer Petition (Civil) No. 718 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
Ashwini Dixit .....Respondent(s)

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TRANSFERRED CASE (CIVIL) NO. 100 OF 2015
(Arising out of Transfer Petition (Civil) No. 709 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
A.Venugopal and another .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 101 OF 2015
(Arising out of Transfer Petition (Civil) No. 714 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
Dr. Mohan K. Patil and others .....Respondent(s)

JUDGMENT

M.Y. EQBAL, J.

The main issue that arises for our consideration in these transferred cases is as to whether all the information sought for under the Right to Information Act, 2005 can be denied by the Reserve Bank of India and other Banks to the public at large on the ground of economic interest, commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other. If the answer to above question is in negative, then upto what extent the information can be provided under the 2005 Act.

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2. It has been contended by the RBI that it carries out inspections of banks and financial institutions on regular basis and the inspection reports prepared by it contain a wide range of information that is collected in a fiduciary capacity. The facts in brief of the Transfer Case No.91 of 2015 are that during May-June, 2010 the statutory inspection of Makarpura Industrial Estate Cooperative Bank Ltd. was conducted by RBI under the Banking Regulation Act, 1949. Thereafter, in October 2010, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sr. No.	Information sought	Reply
1.	Procedure Rules and Regulations of Inspection being carried out on Co-operative Banks	RBI is conducting inspections under Section 35 of the B.R. Act 1949 (AACS) at prescribed intervals.
2.	Last RBI investigation and audit report carried out by Shri Santosh Kumar during 23rd April, 2010 to 6th May, 2010 sent to Registrar of the Cooperative of the Gujarat State, Gandhinagar on Makarpura Industrial Estate Co-op Bank Ltd Reg. No.2808	The Information sought is maintained by the bank in a fiduciary capacity and was obtained by Reserve Bank during the course of inspection of the bank and hence cannot be given to the outsiders. Moreover, disclosure of such information may harm the interest of the bank & banking system. Such information is also exempt from disclosure under Section 8(1) (a) & (e) of the RTI Act,

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		2005.
3.	Last 20 years inspection (carried out with name of inspector) report on above bank and action taken report.	Same as at (2) above
4.	(i) Reports on all co-operative banks gone on liquidation (ii) action taken against all Directors and Managers for recovery of public funds and powers utilized by RBI and analysis and procedure adopted.	(i) Same as at (2) above (ii) This information is not available with the Department
5.	Name of remaining co-operative banks under your observations against irregularities and action taken reports	No specific information has been sought
6.	Period required to take action and implementations	No specific information has been sought

3. On 30.3.2011, the First Appellate Authority disposed of the appeal of the respondent agreeing with the reply given by CPIO in query No.2, 3 & first part of 4, relying on the decision of the Full Bench of CIC passed in the case of *Ravin Ranchochodlal Patel and another vs. Reserve Bank of India*. Thereafter, in the second appeal preferred by the aggrieved respondent, the Central Information Commission by the impugned order dated 01.11.2011, directed RBI to provide

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information as per records to the Respondent in relation to queries Nos.2 to 6 before 30.11.2011. Aggrieved by the decision of the Central Information Commission (CIC), petitioner RBI moved the Delhi High Court by way of a Writ Petition inter alia praying for quashing of the aforesaid order of the CIC. The High Court, while issuing notice, stayed the operation of the aforesaid order.

4. Similarly, in Transfer Case No. 92 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sr. No.	Information sought	Reply
1.	The Hon'ble FM made a written statement on the Floor of the House which inter alia must have been made after verifying the records from RBI and the Bank must have the copy of the facts as reported by FM. Please supply copy of the note sent to FM	In the absence of the specific details, we are not able to provide any information.
2.	The Hon'ble FM made a statement that some of the banks like SBI, ICICI Bank Ltd, Bank of Baroda, Dena Bank, HSBC Bank etc. were issued letter of displeasure for violating FEMA guidelines for opening of accounts where as some other banks were even	We do not have this information.

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	fined Rupees one crore for such violations. Please give me the names of the banks with details of violations committed by them.	
3.	'Advisory Note' issued to ICICI Bank for account opened by some fraudsters at its Patna Branch Information sought about "exact nature of irregularities committed by the bank under "FEMA". Also give list of other illegalities committed by IBL and other details of offences committed by IBL through various branches in India and abroad along with action taken by the Regulator including the names and designations of his officials branch name, type of offence committed etc. The exact nature of offences committed by Patna Branch of the bank and other branches of the bank and names of his officials involved, type of offence committed by them and punishment awarded by concerned authority, names and designation of the designated authority, who investigated the above case and his findings and punishment awarded."	An Advisory Letter had been issued to the bank in December, 2007 for the bank's Patna branch having failed to (a) comply with the RBI guidelines on customer identification, opening/operating customer accounts, (b) the bank not having followed the normal banker's prudence while opening an account in question. As regards the list of supervisory action taken by us, it may be stated that the query is too general and not specific. Further, we may state that Supervisory actions taken were based on the scrutiny conducted under Section 35 of the Banking Regulation (BR) Act. The information in the scrutiny report is held in fiduciary capacity and the disclosure of which can affect the economic interest of the country and also affect the commercial confidence of the bank. And such information is also exempt from disclosure under Section 8(1)(a)(d) & (e) of the RTI Act (extracts enclosed). We, therefore, are unable to accede to your request.
4.	Exact nature of irregularities committed by ICICI Bank in Hong Kong	In this regard, self explicit print out taken from the website of Securities and Futures Commission, Hong Kong is enclosed.
5.	ICICI Bank's Moscow Branch involved in money laundering act.	We do not have the information.
6.	Imposition of fine on ICICI	We do not have any information to

	Bank under Section 13 of the PMLA for loss of documents in floods .	furnish in this regard.
7.	Copy of the Warning or 'Advisory Note' issued twice issued to the bank in the last two years and reasons recorded therein. Name and designation of the authority who conducted this check and his decision to issue an advisory note only instead of penalties to be imposed under the Act.	As regards your request for copies/details of advisory letters to ICICI Bank, we may state that such information is exempt from disclosure under Section 8(1)(a)(d) and (e) of the RTI Act. The scrutiny of records of the ICICI Bank is conducted by our Department of Banking Supervision (DBS). The Chief General Manager-in charge of the DBS, Centre Office Reserve Bank of India is Shri S. Karuppasamy.

5. In this matter, it has been alleged by the petitioner RBI that the respondent is aggrieved on account of his application form for three-in-one account with the Bank and ICICI Securities Limited (ISEC) lost in the floods in July, 2005 and because of non-submission of required documents, the Trading account with ISEC was suspended, for which respondent approached the District Consumer Forum, which rejected the respondent's allegations of tempering of records and dismissed the complaint of the respondent. His appeal was also dismissed by the State Commission. Respondent then moved an application under the Act of 2005 pertaining to

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the suspension of operation of his said trading account. As the consumer complaint as well as the abovementioned application did not yield any result for the respondent, he made an application under the Act before the CPIO, SEBI, appeal to which went up to the CIC, the Division Bench of which disposed of his appeal upholding the decision of the CPIO and the Appellate Authority of SEBI. Thereafter, in August 2009, respondent once again made the present application under the Act seeking aforesaid information. Being aggrieved by the order of the appellate authority, respondent moved second appeal before the CIC, who by the impugned order directed the CPIO of RBI to furnish information pertaining to Advisory Notes as requested by the respondent within 15 working days. Hence, RBI approached Bombay High Court by way of writ petition.

6. In Transfer Case No. 93 of 2015, the Respondent sought following information from the CPIO of National Bank for Agriculture and Rural Development under the Act of 2005, reply to which is tabulated hereunder:-

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Sl. No.	Information Sought	Reply
1.	Copies of inspection reports of Apex Co-operative Banks of various States/Mumbai DCCB from 2005 till date	Furnishing of information is exempt under Section 8(1)(a) of the RTI Act.
2.	Copies of all correspondences with Maharashtra State Govt./RBI/any other agency of State/Central Co-operative Bank from January, 2010 till date.	Different Departments in NABARD deal with various issues related to MSCB. The query is general in nature. Applicant may please be specific in query/information sought.
3.	Provide confirmed/draft minutes of meetings of Governing Board/Board of Directors/Committee of Directors of NABARD from April, 2007 till date	Furnishing of information is exempt under Sec. 8(1)(d) of the RTI Act.
4.	Provide information on compliance of Section 4 of RTI Act, 2005 by NABARD	Compliance available on the website of NABARD i.e. www.nabard.org
5.	Information may be provided on a CD	-

7. The First Appellate Authority concurred with the CPIO and held that inspection report cannot be supplied in terms of Section 8(1)(a) of the RTI Act. The Respondent filed Second Appeal before the Central Information Commission, which was allowed. The RBI filed writ petition before the High Court challenging the order of the CIC dated 14.11.2011 on identical

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issue and the High Court stayed the operation of the order of the CIC.

8. In Transfer Case No. 94 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sl. No.	Information Sought	Reply
1.	As mentioned at 2(a) what is RBI doing about uploading the entire list of Bank defaulters on the bank's website? When will it be done? Why is it not done?	Pursuant to the then Finance Minister's Budget Speech made in Parliament on 28th February, 1994, in order to alert the banks and FIs and put them on guard against the defaulters to other lending institutions. RBI has put in place scheme to collect details about borrowers of banks and FIs with outstanding aggregating Rs. 1 crore and above which are classified as 'Doubtful' or 'Loss or where suits are filed, as on 31st March and 30th September each year. In February 1999, Reserve Bank of India had also introduced a scheme for collection and dissemination of information on cases of willful default of borrowers with outstanding balance of Rs. 25 lakh and above. At present, RBI disseminates list of above said non suit filed 'doubtful' and 'loss' borrowed accounts of Rs.1 crore and above on half-yearly basis (i.e. as on March 31 and September 30) to banks and FIs. for their confidential use. The list of non-suit filed accounts of willful defaulters of Rs. 25 lakh and above is also disseminated on quarterly

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		basis to banks and FIs for their confidential use. Section 45 E of the Reserve Bank of India Act 1934 prohibits the Reserve Bank from disclosing 'credit information' except in the manner provided therein. (iii) However, Banks and FIs were advised on October 1, 2002 to furnish information in respect of suit-filed accounts between Rs. 1 lakh and Rs. 1 crore from the period ended March, 2002 in a phased manner to CIBIL only. CIBIL is placing the list of defaulters (suit filed accounts) of Rs. 1 crore and above and list of willful defaulters (suit filed accounts) of Rs. 25 lakh and above as on March 31, 2003 and onwards on its website (www.cibil.com)

9. The Central Information Commission heard the parties through video conferencing. The CIC directed the CPIO of the petitioner to provide information as per the records to the Respondent in relation to query Nos. 2(b) and 2(c) before 10.12.2011. The Commission has also directed the Governor RBI to display this information on its website before 31.12.2011, in fulfillment of its obligations under Section 4(1)(b) (xvii) of the Right to Information Act, 2005 and to update it each year.

10. In Transfer Case No.95 of 2015, following information was sought and reply to it is tabulated hereunder:

Sl. No.	Information Sought	Reply
1.	Complete and detailed information including related documents/correspondence/file noting etc of RBI on imposing fines on some banks for violating rules like also referred in enclosed news clipping	As the violations of which the banks were issued Show Cause Notices and subsequently imposed penalties and based on the findings of the Annual Financial Inspection (AFI) of the banks, and the information is received by us in a fiduciary capacity, the disclosure of such information would prejudicially affect the economic interests of the State and harm the bank's competitive position. The SCNs/findings/reports/ associated correspondences/orders are therefore exempt from disclosure in terms of the provisions of Section 8(1)(a) (d) and (e) of the RTI Act, 2005.
2.	Complete list of banks which were issued show cause notices before fine was imposed as also referred in enclosed news clipping mentioning also default for which show cause notice was issued to each of such banks	
2.	Complete list of banks which were issued show cause notices before fine was imposed as also referred in enclosed news clippings mentioning also default for which show cause notice was issued to each of such banks.	-do-
3.	List of banks out of those in query (2) above where fine was not imposed giving details like if their reply was satisfactory etc.	Do
4.	List of banks which were ultimately found guilty and fines mentioning also amount of fine on each of the bank	The names of the 19 banks and details of penalty imposed on them are

	and criterion to decide fine on each of the bank	furnished in Annex 1. Regarding the criterion for deciding the fine, the penalties have been imposed on these banks for contravention of various directions and instructions such as failure to carry out proper due diligence on user appropriateness and suitability of products, selling derivative products to users not having proper risk Management policies, not verifying the underlying /adequacy of underlying and eligible limits under past performance route, issued by RBI in respect of derivative transactions.
5.	Is fine imposed /action taken on some other banks also other than as mentioned in enclosed news clipping	No other bank was penalized other than those mentioned in the Annex, in the context of press release No.2010-2011/1555 of April 26, 2011
6.	If yes please provide details	Not Applicable, in view of the information provided in query No.5
7.	Any other information	The query is not specific.
8.	File notings on movement of this RTI petition and on every aspect of this RTI Petition	Copy of the note is enclosed.

11. In the Second Appeal, the CIC heard the respondent via telephone and the petitioner through video conferencing. As

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directed by CIC, the petitioner filed written submission. The CIC directed the CPIO of the Petitioner to provide complete information in relation to queries 1 2 and 3 of the original application of the Respondent before 15.12.2011.

12. In Transfer Case No. 96 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	Before the Orissa High Court RBI has filed an affidavit stating that the total mark to market losses on account of currency derivatives is to the tune of more than Rs. 32,000 crores Please give bank wise breakup of the MTM Losses	The Information sought by you is exempted under Section 8(1)(a) & (e) of RTI Act, which state as under; 8(1) notwithstanding anything contained in this Act, there shall be no obligation to give any citizen (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. (e) Information available to a person in his fiduciary relationship unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.
2.	What is the latest figure available with RBI of the amount of losses suffered by Indian Business	Please refer to our response to 1 above.

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	houses? Please furnish the latest figures bank wise and customer wise.	
3.	Whether the issue of derivative losses to Indian exporters was discussed in any of the meetings of Governor/Deputy Governor or senior official of the Reserve Bank of India? If so please furnish the minutes of the meeting where the said issue was discussed	We have no information in this matter.
4.	Any other Action Taken Reports by RBI in this regard.	We have no information in this matter.

13. The CIC allowed the second appeal and directed the CPIO FED of the Petitioner to provide complete information in queries 1, 2, 9 and 10 of the original application of the Respondent before 05.01.2012. The CPIO, FED complied with the order of the CIC in so far queries 2, 9 and 10 are concerned. The RBI filed writ petition for quashing the order of CIC so far as it directs to provide complete information as per record on query No.1.

14. In Transfer Case No. 97 of 2015, the Respondent sought following information from the CPIO of National Bank for

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Agriculture and Rural Development under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	The report made by NABARD regarding 86 N.P.A. Accounts for Rs. 3806.95 crore of Maharashtra State Co-operative Bank Ltd. (if any information of my application is not available in your Office/Department/ Division/Branch, transfer this application to the concerned Office/Department/ Division/Branch and convey me accordingly as per the provision of Section 6 (3) of Right to Information Act, 2005.	Please refer to your application dated 19 April, 2011 seeking information under the RTI Act, 2005 which was received by us on 06th May, 2011. In this connection, we advise that the questions put forth by you relate to the observations made in the Inspection Report of NABARD pertaining to MSCB which are confidential in nature. Since furnishing the information would impede the process of investigation or apprehension or prosecution of offenders, disclosure of the same is exempted under Section 8(1)(h) of the Act.

15. In Transfer Case No. 98 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

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Sl. No.	Information Sought	Reply
1.	What contraventions and violations were made by SCB in respect of RBI instructions on derivatives for which RBI has imposed penalty of INR 10 lakhs on SCB in exercise of its powers vested under Section 47(1)(b) of Banking Regulation Act, 1949 and as stated in the RBI press release dated April 26, 2011 issued by Department of Communications RBI	The bank was penalized along with 18 other banks for contravention of various instructions issued by the Reserve Bank of India in respect of derivatives, such as, failure to carry out due diligence in regard to suitability of products, selling derivative products to users not having risk management policies and not verifying the underlying/adequacy of underlying and eligible limits under past performance route. The information is also available on our website under press releases.
2.	Please provide us the copies/details of all the complaints filed with RBI against SCB, accusing SCB of mis-selling derivative products, failure to carry out due diligence in regard to suitability of products, not verifying the underlying/adequacy of underlying and eligible limits under past performance and various other non-compliance of RBI instruction on derivatives. Also, please provide the above information in the following format . Date of the complaint Name of the complaint Subject matter of the complaint Brief description of the facts and	Complaints are received by Reserve Bank of India and as they constitute the third party information, the information requested by you cannot be disclosed in terms of Section 8(1)(d) of the RTI Act, 2005.

	accusations made by the complaint. Any other information available with RBI with respect to violation/contraventions by SCB of RBI instructions on derivatives.	
3.	Please provide us the copies of all the written replies/correspondences made by SCB with RBI and the recordings of all the oral submissions made by SCB to defend and explain the violations/contraventions made by SCB	The action has been taken against the bank based on the findings of the Annual Financial Inspection (AFI) of the bank which is conducted under the provisions of Sec.35 of the BR Act, 1949. The findings of the inspection are confidential in nature intended specifically for the supervised entities and for corrective action by them. The information is received by us in fiduciary capacity disclosure of which may prejudicially affect the economic interest of the state. As such the information cannot be disclosed in terms of Section 8(1) (a) and (e) of the RTI Act, 2005
4.	Please provide us the details/copies of the findings recordings, enquiry reports, directive orders file notings and/or any information on the investigations conducted by RBI against SCB in respect of non-compliance by SCB thereby establishing violations by SCBV in respect of non compliances of RBI instructions on derivatives. Please also provide the above information in the following format. . Brief violations/contraventions made by	-do-

	SCB . In brief SCB replies/defense/explanation against each violations/contraventions made by it under the show cause notice. . RBI investigations/notes/on the SCB Replies/defense/explanations for each of the violation/contravention made by SCB. . RBI remarks/findings with regard to the violations/contraventions made by SCB.	

16. In Transfer Case No. 99 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	That, what action has the department taken against scams/financial irregularities of United Mercantile Cooperative Bank Ltd as mentioned in the enclosed published news. Provide day to day progress report of the action taken.	1. Enquiry was carried out against scams/financial irregularities of United Mercantile Cooperative Bank Ltd. as mentioned in the enclosed published news. 2. Note/explanation has been called for from the bank vide our letter dated 8th July, 2011 regarding errors mentioned in enquiry report. 3. The other information asked here is based on the conclusions of Inspection Report. We

		would like to state that conclusions found during inspections are confidential and the reports are finalized on the basis of information received from banks. We received the information from banks in a confident capacity. Moreover, disclosure of such information may cause damage to the banking system and financial interests of the state. Disclosure of such type of information is exempted under Section 8(1)(a) and (e) of RTI Act, 2005.
2.	That permission for opening how many extension counters was obtained by United Mercantile Cooperative Bank Ltd from RBI. Provide details of expenditure incurred for constructing the extension counters. Had the bank followed tender system for these constructions, if yes, provide details of concerned tenders.	United Mercantile Cooperative Bank Ltd. was permitted to open 5, extension counters. The information regarding expenditure incurred on construction of these extension counters and tenders are not available with Reserve Bank of India.

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17. In Transfer Case No. 100 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	Under which Grade The George Town Co-operative Bank Ltd., Chennai, has been categorised as on 31.12.2006?	The classification of banks into various grades are done on the basis of inspection findings which is based on information/ documents obtained in a fiduciary capacity and cannot be disclosed to outsiders. It is also exempted under Section 8(1)(e) of right to Information Act, 2005.

18. The Appellate Authority observed that the CPIO, UBD has replied that the classification of banks into various grades is done on the basis of findings recorded in inspection which are based on information/documents obtained in a fiduciary capacity and cannot be disclosed to outsiders. The CPIO, UBD has stated that the same is exempted under Section 8(1)(e) of RTI Act. Apart from the fact that information sought by the appellant is sensitive and cannot be disclosed, it could also harm the competitive position of the co-operative bank. Therefore, exemption from disclosure of the Information is available under Section 8(1)(d) of the RTI Act.

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19. In Transfer Case No. 101 of 2015, with regard to Deendayal Nagri Shakari Bank Ltd, District Beed, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	Copies of complaints received by RBI against illegal working of the said bank, including violations of the Standing Orders of RBI as well as the provisions under Section 295 of the Companies Act, 1956.	Disclosure of information regarding complaints received from third parties would harm the competitive position of a third party. Further such information is maintained in a fiduciary capacity and is exempted from disclosure under Sections 8(1)(d) and (e) of the RTI Act.
2.	Action initiated by RBI against the said bank, including all correspondence between RBI and the said bank officials.	(a) A penalty of Rs. 1 lakh was imposed on Deendayal Nagri Sahakari Bank Ltd. for violation of directives on loans to directors/their relatives/concerns in which they are interested. The bank paid the penalty on 08.10.2010. (b) As regards correspondence between RBI and the, co-operative bank, it is advised that such information is maintained by RBI in

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		fiduciary capacity and hence cannot be given to outsiders. Moreover disclosure of such information may harm the interest of the bank and banking system. Such information is exempt from disclosure under Section 8(1)(a) and (e) of the RTI Act.
3.	Finding of the enquiry made by RBI, actions proposed and taken against the bank and its officials-official notings, decisions, and final orders passed and issued.	Such information is maintained by the bank in a fiduciary capacity and is obtained by RBI during the course of inspection of the bank and hence cannot be given to outsiders. The disclosure of such information would harm the competitive position of a third party. Such information is, therefore, exempted from disclosure under Section 8(1)(d) and (e) of the RTI Act. As regards action taken against the bank, are reply at S. No.2 (a) above.
4.	Confidential letters received by RBI from the Executive Director of Vaishnavi Hatcheries Pvt. Ltd. complaining about the illegal working and pressure policies of the bank and its chairman for misusing the authority of digital signature for sanction of the backdated resignations of the chairman of the bank and few other directors of the companies details of action taken by RBI on that.	See reply at S. NO.2 (a) above.

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20. The First Appellate Authority observed that the CPIO had furnished the information available on queries 2 and 4. Further information sought in queries 1 and 3 was exempted under Section 8(1)(a)(d) and (e) of the RTI Act.

21. Various transfer petitions were, therefore, filed seeking transfer of the writ petitions pending before different High Courts. On 30.5.2015, while allowing the transfer petitions filed by Reserve Bank of India seeking transfer of various writ petitions filed by it in the High Courts of Delhi and Bombay, this Court passed the following orders:

> "Notice is served upon the substantial number of respondents. Learned counsel for the respondents have no objection if Writ Petition Nos. 8400 of 2011, 8605 of 2011, 8693 of 2011, 8583 of 2011, 32 of 2012, 685 of 2012, 263 of 2012 and 1976 of 2012 pending in the High Court of Delhi at New Delhi and Writ Petition (L) Nos. 2556 of 2011, 2798 of 2011 and 4897 of 2011 pending in the High Court of Bombay are transferred to this Court and be heard together. In the meanwhile, the steps may be taken to serve upon the unserved respondents.
>
> Accordingly, the transfer petitions are allowed and the above mentioned writ petitions are withdrawn to this Court. The High Court of Delhi and the High Court of Bombay are directed to remit the entire record of the said writ petitions to this Court within four weeks."

22. Mr. T.R. Andhyarujina, learned senior counsel appearing for the petitioner-Reserve Bank of India, assailed the impugned orders passed by the Central Information Commissioner as illegal and without jurisdiction. Learned Counsel referred various provisions of The Reserve Bank of India Act, 1934; The Banking Regulation Act, 1949 and The Credit Information Companies (Regulation) Act, 2005 and made the following submissions:-

> I) The Reserve Bank of India being the statutory authority has been constituted under the Reserve Bank of India Act, 1934 for the purpose of regulating and controlling the money supply in the country. It also acts as statutory banker with the Government of India and State Governments and manages their public debts. In addition, it regulates and supervises Commercial Banks and Cooperative Banks in the country. The RBI exercises control over the volume of credit, the rate of interest chargeable on loan and advances and deposits in order to ensure the economic stability. The RBI is also vested with the powers to determine **"Banking Policy"** in the interest of banking system, monetary stability and sound economic growth.
>
> The RBI in exercise of powers of powers conferred under Section 35 of the Banking Regulation Act, 1949 conducts inspection of the banks in the country.
>
> II) The RBI in its capacity as the regulator and supervisor of the banking system of the country access to various information collected and kept by the banks. The inspecting team and the officers carry out inspections of different banks and much of the information accessed by the inspecting officers of RBI would be confidential. Referring Section 28 of the Banking Regulation Act, it was submitted that the RBI in the public interest may publish

the information obtained by it, in a consolidated form but not otherwise.

III) The role of RBI is to safeguard the economic and financial stability of the country and it has large contingent of expert advisors relating to matters deciding the economy of the entire country and nobody can doubt the bona fide of the bank. In this connection, learned counsel referred the decision of this Court in the case of ***Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India,*** 1992 Vol. 2 SCC 343.

IV) Referring the decision in the case of ***B. Suryanarayana Vs. N. 1453 The Kolluru Parvathi Co-Op. Bank Ltd.***, 1986 AIR (AP) 244, learned counsel submitted that the Court will be highly chary to enter into and interfere with the decision of Reserve Bank of India. Learned Counsel also referred to the decision in the case of ***Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India,*** 1992 Vol. 2 SCC 343 and contended that Courts are not to interfere with the economic policy which is a function of the experts.

V) That the RBI is vested with the responsibility of regulation and supervision of the banking system. As part of its supervisory role, RBI supervises and monitors the banks under its jurisdiction through on-site inspection conducted on annual basis under the statutory powers derived by it under section 35 of the Banking Regulation Act 1949, off-site returns on key financial parameters and engaging banks in dialogue through periodical meetings. RBI may take supervisory actions where warranted for violations of its guidelines/directives. The supervisory actions would depend on the seriousness of the offence, systemic implications and may range from imposition of penalty, to issue of strictures or letters of warning. While RBI recognizes and promotes enhanced transparency in banks disclosures to the public, as transparency strengthens market discipline, a bank may not be able to disclose all data that may be relevant to assess its risk profile, due to the inherent need to preserve confidentially in relation to its customers. In this light, while mandatory disclosures include certain prudential parameters such as capital adequacy, level of Non Performing Assets etc., the supervisors themselves may not disclose all or some information obtained on-site or off-site. In some countries, wherever there are supervisory concerns, "prompt corrective action" programmes are normally put in place, which may or may not be publicly disclosed. Circumspection in

> disclosures by the supervisors arises from the potential market reaction that such disclosure might trigger, which may not be desirable. Thus, in any policy of transparency, there is a need to build processes which ensure that the benefits of supervisory disclosure are appropriately weighed against the risk to stakeholders, such as depositors.
>
> VI) As per the RBI policy, the reports of the annual financial inspection, scrutiny of all banks/ financial institutions are confidential document cannot be disclosed. As a matter of fact, the annual financial inspection/ scrutiny report reflect the supervisor's critical assessment of banks and financial institutions and their functions. Disclosure of these scrutiny and information would create misunderstanding/ misinterpretation in the minds of the public. That apart, this may prove significantly counter productive. Learned counsel submitted that the disclosure of information sought for by the applicant would not serve the public interest as it will give adverse impact in public confidence on the bank. This has serious implication for financial stability which rests on public confidence. This will also adversely affect the economic interest of the State and would not serve the larger public interest.

23. The specific stand of petitioner Reserve Bank of India is that the information sought for is exempted under Section 8(1)(a), (d) and (e) of the Right to Information Act, 2005. As the regulator and supervisor of the banking system, the RBI has discretion in the disclosure of such information in public interest.

24. Mr. Andhyarujina, learned senior counsel, referred various decisions to the High Court and submitted that the disclosure of information would prejudicially affect the

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economic interest of the State. Further, if the information sought for is sensitive from the point of adverse market reaction leading to systematic crisis for financial stability.

25. Learned senior counsel put heavy reliance on the Full Bench decision of the Central Information Commissioner and submitted that while passing the impugned order, the Central Information Commissioner completely overlooked the Full Bench decision and ignored the same. According to the learned counsel, the Bench, which passed the impugned order, is bound to follow the Full Bench decision. The Commission also erred in holding that the Full Bench decision is *per incuriam* as the Full Bench has not considered the statutory provisions of Section 8 (2) of the Right to Information Act, 2005.

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26. Learned senior counsel also submitted that the Commission erred in holding that even if the information sought for is exempted under Section 8(1) (a), (d) or (e) of the Right to Information Act, Section 8(2) of the RTI Act would mandate the disclosure of the information.

27. Learned senior counsel further submitted that the basic question of law is whether the Right to Information Act, 2005 overrides various provisions of special statutes which confer confidentiality in the information obtained by the RBI.; If the Respondents are right in their contention, these statutory provisions of confidentiality in the Banking Regulation Act, 1949, the Reserve Bank of India Act, 1934 and the Credit Information Companies (Regulation) Act, 2005 would be repealed or overruled by the Right to Information Act, 2005.

28. Under the Banking Regulation Act, 1949, the Reserve Bank of India has a right to obtain information from the banks under Section 27. These information can only be in its discretion published in such consolidated form as RBI deems fit. Likewise under Section 34A production of documents of confidential nature cannot be compelled. Under sub-section (5) of Section 35, the Reserve Bank of India may carry out inspection of any bank but its report can only be disclosed if the Central Government orders the publishing of the report of the Reserve Bank of India when it appears necessary.

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29. Under Section 45E of the Reserve Bank of India Act, 1934, disclosure of any information relating to credit information submitted by banking company is confidential and under Section 45E(3) notwithstanding anything contained in any law no court, tribunal or authority can compel the Reserve Bank of India to give information relating to credit information etc.

30. Under Section 17(4) of the Credit Information Companies (Regulation) Act, 2005, credit information received by the credit information company cannot be disclosed to any person. Under Section 20, the credit information company has to adopt privacy principles and under Section 22 there cannot be unauthorized access to credit information.

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31. It was further contended that the Credit Information Companies Act, 2005 was brought into force after the Right to Information act, 2005 w.e.f. 14.12.2006. It is significant to note that Section 28 of Banking Regulation Act, 1949 was amended by the Credit Information Companies (Regulation) Act, 2005. This is a clear indication that the Right to

Information Act, 2005 cannot override credit information sought by any person in contradiction to the statutory provisions for confidentiality.

32. This is in addition to other statutory provisions of privacy in Section 44 of State Bank of India Act, 1955, Section 52, State Bank of India (Subsidiary Banks) Act, 1959, Section 13 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970.

33. The Right to Information Act, 2005 is a general provision which cannot override specific provisions relating to confidentiality in earlier legislation in accordance with the principle that where there are general words in a later statute it cannot be held that the earlier statutes are repealed altered or discarded.

34. Learned counsel submitted that Section 22 of the Right to Information Act, 2005 cannot have the effect of nullifying and repealing earlier statutes in relation to confidentiality. This has been well settled by this Court in

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a) ***Raghunath vs. state of Karnataka*** 1992(1) SCC 335 at p.348 pages 112 and 114

b) ***ICICI Bank vs. SIDCO Leather etc.***, 2006(10) SCC 452 at p. 466, paras 36 & 37

c) ***Central Bank vs. Kerala***, 2009 (4) SCC 94 at p. 132-133 para 104

d) ***AG Varadharajalu vs. Tamil Nadu***, 1998 (4) SCC 231 at p. 236 para 16.

Hence, the Right to Information Act, 2005 cannot override the provisions for confidentiality conferred on the RBI by the earlier statutes referred to above.

35. The Preamble of the RTI Act, 2005 itself recognizes the fact that since the revealing of certain information is likely to conflict with other public interests like "the preservation of confidentiality of sensitive information", there is a need to harmonise these conflicting interests. It is submitted that certain exemptions were carved out in the RTI Act to harmonise these conflicting interests. This Court in ***Central Board of Secondary Education and Anr. vs. Aditya Bandopadhyay and Ors,*** (2011)8 SCC 497, has observed as under:-

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> "When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the Governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualise and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act, that is, Section 8 of the Freedom to Information Act, 2002. The courts and Information Commissions enforcing the provisions of the RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting Section 8 and the other provisions of the Act."

36. Apart from the legal position that the Right to Information Act, 2005 does not override statutory provisions of confidentiality in other Act, it is submitted that in any case Section 8(1)(a) of the Right to Information Act, 2005 states that there is no obligation to give any information which pre-judiciously affects the economic interests of the States. Disclosure of such vital information relating to banking would pre-judiciously affect the economic interests of the State. This was clearly stated by the Full Bench of the Central Information Commission by its Order in the case of Ravin Ranchchodlal Patel (supra). Despite this emphatic ruling individual Commissioners of the Information have disregarded it by

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holding that the decision of the Full Bench was *per incurium* and directed disclosure of information.

37. Other exceptions in Section 8, viz 8(1)(a)(d), 8(1)(e) would also apply to disclosure by the RBI and banks. In sum, learned senior counsel submitted that the RBI cannot be directed to disclose information relating to banking under the Right to Information Act, 2005.

38. Mr. Prashant Bhushan, learned counsel appearing for the respondents in Transfer Case Nos.94 & 95 of 2015, began his arguments by referring the Preamble of the Constitution and submitted that through the Constitution it is the people who have created legislatures, executives and the judiciary to exercise such duties and functions as laid down in the constitution itself.

39. The right to information regarding the functioning of public institutions is a fundamental right as enshrined in Article 19 of the Constitution of India. This Hon'ble Court has declared in a plethora of cases that the most important value

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for the functioning of a healthy and well informed democracy is transparency. Mr. Bhushan referred Constitution Bench judgment of this Court in the case of ***State of U.P. vs. Raj Narain,*** AIR 1975 SC 865, and submitted that it is a Government's 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 functionaries. 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 public.

40. In the case of ***S.P. Gupta v. President of India and Ors.***, AIR 1982 SC 149, a seven Judge Bench of this Court made the following observations regarding the right to information:-

> "There is also in every democracy a certain amount of public suspicion and distrust of Government, varying of course from time to time according to its performance,

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> which prompts people to insist upon maximum exposure of its functioning. It is axiomatic that every action of the Government must be actuated by public interest but even so we find cases, though not many, where Governmental action is taken not for public good but for personal gain or other extraneous considerations. Sometimes Governmental action is influenced by political and other motivations and pressures and at times, there are also instances of misuse or abuse of authority on the part of the executive. Now, if secrecy were to be observed in the functioning of Government and the processes of Government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would all be shrouded in the veil of secrecy without any public accountability. But if there is an open Government with means of information available to the public, there would be greater exposure of the functioning of Government and it would help to assure the people a better and more efficient administration. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open Government is clean Government and a powerful safeguard against political and administrative aberration and inefficiency."

41. In the case of the ***Union of India vs. Association for Democratic Reforms***, AIR 2002 SC 2112, while declaring that it is part of the fundamental right of citizens under Article 19(1)(a) to know the assets and liabilities of candidates contesting election to the Parliament or the State Legislatures, a three Judge Bench of this Court held unequivocally that:- "The right to get information in a democracy is recognized all throughout and is a natural right flowing from the concept of democracy (Para 56)." Thereafter, legislation was passed

amending the Representation of People Act, 1951 that candidates need not provide such information. This Court in the case of ***PUCL vs. Union of India***, (2003) 4 SCC 399, struck down that legislation by stating: "It should be properly understood that the fundamental rights enshrined in the Constitution such as, right to equality and freedoms have no fixed contents. From time to time, this Court has filled in the skeleton with soul and blood and made it vibrant. Since the last more than 50 years, this Court has interpreted Articles 14, 19 and 21 and given meaning and colour so that the nation can have a truly republic democratic society."

42. The RTI Act, 2005, as noted in its very preamble, does not create any new right but only provides machinery to effectuate the fundamental right to information. The institution of the CIC and the SICs are part of that machinery. The preamble also inter-alia states "... democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to

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hold Governments and their instrumentalities accountable to the governed."

43. The submission of the RBI that exceptions be carved out of the RTI Act regime in order to accommodate provisions of RBI Act and Banking Regulation Act is clearly misconceived. RTI Act, 2005 contains a clear provision (Section 22) by virtue of which it overrides all other Acts including Official Secrets Act. Thus, notwithstanding anything to the contrary contained in any other law like RBI Act or Banking Regulation Act, the RTI Act, 2005 shall prevail insofar as transparency and access to information is concerned. Moreover, the RTI Act 2005, being a later law, specifically brought in to usher transparency and to transform the way official business is conducted, would have to override all earlier practices and laws in order to achieve its objective. The only exceptions to access to information are contained in RTI Act itself in Section 8.

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44. In T.C.No.94 of 2015, the RTI applicant Mr. P.P. Kapoor had asked about the details of the loans taken by the industrialists that have not been repaid, and he had asked about the names of the top defaulters who have not repaid their loans to public sector banks. The RBI resisted the disclosure of the information claiming exemption under Section 8(1) (a) and 8(1)(e) of the RTI Act on the ground that disclosure would affect the economic interest of the country, and that the information has been received by the RBI from the banks in fiduciary capacity. The CIC found these arguments made by RBI to be totally misconceived in facts and in law, and held that the disclosure would be in public interest.

45. In T.C.No.95 of 2015, the RTI applicant therein Mr. Subhash Chandra Agrawal had asked about the details of the show cause notices and fines imposed by the RBI on various banks. The RBI resisted the disclosure of the information claiming exemption under Section 8(1)(a),(d) and 8(1) (e) of the RTI Act on the ground that disclosure would affect the

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economic interest of the country, the competitive position of the banks and that the information has been received by RBI in fiduciary capacity. The CIC, herein also, found these arguments made by RBI to be totally misconceived in facts and in law and held that the disclosure would be in public interest.

46. In reply to the submission of the petitioner about fiduciary relationship, learned counsel submitted that the scope of Section 8(1)(e) of the RTI Act has been decided by this Court in ***Central Board of Secondary Education vs. Aditya Bandopadhyay***, (2011) 8 SCC 497, wherein, while rejecting the argument that CBSE acts in a fiduciary capacity to the students, it was held that:

> "…In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the word 'information available to a person in his fiduciary relationship' are used in Section 8(1) (e) of the RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the action of the fiduciary."

47. We have extensively heard all the counsels appearing for the petitioner Banks and respondents and examined the law and the facts.

48. While introducing the Right to Information Bill, 2004 a serious debate and discussion took place. The then Prime Minister while addressing the House informed that the RTI Bill is to provide for setting out practical regime of right to information for people, to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority. The new legislation would radically alter the ethos and culture of secrecy through ready sharing of information by the State and its agencies with the people. An era of transparency and accountability in governance is on the anvil. Information, and more appropriately access to information would empower and enable people not only to make informed choices but also participate effectively in decision making processes. Tracing the origin of the idea of the then Prime Minister who had stated, "Modern societies are information

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societies. Citizens tend to get interested in all fields of life and demand information that is as comprehensive, accurate and fair as possible." In the Bill, reference has also been made to the decision of the Supreme Court to the effect that Right to Information has been held as inherent in Article 19 of our Constitution, thereby, elevating it to a fundamental right of the citizen. The Bill, which sought to create an effective mechanism for easy exercise of this Right, was held to have been properly titled as "Right to Information Act". The Bill further states that a citizen has to merely make a request to the concerned Public Information Officer specifying the particulars of the information sought by him. He is not required to give any reason for seeking information, or any other personal details except those necessary for contacting him. Further, the Bill states:-

> "The categories of information exempted from disclosure are a bare minimum and are contained in clause 8 of the Bill. Even these exemptions are not absolute and access can be allowed to them in public interest if disclosure of the information outweighs the harm to the public authorities. Such disclosure has been permitted even if it is in conflict with the provisions of the Official Secrets Act, 1923. Moreover, barring two categories that relate to information disclosure – which may affect

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> sovereignty and integrity of India etc., or information relating to Cabinet papers etc.-all other categories of exempted information would be disclosed after twenty years.
>
> There is another aspect about which information is to be made public. We had a lengthy discussion and it is correctly provided in the amendment under clause 8 of the Bill. The following information shall be exempted from disclosure which would prejudicially affect the sovereignty and integrity of India; which has been expressly forbidden; which may result in a breach of privileges of Parliament or the Legislature; and also information pertaining to defence matters. They are listed in clause 8 (a) to (g). There are exceptions to this clause. Where it is considered necessary that the information will be divulged in the interest of the State, that will be done. There must be transparency in public life. There must be transparency in administration and people must have a right to know what has actually transpired in the secretariat of the State as well as the Union Ministry. A citizen will have a right because it will be safe to prevent corruption. Many things are done behind the curtain. Many shoddy deals take place in the secretariats of the Central and State Governments and the information will always be kept hidden. Such practice should not be allowed in a democratic country like ours. Ours is a republic. The citizenry should have a right to know what transpired in the secretariat. Even Cabinet papers, after a decision has been taken, must be divulged as per the provisions of this amendment. It cannot be hidden from the knowledge of others."

49. Addressing the House, it was pointed out by the then Prime Minister that in our country, Government expenditure both at the Central and at the level of the States and local bodies, account for nearly 33% of our Gross National Product. At the same time, the socio-economic imperatives require our

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Government to intervene extensively in economic and social affairs. Therefore, the efficiency and effectiveness of the government processes are critical variables, which will determine how our Government functions and to what extent it is able to discharge the responsibilities entrusted. It was pointed out that there are widespread complaints in our country about wastefulness of expenditure, about corruption, and matter which have relations with the functioning of the Government. Therefore, it was very important to explore new effective mechanism to ensure that the Government will purposefully and effectively discharge the responsibilities entrusted to it.

50. Finally the Right to Information Act was passed by the Parliament called "The Right to Information Act, 2005". The Preamble states:-

> "An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS 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;

AND WHEREAS 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 WHEREAS it is necessary to harmonise these conflicting interest while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

51. Section 2 of the Act defines various authorities and the words. Section 2(j) defines right to information as under :-

"2(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

(i) inspection of work, documents, records;

(ii) taking notes, extracts, or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"

52. Section 3 provides that all citizens shall have the right to information subject to the provisions of this Act. Section 4 makes it obligatory on all public authorities to maintain records in the manner provided therein. According to Section 6, a person who desires to obtain any information under the Act shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made to the competent authority specifying the particulars of information sought by him or her. Sub-section (ii) of Section 6 provides that the applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. Section 7 lays down the procedure for disposal of the request so made by the person under Section 6 of the Act. Section 8, however, provides certain exemption from disclosure of information. For better appreciation Section 8 is quoted hereinbelow:-

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"8. Exemption from disclosure of information.—
(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—
(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;
(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
(f) information received in confidence from foreign government;
(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
(h) information which would impede the process of investigation or apprehension or prosecution of offenders;
(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;
(j) information which relates to personal information the disclosure of which has not relationship to any

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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: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."

SUPREME COURT JUDGMENT

53. The information sought for by the respondents from the petitioner-Bank have been denied mainly on the ground that such information is exempted from disclosure under Section 8(1)(a)(d) and (e) of the RTI Act.

54. Learned counsel appearing for the petitioner-Bank mainly relied upon Section 8(1)(e) of the RTI Act taking the

stand that the Reserve Bank of India having fiduciary relationship with the other banks and that there is no reason to disclose such information as no larger public interest warrants such disclosure. The primary question therefore, is, whether the Reserve Bank of India has rightly refused to disclose information on the ground of its fiduciary relationship with the banks.

55. The Advanced Law Lexicon, 3rd Edition, 2005, defines fiduciary relationship as "a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the fiduciary relationship. Fiduciary relationship usually arise in one of the four situations (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act or give advice to another on matters falling within the scope of the relationship, or (4) when there is specific relationship that has

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traditionally be recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer."

56. The scope of the fiduciary relationship consists of the following rules:

> "(i) No Conflict rule- A fiduciary must not place himself in a position where his own interests conflicts with that of his customer or the beneficiary. There must be "real sensible possibility of conflict.
> (ii) No profit rule- a fiduciary must not profit from his position at the expense of his customer, the beneficiary;
> (iii) 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. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer's affairs
> (iv) Duty of confidentiality- a fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person."

57. The term fiduciary relationship has been well discussed by this Court in the case of ***Central Board of Secondary Education and Anr. vs. Aditya Bandopadhyay and Ors.*** (supra). In the said decision, their Lordships referred various authorities to ascertain the meaning of the term fiduciary relationship and observed thus:-

"20.1) Black's Law Dictionary (7th Edition, Page 640) defines 'fiduciary relationship' thus:

"A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships – such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client – require the highest duty of care. Fiduciary relationships usually arise in one of four situations : (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer."

20.2) The American Restatements (Trusts and Agency) define 'fiduciary' as one whose intention is to act for the benefit of another as to matters relevant to the relation between them. The Corpus Juris Secundum (Vol. 36A page 381) attempts to define fiduciary thus :

"A general definition of the word which is sufficiently comprehensive to embrace all cases cannot well be given. The term is derived from the civil, or Roman, law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the transaction, refers to the integrity, the fidelity, of the party trusted, rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others, and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations.

The word 'fiduciary,' as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee, with respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires; a person having the duty, created by his undertaking, to act primarily for

another's benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, trust, or estate. Some examples of what, in particular connections, the term has been held to include and not to include are set out in the note."

20.3) Words and Phrases, Permanent Edition (Vol. 16A, Page 41) defines 'fiducial relation' thus :

"There is a technical distinction between a 'fiducial relation' which is more correctly applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, and other similar relationships, and 'confidential relation' which includes the legal relationships, and also every other relationship wherein confidence is rightly reposed and is exercised.

Generally, the term 'fiduciary' applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another, as well as technical fiduciary relations."

20.4) In Bristol and West Building Society vs. Mothew [1998 Ch. 1] the term fiduciary was defined thus :

"A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty..... A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal."

20.5) In Wolf vs. Superior Court [2003 (107) California Appeals, 4th 25] the California Court of Appeals defined fiduciary relationship as under :

"any relationship existing between the parties to the transaction where one of the parties is duty bound to act with utmost good faith for the benefit of the other party. Such a relationship ordinarily arises where confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interests of the other party without the latter's knowledge and consent."

21. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and expected not to disclose the thing or information to any third party. There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are : a partner vis-à-vis another partner and an employer vis-à-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee

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> furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer."

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

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59. RBI is a statutory body set up by the RBI Act as India's Central Bank. It is a statutory regulatory authority to oversee the functioning of the banks and the country's banking sector. Under Section 35A of the Banking Regulation Act, RBI has been given powers to issue any direction to the banks in

public interest, in the interest of banking policy and to secure proper management of a banking company. It has several other far-reaching statutory powers.

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

61. The baseless and unsubstantiated argument of the RBI that the disclosure would hurt the economic interest of the country is totally misconceived. In the impugned order, the CIC has given several reasons to state why the disclosure of

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the information sought by the respondents would hugely serve public interest, and non-disclosure would be significantly detrimental to public interest and not in the economic interest of India. RBI's argument that if people, who are sovereign, are made aware of the irregularities being committed by the banks then the country's economic security would be endangered, is not only absurd but is equally misconceived and baseless.

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

purview of being shared in fiduciary relationship. One of the main characteristic of a Fiduciary relationship is "Trust and Confidence". Something that RBI and the Banks lack between them.

63. In the present case, we have to weigh between the public interest and fiduciary relationship (which is being shared between the RBI and the Banks). Since, RTI Act is enacted to empower the common people, the test to determine limits of Section 8 of RTI Act is whether giving information to the general public would be detrimental to the economic interests of the country? To what extent the public should be allowed to get information?

64. In the context of above questions, it had long since come to our attention that the Public Information Officers (PIO) under the guise of one of the exceptions given under Section 8 of RTI Act, have evaded the general public from getting their hands on the rightful information that they are entitled to.

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65. And in this case the RBI and the Banks have sidestepped the General public's demand to give the requisite information on the pretext of "Fiduciary relationship" and "Economic Interest". This attitude of the RBI will only attract more suspicion and disbelief in them. RBI as a regulatory authority should work to make the Banks accountable to their actions.

66. Furthermore, the RTI Act under Section 2(f) clearly provides that the inspection reports, documents etc. fall under the purview of "Information" which is obtained by the public authority (RBI) from a private body. Section 2(f), reads thus:

> "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

67. From reading of the above section it can be inferred that the Legislature's intent was to make available to the general public such information which had been obtained by the public authorities from the private body. Had it been the case

where only information related to public authorities was to be provided, the Legislature would not have included the word "private body". As in this case, the RBI is liable to provide information regarding inspection report and other documents to the general public.

68. Even if we were to consider that RBI and the Financial Institutions shared a "Fiduciary Relationship", Section 2(f) would still make the information shared between them to be accessible by the public. The facts reveal that Banks are trying to cover up their underhand actions, they are even more liable to be subjected to public scrutiny.

69. We have surmised that many Financial Institutions have resorted to such acts which are neither clean nor transparent. The RBI in association with them has been trying to cover up their acts from public scrutiny. It is the responsibility of the RBI to take rigid action against those Banks which have been practicing disreputable business practices.

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70. From the past we have also come across financial institutions which have tried to defraud the public. These acts are neither in the best interests of the Country nor in the interests of citizens. To our surprise, the RBI as a Watch Dog should have been more dedicated towards disclosing information to the general public under the Right to Information Act.

71. We also understand that the RBI cannot be put in a fix, by making it accountable to every action taken by it. However, in the instant case the RBI is accountable and as such it has to provide information to the information seekers under Section 10(1) of the RTI Act, which reads as under:

> "Section 10(1) Severability —Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information."

72. It was also contended by learned senior counsel for the RBI that disclosure of information sought for will also go

against the economic interest of the nation. The submission is wholly misconceived.

73. Economic interest of a nation in most common parlance are the goals which a nation wants to attain to fulfil its national objectives. It is the part of our national interest, meaning thereby national interest can't be seen with the spectacles(glasses) devoid of economic interest.

74. It includes in its ambit a wide range of economic transactions or economic activities necessary and beneficial to attain the goals of a nation, which definitely includes as an objective economic empowerment of its citizens. It has been recognized and understood without any doubt now that one of the tool to attain this goal is to make information available to people. Because an informed citizen has the capacity to reasoned action and also to evaluate the actions of the legislature and executives, which is very important in a participative democracy and this will serve the nation's interest better which as stated above also includes its

economic interests. Recognizing the significance of this tool it has not only been made one of the fundamental rights under Article 19 of the Constitution but also a Central Act has been brought into effect on 12th October 2005 as the Right to Information Act, 2005.

75. The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy.

76. But neither the Fundamental Rights nor the Right to Information have been provided in absolute terms. The fundamental rights guaranteed under Article 19 Clause 1(a) are restricted under Article 19 clause 2 on the grounds of national and societal interest. Similarly Section 8, clause 1 of Right to Information Act, 2005, contains the exemption provisions where right to information can be denied to public in the name of national security and sovereignty, national

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economic interests, relations with foreign states etc. Thus, not all the information that the Government generates will or shall be given out to the public. It is true that gone are the days of closed doors policy making and they are not acceptable also but it is equally true that there are some information which if published or released publicly, they might actually cause more harm than good to our national interest… if not domestically it can make the national interests vulnerable internationally and it is more so possible with the dividing line between national and international boundaries getting blurred in this age of rapid advancement of science and technology and global economy. It has to be understood that rights can be enjoyed without any inhibition only when they are nurtured within protective boundaries. Any excessive use of these rights which may lead to tampering these boundaries will not further the national interest. And when it comes to national economic interest, disclosure of information about currency or exchange rates, interest rates, taxes, the regulation or supervision of banking, insurance and other financial institutions, proposals

for expenditure or borrowing and foreign investment could in some cases harm the national economy, particularly if released prematurely. However, lower level economic and financial information, like contracts and departmental budgets should not be withheld under this exemption. This makes it necessary to think when or at what stage an information is to be provided i.e., the appropriate time of providing the information which will depend on nature of information sought for and the consequences it will lead to after coming in public domain.

77. In one of the case, the respondent S.S. Vohra sought certain information in relation to the Patna Branch of ICICI Bank and advisory issued to the Hong Kong Branch of ICICI Bank. The contention of the respondent was that the Finance Minister had made a written statement on the floor of the House on 24.07.2009 that some banks like SBI, ICICI, Bank of Baroda, Dena Bank etc., were violating FEMA Guidelines for opening of accounts and categorically mentioned that the Patna Branch of ICICI Bank Ltd. had opened some fictitious

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accounts which were opened by fraudsters and hence an advisory note was issued to the concerned branch on December 2007 for its irregularities. The Finance Minister even mentioned that in the year 2008 the ICICI Bank Ltd. was also warned for alleged irregular dealings in securities in Hong Kong. Hence, the respondent sought such advisory note as issued by the RBI to ICICI Bank. The Central Information Commissioner in the impugned order considered the RBI Master Circular dated 01.07.2009 to all the commercial banks giving various directions and finally held as under :-

> "It has been contended by the Counsel on behalf of the ICICI Bank Limited that an advisory note is prepared after reliance on documents such as Inspection Reports, Scrutiny reports etc. and hence, will contain the contents of those documents too which are otherwise exempt from disclosure. We have already expressed our view in express terms that whether or not an Advisory Note shall be disclosed under the RTI Act will have to be determined on case by case basis. In some other case, for example, there may be a situation where some contents of the Advisory Note may have to be severed to such an extent that details of Inspection Reports etc. can be separated from the Note and then be provided to the RTI Applicant. Section 10 of the RTI Act leaves it open to decide each case on its merits after having satisfied ourselves whether an Advisory Note needs to be provided as it is or whether some of its contents may be severed since they may be exempted per se under the RTI Act. However, we find no reason, whatsoever, to apply Section 10 of the RTI Act in order to severe the contents of the Advisory Note issued by the RBI to the ICICI Bank Limited as the matter has already been placed on the floor of the Lok Sabha by the Hon'ble Finance Minister.

> This is a matter of concern since it involves the violation of policy Guidelines initiated by the RBI and affects the public at large. Transparency cannot be brought overnight in any system and one can hope to witness accountability in a system only when its end users are well-educated, well-informed and well-aware. If the customers of commercial banks will remain oblivious to the violations of RBI Guidelines and standards which such banks regularly commit, then eventually the whole financial system of the country would be at a monumental loss. This can only be prevented by suo motu disclosure of such information as the penalty orders are already in public domain."

78. Similarly, in another case the respondent Jayantilal N. Mistry sought information from the CPIO, RBI in respect of a Cooperative Bank viz. Saraspur Nagrik Sahkari Bank Limited related to inspection report, which was denied by the CPIO on the ground that the information contained therein were received by RBI in a fiduciary capacity and are exempt under Section 8(1)(e) of RTI Act. The CIC directed the petitioner to furnish that information since the RBI expressed their willingness to disclose a summary of substantive part of the inspection report to the respondent. While disposing of the appeal the CIC observed:-

> "Before parting with this appeal, we would like to record our observations that in a rapidly unfolding economics scenario, there are public institutions, both in the banking and non-banking sector, whose activities have not served public interest. On the

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> contrary, some such institutions may have attempted to defraud the public of their moneys kept with such institutions in trust. RBI being the Central Bank is one of the instrumentalities available to the public which as a regulator can inspect such institutions and initiate remedial measures where necessary. It is important that the general public, particularly, the share holders and the depositors of such institutions are kept aware of RBI's appraisal of the functioning of such institutions and taken into confidence about the remedial actions initiated in specific cases. This will serve the public interest. The RBI would therefore be well advised to be proactive in disclosing information to the public in general and the information seekers under the RTI Act, in particular. The provisions of Section 10(1) of the RTI Act can therefore be judiciously used when necessary to adhere to this objective."

79. In another case, where the respondent P.P. Kapoor sought information *inter alia* about the details of default in loans taken from public sector banks by industrialists, out of the list of defaulters, top 100 defaulters, names of the businessmen, firm name, principal amount, interest amount, date of default and date of availing the loan etc. The said information was denied by the CPIO mainly on the basis that it was held in fiduciary capacity and was exempt from disclosure of such information. Allowing the appeal, the CIC directed for the disclosure of such information. The CIC in the impugned order has rightly observed as under:-

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"I wish government and its instrumentalities would remember that all information held by them is owned by citizens, who are sovereign. Further, it is often seen that banks and financial institutions continue to provide loans to industrialists despite their default in repayment of an earlier loan." This Court in ***UP Financial Corporation vs. Gem Cap India Pvt. Ltd***., AIR 1993 SC 1435 has noted that :

> "Promoting industrialization at the cost of public funds does not serve the public interest, it merely amounts to transferring public money to private account'. Such practices have led citizens to believe that defaulters can get away and play fraud on public funds. There is no doubt that information regarding top industrialists who have defaulted in repayment of loans must be brought to citizens' knowledge; there is certainly a larger public interest that could be served on ....disclosure of the same. In fact, information about industrialists who are loan defaulters of the country may put pressure on such persons to pay their dues. This would have the impact of alerting Citizens about those who are defaulting in payments and could also have some impact in shaming them.

RBI had by its Circular DBOD No. BC/CIS/47/20.16.002/94 dated April 23, 1994 directed all banks to send a report on their defaulters, which it would share with all banks and financial institutions, with the following objectives:

1) To alert banks and financial institutions (FIs) and to put them on guard against borrowers who have defaulted in their dues to lending institutions;

2) To make public the names of the borrowers who have defaulted and against whom suits have been filed by banks/ FIs."

80. At this juncture, we may refer the decision of this Court in ***Mardia Chemicals Limited vs. Union of India***, (2004) 4 SCC 311, wherein this court while considering the validity of SARFAESI Act and recovery of non-performing assets by banks and financial institutions in India, held :-

> "……it may be observed that though the transaction may have a character of a private contract yet the question of great importance behind such transactions as a whole having far reaching effect on the economy of the country cannot be ignored, purely restricting it to individual transactions more particularly when financing is through banks and financial institutions utilizing the money of the people in general namely, the depositors in the banks and public money at the disposal of the financial institutions. Therefore, wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purposes, individual rights may have to give way. Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact in the socio- economic drive of the country……."

81. In rest of the cases the CIC has considered elaborately the information sought for and passed orders which in our opinion do not suffer from any error of law, irrationality or arbitrariness.

82. We have, therefore, given our anxious consideration to the matter and came to the conclusion that the Central Information Commissioner has passed the impugned orders giving valid reasons and the said orders, therefore, need no interference by this Court.

83. There is no merit in all these cases and hence they are dismissed.

.....J.
(M.Y. Eqbal)

.....J.
(C. Nagappan)

New Delhi
December 16, 2015

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