

**THE HIGH COURT OF SIKKIM : GANGTOK**  
(Civil Extra Ordinary Jurisdiction)

DATED: 30<sup>th</sup> April, 2018

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**SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**  
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W.P.(C) No. 31 of 2017

**Petitioner** : Shri Sancha Bahadur Subba,  
Son of Late Aitabir Subba,  
Aged about 54 years,  
Permanent resident of Upper Burtuk,  
Above Helipad,  
Gangtok,  
Sikkim – 737101.

**versus**

**Respondents** : 1. State of Sikkim,  
Through the Chief Secretary,  
Government of Sikkim,  
Gangtok,  
Sikkim.

2. The SPIO/Joint Secretary,  
Department of Personnel, Adm. Reforms,  
Training & Public Grievances (DoPART),  
Government of Sikkim,  
Gangtok,  
Sikkim.

3. The First Appellate Authority/Special Secretary,  
DoPART,  
Government of Sikkim,  
Gangtok,  
Sikkim.

4. The Chief Information Commissioner,  
Sikkim Information Commission,  
Lower Secretariat,  
Opposite Super Market,  
Gangtok,  
Sikkim.

5. Shri Prem Bahadur Subba,  
S/o Late Padam Singh Subba,

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Resident of Sichey,  
Way to Ranka Road,  
Namastay Building,  
Gangtok,  
Sikkim.

**Writ Petition under Articles 226 and 227 of  
the Constitution of India.**

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**Appearance**

Mr. Raghavendra Kumar, Advocate for the Appellant.

Mr. Karma Thinlay, Senior Government Advocate with Mr. S.K. Chettri, Assistant Government Advocate for the State-Respondents No. 1 to 3.

Mrs. Tshering Choden Bhutia, Advocate for the Respondent No.4.

Mr. S.S. Hamal, Advocate with Ms. Sabina Chettri, Ms. Priyanka Chettri and Ms. Saroja Chettri, Advocates for the Respondent No.5.

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**J U D G M E N T**

**Meenakshi Madan Rai, J.**

**1.** The Petitioner by filing the instant Writ Petition seeks quashing of the following Orders of different authorities under the Right to Information Act, 2005, being;

(a) Order dated 09.03.2017 passed in Appeal No. 54/SIC/2016 (Annexure P-6),

(b) Order dated 10.09.2016 passed in F.A. No. 02/2016 (Annexure P-4) and

(c) Order dated 25.06.2016 in RTI Application I.D. No. 116/GoS/DoP/RTI/2016 dated 14.6.2016 (Annexure P-2).

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**2.** The Petitioner also seeks a declaration that the information submitted by the Government Servants/Public Authorities under Rule 19 of the Sikkim Government Servants (Conduct) Rules, 1981, is public information and not an exception within Section 8(1)(j) of the Right to Information Act, 2005 (hereinafter 'RTI Act'). That, a direction be issued to the State Public Information Officer (hereinafter 'SPIO'), Department of Personnel, Administrative Reforms and Training, Government of Sikkim, to supply the information sought by the Petitioner in his Application within the time frame stipulated under the RTI and not later than a month of the order and other directions as deemed proper by this Court.

**3.** The Petitioner's case as it unravels is that, he is the Principal Director, Finance and Accounts, presently posted in the Police Department, Government of Sikkim. The Respondent No.5 is a retired Secretary of the Energy and Power Department, Government of Sikkim, having retired in April, 2015. By an Application dated 14.06.2016, submitted under the RTI Act to the SPIO, Department of Personnel, Adm., Reforms & Training, Government of Sikkim, Gangtok, the Petitioner sought the following information pertaining to the Respondent No.5;

- (a) *Date of Appointment and Date of Retirement of Shri Prem Bahadur Subba.*
- (b) *All sources of income as declared by Shri Prem Bahadur Subba as per Rule 19 of the Sikkim Government Servants (Conduct) Rules, 1981 and*
- (c) *Declaration of assets and liabilities and all inherited and acquired properties situated within and outside the State*

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*of Sikkim as declared by Shri Prem Bahadur Subba, as per Rule 19 of the Sikkim Government Servant (Conduct) Rules, 1981 (hereinafter 'SGC Conduct Rules 1981').*

4. The Respondent No.2 vide his Order dated 25.6.2016 supplied the information sought at (a) *supra* but withheld information pertaining to query No. (b) and (c), citing the reason that the Respondent No. 5 being a third-party had declined consent to the supply of such information. Aggrieved thereof, the Petitioner preferred an Appeal before the First Appellate Authority, Respondent No.3, relying on the Order of the Chief Information Commissioner of India, in the matter of **Mr. Jayant G. Joshi vs. Mr. M.B. Patel**<sup>1</sup> wherein it was, *inter alia*, held that disclosure of information such as assets of a Public Servant which is routinely collected by the Public Authority and routinely provided by the Public Servant cannot be construed as an invasion on the privacy of an individual. However, by letter dated 24.8.2016 issued by the Respondent No.2, the Petitioner was informed that his First Appeal was disposed of ex-parte on 22.08.2016. In the face of protests by the Petitioner, a re-hearing was directed whereby the Respondent No.3 upheld the Order of the Respondent No.2, reasoning that the Petitioner did not succeed in establishing larger public interest as envisaged under Section 8(1)(j) of the RTI Act. Assailing this Order, an Appeal was preferred before the Respondent No. 4 drawing strength from the decision in **State of U.P. vs. Raj Narain**<sup>2</sup>, besides contending that the regular submission

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<sup>1</sup> (CIC/SG/A/2011/003103/16921)

<sup>2</sup> (1975) 4 SCC 428

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of information of assets and liabilities, including sources of income by all government servants including the Petitioner was a requisite under Rule 19 of the Sikkim Government Servant (Conduct) Rules, 1981. The Appellate Authority was also informed that the Petitioner was already pursuing a Complaint/Representation in the matter of corruption against the Respondent No.5 through departmental proceedings. Respondent No.4 concluded that query No. (b) and (c) of the Application of the Petitioner (extracted hereinabove) was personal information which were confidential and on the failure of the Petitioner to satisfy and convince the Commission that there was *prima facie* a case of corruption against the third-party, rejected the Appeal vide Order dated 09.03.2017. Hence, this Petition wherein it is, *inter alia*, contended that the Respondents No. 2, 3 and 4, being Public Authorities within the meaning of Section 2(h) of the RTI Act, are bound to ensure maximum disclosure and minimum exemptions in providing the information necessary for transparency and accountability and to contain corruption as envisaged under the RTI Act and not to muzzle, throttle or minimise disclosure.

**5.** Advancing his arguments for the Petitioner, learned Counsel sought to convince this Court that the disclosure of the assets of the Respondent No.5 would reveal whether there was large scale corruption or whether the assets of the Respondent No.5 were equivalent to his income. It was next contended that the exemptions carved under Section 8(1) of the RTI Act, vests discretion on the Public Authority to hold that personal information of a third party can be supplied to the person seeking information, when the

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disclosure outweighs the harm to protected interests and has some relationship to any public activity or interest and when the authority is satisfied that larger public interest justifies the disclosure of such information. The Respondents No. 2, 3 and 4 failed to appreciate this context and erred in concluding that there was no larger public interest involved. Inviting the attention of this Court to Section 8(2) of the RTI Act, it was contended that the provision commences with a *non obstante* clause overarching the exemptions carved out under Section 8(1) of the RTI Act. Learned Counsel for the Petitioner would further canvass that the information sought by the Petitioner was not third party information since it is public record maintained in the regular course of governance, to ensure transparency and contain corruption. In this context, attention was also drawn to Rule 19 of the Sikkim Government Servants' Conduct Rules, 1981 (for short 'SGS Rules'), which provides for yearly declaration of assets and liabilities and sources of income of a Government servant commencing from his appointment till superannuation. That, the Respondent No.3 erroneously relied upon the ratio in ***Girish Chandra Deshpande vs. Central Information Commissioner and Others***<sup>3</sup>, which in fact provides that when in a given case the Central Public Information Officer or the SPIO or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed. Learned Counsel would argue that the ratio did not conclude that routine declaration of assets and liabilities by a Public Servant to a Public

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<sup>3</sup> (2013) 1 SCC 212

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Authority in the course of public service is third-party confidential information within the ambit of Section 8(1)(j) of the RTI Act, as a public servant is expected to be accountable in the discharge of his duties and the privacy of a public servant cannot be of a larger concern than the public interest in transparency and accountability of governance in containing corruption. It was further contended that the Respondent No.4 failed to consider the ratio in the ***State of Karnataka vs. Selvi J. Jayalalitha and others***<sup>4</sup> and ***State of U.P. vs. Raj Narayan***<sup>5</sup>, that the question of corruption was of larger public interest. Thus, the impugned orders suffer from illegality and perversity.

**6.** Countering the contentions advanced by the Petitioner, learned Counsel for the Respondents No.1, 2 and 3, put forth the arguments that the Petitioner was unsuccessful in establishing that the information sought for was in larger public interest. That, in fact the decision in ***Girish Ramchandra Deshpande*** (supra) would aptly be applicable to the facts of the instant case, as the assets of an employee was being sought thereunder but in appeal the Hon'ble Supreme Court declined to allow the application. That, the information sought herein is purely personal and no public interest can be envisaged, as a result this Petition deserves a dismissal.

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<sup>4</sup> (2017-SCC Online SC 134)

<sup>5</sup> (1975) 4 SCC 428

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**7.** None appeared for the Respondent No. 4 to advance verbal submissions, however in his Counter-Affidavit while adverting to Section 3, Section 11, Section 15, Section 17, Section 18, Section 8(1)(j), Section 19, Section 23 of the RTI Act, the Respondent No.4 would aver that the information sought for by the Petitioner is personal information pertaining to Respondent No.5 and no larger public interest was indicated which justified the disclosure of such information. That, the expression 'public interest' like public purpose is not capable of any precise definition, however, public interest has to be construed keeping in mind the balance between right to privacy and right to information and the decision based on objective satisfaction, ensuring that larger public interest outweighs unwarranted invasion of privacy. That, no evidence was shown to indicate that the complaint of the Petitioner had been accepted by any competent authority including the Court nor has any proceeding of corruption been initiated against the Respondent No.5. The Petitioner was in fact relying on the disclosure of the assets and liabilities declared by the Respondent No.5 under Section 19 of the SGS Rules, in order to constitute a case of corruption against the Respondent No.5.

**8.** Learned Counsel for the Respondent No.5 while refuting the allegations of public interest would contend that no legal or fundamental right of the Petitioner has been infringed thereby the Petition be dismissed at the threshold. That in fact, the Respondent No.5 retired after 36 (thirty-six) years of unblemished service but the Petitioner being under the misconception that the Respondent

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No.5 is in cohorts with one Ramesh Sharma who is embroiled in some financial dispute with the Petitioner is pursuing a witch-hunt against the Respondent No.5. That, detailed investigation following the First Information Report dated 05.01.2015, lodged by the Petitioner, before the Sadar Police Station, alleging that the Respondent No.5 in connivance with Ramesh Sharma had cheated him of Rs.42,70,000/- (Rupees forty-two lakhs and seventy thousand) only, uncovered no such circumstance. That apart, the Petitioner had also submitted a representation to the Chief Secretary, Government of Sikkim, demanding recovery of financial losses suffered by him from Ramesh Sharma and from the pension and terminal benefits of the Respondent No.5 but Preliminary Enquiry conducted was devoid of any such revelation. A Complaint filed by the Petitioner on 16.08.2016 before the Station House Officer, Vigilance Department, Government of Sikkim, against the Respondent No.5 and his wife for amassing assets disproportionate to their known sources of income has since been closed. The Petitioner taking undue advantage of his post and position in the Pension Group Insurance & Provident Fund Division of Finance Revenue & Expenditure Department, Government of Sikkim, stalled the reliefs of the pension of Respondent No.5 for more than a year thereby causing him severe financial hardship. The information sought from the Respondent No.5 are his personal information falling under the ambit of Section 8(1)(j) and Section 11 of the RTI Act and could likely be misused against the Respondent No.5 if

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made available, hence the Petition be dismissed with exemplary costs.

**9.** The Petitioner filed his Rejoinder Affidavit to the joint Counter-Affidavit of the Respondents No.1, 2 and 3, as well as that of the Respondent No.4 and Respondent No.5, largely reiterating the averments made in his Petition.

**10.** Learned Counsel for the parties were heard at length and the pleadings and documents appended were perused as also the citations made at the Bar and given careful consideration.

**11.** What thus requires determination is whether information submitted by the Petitioner under Section 19 of the Sikkim Government Servants' Conduct Rules, 1981, ought to be made available to the Petitioner or would it be exempted from disclosure in terms of Section 8, more specifically Section 8(1)(j) of the RTI Act?

**12.** Before embarking on a discussion on the merits of the matter, we may briefly look into the object of the RTI Act. The preamble of the RTI Act is as follows;

*"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 Commission and for matters connected therewith or incidental thereto.*

*Whereas the Constitution of India has established democratic Republic;*

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*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 interests while preserving the paramountcy of the democratic ideal;*

.....”

**13.** The Statement of Objects and Reasons, *inter alia*, provides that in order to ensure great and more effective access to information, the Government resolved that the Freedom of Information Act, 2002 enacted by Parliament needs to be made more progressive participatory and meaningful. The proposed legislation was to provide an effective framework for effectuating the right of information recognised under Article 19 of the Constitution of India. The Right to Information as provided in the RTI Act stems from the Universal Declaration of Human Rights 1986, International Covenant on Civil and Political Rights 1966 and Part III of the Constitution of India, which enumerates Fundamental Rights. Nevertheless, reasonable restrictions on Right to Information are envisaged in each of the above. Article 19 of the Universal Declaration of Human Rights states as herein below;

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.”

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Article 12 of the Universal Declaration of Human Rights stipulates that:

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

Article 14 of International covenant on Civil and Political Rights while permitting restrictions lays down as follows;

“The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security or when the interest of the private lives of the parties so requires or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interest of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concerns matrimonial disputes or the guardianship of children.”

**14.** Article 19 (1) (a) of the Constitution of India guarantees that all citizens shall have the right to freedom of speech and expression while making out an exception under Article 19 (2), which states that;

“Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of (the sovereignty and integrity of India) the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.”

**15.** It goes without saying that the freedom of speech and expression as found in Article 19 (1) is one of the basic right but is not absolute being liable to curtailment by laws made by the State to the extent mentioned in clause (2) to (6) thereof. Article 19 (2) of

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the Constitution extracted hereinabove empowers the State to make laws setting reasonable restrictions in the interest of the general public, security of the State, public order, decency, morality, health or protection of general welfare or any other reason as set out therein. Thus, the scheme of Article 19 indicates that the group of rights, listed as clause (a) to (g), though recognized as Fundamental Rights conferred on citizens cannot be absolute, uncontrolled or wholly emancipated from restraints, which could result in anarchy.

**16.** In *Collector of Customs, Madras v. Nathella Sampathu Chetty*<sup>6</sup>, the Hon'ble Supreme Court would hold that ordinarily every man has the liberty to order his life as he pleases, to say what he will, to go where he will, to follow any trade, occupation or calling at his pleasure and do any other thing which he can lawfully do without let or hindrance by any other person. On the other hand, for the very protection of these liberties the society must arm itself with certain powers. What the Constitution, therefore, attempts to do in declaring the rights of the people is to strike a balance between individual liberty and social control. In *Mohd. Hanif Quareshi v. State of Bihar*<sup>7</sup>, the Hon'ble Supreme Court held as follows;

"It follows that the reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interest of the general public and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations."

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<sup>6</sup> AIR 1962 SC 316

<sup>7</sup> AIR 1958 SC 731

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**17.** Later in time, in *State of Gujarat v. Shantilal Mangaldas*<sup>8</sup>, the Hon'ble Supreme Court would hold that a law cannot be said to be unreasonable merely because in a given case, it operates harshly. In other words, it cannot be claimed by a citizen that his right to exercise one of the freedoms guaranteed under Article 19 should be unfettered by any restriction which the State would otherwise be entitled to impose in respect of another freedom. At the same time, it is important to realize that since all citizens possess rights under Article 19 (1), the right of one citizen cannot be curtailed for facilitating the exercise of the fundamental right of another.

**18.** That having been said, we may turn our attention momentarily to Article 21 of the Constitution of India which provides for protection of life and personal liberty. This right encompasses the right to live with human dignity inclusive of the bare necessities such as food, clothing and shelter as also leisure and pursuit of better standards of living. The right to privacy is not listed as a fundamental right but is found to be inherent in Article 21. *"There is a strong link between Article 21 and the right to know."* (*Essar Oil Ltd. v. Halar Utkarsh Samit*)<sup>9</sup>. *"The people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broaden horizon of the right to live in this age on our land under Article 21 of our Constitution. The right has reached*

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<sup>8</sup> AIR 1969 SC 634,

<sup>9</sup> AIR 2004 SC 1834

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*new dimensions and urgency.” (Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd.)<sup>10</sup>*

*“ ..... In the freedom of free movement and right to life and liberty guaranteed to a citizen under Articles 19 (1) (d) and 21 of the Constitution of India, it is implicit that they should be free from fear and threat to life inasmuch as the life under fear and threat of death will be no life at all and in cases of imminent threat to the freedom of free movement or right to life and personal liberty, the Supreme Court is not powerless, it can issue directions to the authorities concerned to immediately make arrangement of security of the lives of the citizens. The right to life means something more than survival or animal existence and it would include the right to live in peace with human dignity.” (Ramveer Upadhaya v. State of U.P.)<sup>11</sup>*

[With inputs from Right to Information Law and Practice, 2016, Justice Rajesh Tandon, Pages I.262 to I.277]

**19.** In the light of the above pronouncements, when the right to information and right to privacy are placed in juxtaposition, the former gives one the right to know, while the right to privacy protects the rights of the individual. Consequently, a balance is to be struck between the Fundamental Rights of persons seeking information and that of the person whose information is being sought.

**20.** On the anvil of the afore stated reasonings, when the provisions of Section 8 of the RTI Act are to be considered, almost

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<sup>10</sup> AIR 1989 SC 190 (202-203)

<sup>11</sup> AIR 1996 All 131

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all reasonable restrictions and exclusions discussed under Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and Article 19(2) of the Constitution of India find place as exemptions in the RTI Act with additions of few more grounds. The Section being a restriction on the fundamental right to information must be considered as a whole and construed strictly. This is clearly elucidated in the order of the Hon'ble Andhra Pradesh High Court in ***Kunche Durga Prasad & Anr. v. Public Information Officer, Office of Chief Manager (HR), Oil and Natural Gas Corporation Ltd., Rajahmundry & Ors.***<sup>12</sup>, as follows;

**"9.** ..... On the other hand, disclosure of the information in relation to an individual, even where it is available with the Government, may amount to invasion of his privacy or right to life which in turn is also referable to Article 21 of the Constitution of India. It is also possible to treat the privilege of an individual not to be compelled to part with any information available with him, as an essential part of the Article 19 (1) (a) of the Constitution of India. Even while exercising his right of freedom of speech and expression, an individual can insist that any information relating to him cannot be furnished to others unless it is in the realm of public activity or is required to be furnished under any law, for the time being in force."

**"10.** ..... The freedom of an individual to have access to the information cannot be projected to such an extent as to invade the rights of others. Further, Section 6 (2) of the Act cannot be read in isolation, nor can be interpreted to mean that an applicant can seek, every information relating to anyone. Just as he cannot be compelled to divulge the purpose for which he needs the information, he must respect the right of the other man to keep the facts relating to him, close to his chest, unless compelled by law to disclose the same. It is relevant to mention that even where an individual is placed under obligation to speak, the law can only draw adverse inference from his failure or refused to speak but cannot go further to invade his privacy or private life."

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<sup>12</sup> AIR 2010 AP 105

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**21.** What tantamounts to invasion of private life would be divulgence of the name, address, occupation, physical health including medical status of the person and financial status, such as income, assets liabilities of self and other members of the family. Generally, a person may be reticent about disclosing such information but there may be circumstances when it becomes absolutely expedient to share some of this information in larger public interest viz. when there is a doubt about the integrity of any person occupying a public office or if it is seen in the larger public interest. At the same time, I hasten to add that no specific parameters can be laid down as it depends on the facts of every individual case. The object of the RTI Act being to bring about transparency and accountability in the working of the public authority, a citizen has the right to access information from the public authority who can facilitate such information. However, it must be borne in mind that in **Central Board of Secondary Education and Anr. v. Aditya Bandopadhyay & Ors<sup>13</sup>**, the Hon'ble Supreme Court while dealing with the provisions of the RTI Act, *inter alia*, held that;

**"61.** Some High Courts have held that Section 8 of RTI Act is in the nature of an exception to Section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech; and that therefore Section 8 should be construed strictly, literally and narrowly. This may not be the correct approach. The Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. One is to bring about transparency and

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<sup>13</sup> (2011) 8 SCC 497

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accountability by providing access to information under the control of public authorities. The other is to ensure that the revelation of information, in actual practice, does not conflict with other public interests which include efficient operation of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The preamble to the Act specifically states that the object of the Act is to harmonise these two conflicting interests. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore when Section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfillment and preservation of democratic ideals.

**62.** 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 visualize 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 Freedom to Information Act, 2002. The Courts and Information Commissions enforcing the provisions of RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonizes the two objects of the Act, while interpreting Section 8 and the other provisions of the Act."

The aforesaid extracts need no further explanation.

**22.** At this juncture, it would be apposite to refer to Section 8(1)(j) of the RTI Act which reads as herein below;

**"8. Exemption from disclosure of information** -(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) ...

(b) ...

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(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(h) ...

(i) ...

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

.....”

**23.** It is apparent from a reading of the said provision that personal information can be disclosed only if the concerned authority who is dealing with the application requiring the information is satisfied that larger public interest justifies the disclosure of such information. This position has been accepted by the Petitioner himself in Paragraph VI of 'Grounds' narrated in his Petition, wherein it is, *inter alia*, stated that personal information related to a third-party can be disclosed when the disclosure has some relationship to any public activity or interest and when such authority is satisfied that the larger public interest justifies the disclosure of such information.

**24.** That having been said, we may now refer to the provision of Section 19 of the SGC Rules. The relevant portions read as follows;

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**“19. Movable, immovable and valuable property.-**

(i) A Government Servant shall, on his first appointment to any Service or post and thereafter at the close of every financial year, submit to the Government return of his asset and liabilities in such form as may be prescribed by the Government giving full particulars regarding –

(a) Immovable property inherited by him or owned or acquired by him or held on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any member of his family or in the name of any other person;

(b) Shares, debentures, cumulative time deposits and cash including bank deposits owned, acquired or inherited by him, or held by him, either in his own name or in the name of any member of his family or in the name of any other person;

(c) Other movable property inherited by him or similarly owned, acquired or held by him;

(d) Debts and other liabilities, if any, incurred by him directly or indirectly.

.....

(iv) The Government may, at any time, by general or special order, require a Government Servant to furnish, within a period specified in the order, a full and complete statement of such movable or immovable property held or acquired by him or on his behalf or by any member of his family as may be specified in the order. Such statement shall, if so required by the Government include the details of the means by which, or the source from which, such property was acquired.

.....

(vi) A Government Servant found to be in possession of pecuniary resources or property disproportionate to his known sources of income, for which he cannot satisfactorily account, shall, unless the contrary is proved, be presumed to have been guilty of grave misconduct in the discharge of his official duty for which he shall be liable for criminal action besides departmental proceedings.

.....”

Suffice it to say that as per this provision, a Government servant shall on his first appointment to any service or post and

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thereafter, at the close of every financial year submit to the Government a return of assets and liabilities in such Form as may be prescribed by the Government giving full particulars regarding immovable property, movable property, both inherited and acquired, debentures and other such details as enumerated in the provisions thereof. The provision also envisages that a government servant found to be in possession of pecuniary resources or property disproportionate to his known sources of income for which he cannot satisfactorily account shall unless the contrary is proved, be presumed to have been guilty of grave misconduct for which he shall be liable for criminal action besides departmental proceedings. What emerges from the above is that consequent upon the government servant disclosing his assets and liabilities to the Government on a yearly basis, should the government find that there is a mismatch in the possession of property and the income of the government servant, he would be taken to task by the government.

**25.** That having been said, in the instant matter despite having heard learned Counsel at length and despite having meticulously perused the pleadings, nothing emerges to establish that the request for information made by the Petitioner pertaining to Respondent No.5 is in the larger public interest. The Petitioner harbours a suspicion that the Respondent No.5 has assets disproportionate to his sources of income but would merely harbouring a suspicion make out grounds for disclosing private information of the individual, the response would have to be in the

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negative. While recalling the arguments of learned Counsel for the Petitioner with regard to the observations made in **Girish Ramchandra Deshpande** case (*supra*) by the Hon'ble Supreme Court, on perusal of the said Judgment, it emerges that the Hon'ble Supreme Court was in seisen of the fact that the Petitioner therein had sought for copies of all memos, show-cause notices and orders of censure/punishment awarded to the third respondent from his employer and also details of movable and immovable properties as well as details of his investments, lending and borrowing from banks and other financial institutions. We may briefly walk through the said decision for clarity and extract the relevant answers given by the Regional Provident Fund Commissioner, Nagpur, to the queries made to him and discussed in the Judgment of **Girish Ramchandra Deshpande** case (*supra*), as follows;

*"As to Point 1: Copy of appointment order of Shri A.B. Lute, is in 3 pages. You have sought the details of salary in respect of Shri A.B. Lute, which relates to personal information the disclosures of which has no relationship to any public activity or interest, it would cause unwarranted invasion of the privacy of individual hence denied as per the RTI provision under Section 8(1)(j) of the Act.*

.....

*As to Point 6: Copy of return of assets and liabilities in respect of Mr Lute cannot be provided as per the provision of the RTI Act under Section 8(1) (j) as per the reason explained above at Point 1.*

*As to Point 7: Details of investment and other related details are rejected as per the provision of the RTI Act under Section 8(1)(j) as per the reason explained above at Point 1.*

*AS to Point 8: Copy of report of itemwise and valuewise details of gifts accepted by Mr Lute, is rejected as per the provisions of the RTI Act under Section*

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*8(1)(j) as per the reason explained above at Point 1.*

*As to Point 9: Copy of details of movable, immovable properties of Mr Lute, the request to provide the same is rejected as per the RTI provisions under Section 8(1)(j).*

*....."*

**26.** Aggrieved by the refusal, the Petitioner therein approached the Central Information Commissioner, who vide its order dated 18.06.2009, *inter alia*, held that the assets and liabilities, movable and immovable properties and other financial aspects qualified as personal information under Section 8(1)(j) of the RTI Act. The Petitioner therein then approached the Hon'ble Supreme Court, who, while examining the correctness of the decisions below and considering the queries and responses as extracted above, held as follows;

**13.** The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under Clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information."

**14.** The Petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act."

**27.** It was also clarified that *"Of course in a given case, if the Central Public Information Officer or the State Public Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the*

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*Petitioner cannot claim those details as a matter of right.*" It would be, thus, essential to understand what public interest encompasses.

*Black's Law Dictionary*<sup>14</sup> defines public interest as:

"Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interest of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government."

**28.** In *Janata Dal v. V.H.S. Chowdhary*<sup>15</sup>, the Hon'ble Supreme Court observed that the purpose of the public interest is;

"To wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not for personal gain or private profit of political motive or any oblique consideration."

**29.** This Court is aware and conscious of the fact that the pivotal object of the RTI Act is to advance transparency and accountability and to contain corruption. However, despite these objects, the right to privacy and personal information are on a separate footing and protected under the provisions of Section 8(1)(j) of the RTI Act, unless the information sought is established to be in public interest.

**30.** What concludes therefore from the gamut of discussions herein above is that in a given case information pertaining to assets and liabilities can be disclosed with the rider that there must be larger public interest involved justifying such disclosure. As can be

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<sup>14</sup> 6<sup>th</sup> Edition

<sup>15</sup> (1992) 4 SCC 305

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culled out from the averments and submissions, the Petitioner herein suspects that the Respondent No.5 is in possession of assets disproportionate to his known sources of income, however mere suspicion without any *prima facie* material to substantiate it does not justify the disclosure of such information of the Respondent No.5 as rests with the concerned government authority. This situation indeed appears to be a fishing expedition embarked upon by the Petitioner without any bona fide public interest. In these circumstances, it obtains that disclosure of such information would cause unwarranted invasion of the privacy of the individual and falls under the ambit of Section 8(1)(j) of the RTI Act.

**31.** Consequently, the prayers are rejected and the Writ Petition dismissed.

**32.** No costs.

Sd/-  
**( Meenakshi Madan Rai )**  
**Judge**  
**30.04.2018**

Approved for reporting : Yes

Internet : Yes

bp