

MOST RESPECTFULLY SHOWETH:

The Petitioners above named respectfully submit the present petition seeking Review of the judgment dated 13.09.2012 passed by this Hon'ble Court in Writ Petition No. 210 of 2012 ("**impugned judgment**"). By which this Hon'ble Court was pleased to partly allow the Writ Petition and issue certain directions, pertaining to the functioning of the Chief Information Commission and the State Information Commissions, and the qualifications of the Chief Information Commissioner, Information Commissioners, and the First Appellate Authority ("**FAA**").

2. That, the brief facts relevant for the present case are as follows :

BACKGROUND TO THE RIGHT TO INFORMATION ACT, 2005

- (i) In 2002, the Freedom of Information Act was enacted, with the purpose of providing freedom to every citizen to secure access to information which was in the control of public authorities.
- (ii) Due to certain deficiencies in the Act, a decision was taken to overhaul the Act, with a view to ensure greater and more effective access to information. It was felt that a new legislation was the need of the hour, and that cosmetic amendments were not sufficient. For example, the 2002 Act contained no penal provision. The National Advisory Council was also consulted, and it suggested changes to be made.
- (iii) The introduction of an appellate machinery was one of the crucial changes made to the 2002 Act. This machinery provided for a power to review the decision of the Public

Information Officers, penal provisions for failure to provide information as per law, provisions to ensure maximum disclosure and minimum exemptions, and an effective mechanism for access to information and disclosure by authorities, etc.

- (iv) Given the fact that the magnitude of the changes brought about was large, the Government of India decided to repeal the Freedom of Information Act, 2002, and to enact the Right to Information Act, 2005 on 15.06.2005 ("**RTI Act**").

SCHEME OF THE RTI ACT

- (i) Section 3 of the Act provides to all citizens, the right to information, subject to the provisions of the Act.
- (ii) Section 5 of the Act deals with the designation of Public Information Officers ("**PIOs**"), to provide information to persons requesting such information under this Act. Section 5(3) provides that such officer who has been designated as a PIO shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information. It is pertinent to note that no educational qualification is prescribed for a PIO. The decision and assistance of the PIO is purely an administrative function.
- (iii) Section 7 of the Act provides that the PIO will either furnish the information sought, or reject the request for any of the reasons laid down in Sections 8 or 9.
- (iv) Section 12 of the RTI Act provides for constitution of the Central Information Commission.

Section 12(3) stipulates that the Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of (a) the Prime Minister, who shall be the Chairperson of the committee; (b) the Leader of Opposition in the Lok Sabha; (c) a Union Cabinet Minister to be nominated by the Prime Minister.

Section 12(5) provides that the Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

Section 12(6) provides that the Chief Information Commissioner and Information Commissioners shall not be a Member of Parliament or a Member of the Legislature of any State or Union Territory, or hold any office of profit or be connected with any political party or carrying on any business or pursuing any profession.

- (ix) Section 13 of the Act provides for the term of office and conditions of service for the Chief Information Commissioner and Information Commissioners.
- (x) Chapter IV of the Act (Sections 15, 16, and 17) deals with provisions related to State Information Commissions
- (xi) The powers and functions of the Commission are laid down in Section 18 of the RTI Act, including the limited matters in respect of which the Commission can exercise powers as a civil Court.

- (xii) Section 19 of the Act provides for appeal. Section 19(1) provides that a person aggrieved by a decision of the PIO may prefer an appeal within 30 days to such officer who is senior in rank to the PIO in each public authority.
- Section 19(3) stipulates that a second appeal will lie against the decision under sub-section (1), with the Central Information Commission or the State Information Commission.
- Section 19(7) provides that the decision of the Central Information Commission or the State Information Commission shall be binding.
- Section 19(8) elaborates upon the powers of the Central Information or State Information Commission when it takes a decision.
- (xiii) Section 20 of the Act provides for penalties to be imposed, which may be pecuniary or recommending disciplinary action against the PIO.
- (xiv) Section 25(1) of the Act, provides for the preparation of a report by the Central or State Information Commission, to be forwarded to the appropriate Government, which shall then cause a copy of the report to be laid before each House of Parliament, or before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House.
- (xv) Sections 27 and 28 provide for the power give to the appropriate Government and to the competent authority to make rules to carry out of the provisions of the Act.

WRIT PETITION (CIVIL) NO. 210 OF 2012

(xvi) The Respondent herein filed Writ Petition (Civil) No. 210 of 2012 before this Hon'ble Court praying for the following:

"It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- (a) issue a writ in the nature of mandamus or any other appropriate writ, order or direction, declaring sub sections 5 & 6 of Section 12 & Sub Sections 5 & 6 of Section 15 of the Right to Information Act, 2005 as ultra vires the Constitution of India being violative of Articles 14, 15, 19(i)(g) & 50 of the Constitution of India; and*
- (b) issue a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondent to amend the Right to Information Act, 2005 in consonance with the directions of this Hon'ble Court and/or the ratio laid down in Union of India Vs. Madras Bar Association, (2010) 11 SCC 1; Pareeta Swarup Vs. Union of India (2008) 11 SCC 107; L. Chandra Kumar Vs. Union of India, (1997) 3 SCC 261; K.K. Jain Vs. Union of India (1993) 1 SCC 119; S.P. Sampath Kumar Vs. Union of India, (1987) 1 SCC 124; and*
- (c) issue a writ in the nature of mandamus or any other appropriate writ, order or direction directing respondent to incorporate there should a provision for appointment of retired Judges of High Court or this Hon'ble Court as Chief Information Commissioner, retired District Judges as State Information Commissions and mixed appointment of technical as well as Judges of the Bench as Information Commissioners respectively.*
- (d) pending the hearing and final disposal of this Writ Petition, issue an appropriate writ, order or direction directing the Respondent to ensure that fresh appointment to be made under the Right to Information Act, 2005 to the existing / vacant post/s of Chief Information Commissioner, Information Commissioners, State Information Commissioners (as the case may be), be made as per the directions and orders of to be passed by this Hon'ble Court; and*
- (e) pending the hearing and final disposal of this Writ Petition, issue an appropriate writ, order or direction directing the Respondent to ensure that no further/new appointments to the vacant post/s of Chief Information Commissioner,*

Information Commissioners, State Chief Information Commissioner, State Information Commissioners (as the case may be) are made as per the provisions of sub sections 5 & 6 of Section 12 & Sub Sections 5 & 6 of Section 15 of the Right to Information Act, 2005 and

(f) pass any other writ, order or direction as this Hon'ble Court may deem fit, and appropriate in the facts and circumstances of the case."

(xvii) The said Writ Petition came up for preliminary hearing before this Hon'ble Court on 11.07.2012, when this Hon'ble Court was pleased to issue notice, returnable on 18.07.2012. This Hon'ble Court was pleased to ask the Panel Counsel of the Central Agency (on behalf of the advocate-on-record) present in Court to accept notice on behalf of the Respondents, which the Panel Counsel did. in deference of the instruction of this Hon'ble Court. Time was sought by the Senior Counsel present in Court to file a Counter Affidavit, but this Hon'ble Court opined that it was not necessary. It is pertinent to note that the Petitioner herein was not informed of these proceedings at that stage

(xviii) The matter was listed again on 18.07.2012, and remained part-heard at the end of the day.

(xix) On the evening of 18.07.2012, the Department of Personnel and Training was informed that the matter was listed the next day. Officers of the Department proceeded to brief the Learned Additional Solicitor General who was assigned the case.

(xx) On 19.07.2012, when the matter continued, the Learned Additional Solicitor General appeared for the Petitioner herein before this Hon'ble Court and asked for time (of one day) to file Written Submissions.

(xxi) However, this Hon'ble Court was of the opinion that Written Submissions were not necessary at stage, and asked the Learned Additional Solicitor General to proceed with his arguments.

(xxii) The Learned Additional Solicitor General concluded his arguments on 19.07.2012. This Hon'ble Court then passed the following order:

*“Heard learned counsel for the parties.
Hearing concluded. Judgment reserved.
In the meanwhile, no further appointment will be made to the posts of Information Commissioner, by the Central Government.”*

(xxiii) The Learned Additional Solicitor General mentioned the matter before this Hon'ble Court on 11.09.2012, and after seeking the permission of this Hon'ble Court, filed Written Submissions in the matter

(xxiv) The Vakalatnama on behalf of the Petitioner was filed on 12.09.2012.

(xxv) The judgment of this Hon'ble Court in WP (C) 210 of 2012 was delivered on 13.09.2012. Vide the impugned judgment, this Hon'ble Court was pleased to partly allow the Writ

Petition and to issue the following directions, contained in para 106 of the judgment:

“106. For the elaborate discussion and reasons afore-recorded, we pass the following order and directions:

1. The writ petition is partly allowed

2. The provisions of Sections 12(5) and 15(5) of the Act of 2005 are held to be constitutionally valid, but with the rider that, to give it a meaningful and purposive interpretation, it is necessary for the Court to ‘read into’ these provisions some aspects without which these provisions are bound to offend the doctrine of equality. Thus, we hold and declare that the expression ‘knowledge and experience’ appearing in these provisions would mean and include a basic degree in the respective field and the experience gained thereafter. Further, without any peradventure and veritably, we state that appointments of legally qualified, judicially trained and experienced persons would certainly manifest in more effective serving of the ends of justice as well as ensuring better administration of justice by the Commission. It would render the adjudicatory process which involves critical legal questions and nuances of law, more adherent to justice and shall enhance the public confidence in the working of the Commission. This is the obvious interpretation of the language of these provisions and, in fact, is the essence thereof.

3. As opposed to declaring the provisions of Section 12(6) and 15(6) unconstitutional, we would prefer to read these provisions as having effect ‘post-appointment’. In other words, cessation/termination of holding of office of profit, pursuing any profession or carrying any business is a condition precedent to the appointment of a person as Chief Information Commissioner or Information Commissioner at the Centre or State levels.

4. There is an absolute necessity for the legislature to reword or amend the provisions of Section 12(5), 12(6) and 15(5), 15(6) of the Act. We observe and hope that these provisions would be amended at the earliest by the legislature to avoid any ambiguity or impracticability and to make it in consonance with the constitutional mandates.

5. We also direct that the Central Government and/or the competent authority shall frame all practice and procedure related rules to make

working of the Information Commissions effective and in consonance with the basic rule of law. Such rules should be framed with particular reference to Section 27 and 28 of the Act within a period of six months from today.

6. We are of the considered view that it is an unquestionable proposition of law that the Commission is a 'judicial tribunal' performing functions of 'judicial' as well as 'quasi-judicial' nature and having the trappings of a Court. It is an important cog and is part of the court attached system of administration of justice, unlike a ministerial tribunal which is more influenced and controlled and performs functions akin to the machinery of administration.

7. It will be just, fair and proper that the first appellate authority (i.e. the senior officers to be nominated in terms of Section 5 of the Act of 2005) preferably should be the persons possessing a degree in law or having adequate knowledge and experience in the field of law.

8. The Information Commissions at the respective levels shall henceforth work in Benches of two members each. One of them being a 'judicial member', while the other an 'expert member'. The judicial member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. A law officer or a lawyer may also be eligible provided he is a person who has practiced law at least for a period of twenty years as on the date of the advertisement. Such lawyer should also have experience in social work. We are of the considered view that the competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioners. Chief Information Commissioner at the Centre or State level shall only be a person who is or has been a Chief Justice of the High Court or a Judge of the Supreme Court of India.

9. The appointment of the judicial members to any of these posts shall be made 'in consultation' with the Chief Justice of India and Chief Justices of the High Courts of the respective States, as the case may be.

10. The appointment of the Information Commissioners at both levels should be made from amongst the persons empanelled by the DoPT in the case of Centre and the concerned Ministry in the case of a State. The panel has to be prepared upon

due advertisement and on a rational basis as afore-recorded.

11. The panel so prepared by the DoPT or the concerned Ministry ought to be placed before the High-powered Committee in terms of Section 12(3), for final recommendation to the President of India. Needless to repeat that the High Powered Committee at the Centre and the State levels is expected to adopt a fair and transparent method of recommending the names for appointment to the competent authority.

12. The selection process should be commenced at least three months prior to the occurrence of vacancy.

13. This judgment shall have effect only prospectively.”

3. The Petitioner is preferring the present Review Petition under Article 137 of the Constitution of India, seeking review of the judgment of this Hon'ble Court dated 13.09.2012 which partly allowed WP (C) 210 of 2012, inter alia on the following:-

GROUND

- A. FOR THAT this Hon'ble Court has erred in directing the legislature to reword or amend the provisions of Sections 12(5), 12(6), 15(5), and 15(6) of the Act.
- B. FOR THAT it is well-settled that the Court cannot issue directions to the legislature to amend an Act or Rules. It is for the Parliament to amend an Act or Rules. This Hon'ble Court, in the case of **Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294**, held that:

“19. At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory Rules. It is for Parliament to amend the

Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules.

20. *However, it is equally settled that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted.”*

Therefore, the only situation where the Court can issue directions or orders is where the Act or Rules are silent on a particular subject. That is not the case here. Section 12(5) and 15(5) of the Act clearly lay down the norms relating to qualifications of the Chief Information Commissioner and Information Commissioners at the Centre and at State level respectively. Various directions given by this Hon'ble Court in para 106 of the impugned judgment are contrary to the provisions of the RTI Act

This Hon'ble Court, in **Common Cause (A Regd. Society) v. Union of India, (2008) 5 SCC 511**, held that

“24. Before proceeding further, we may state that the Motor Vehicles Act is a comprehensive enactment on the subject. If there is a lacuna or defect in the Act, it is for the legislature to correct it by a suitable amendment and not by the court. What the petitioner really prays for in this petition is for various directions which would be legislative in nature, as they would amount to amending the Act.

31. *A perusal of the prayers made in this writ petition (which have been quoted above) clearly shows that what the petitioner wants us to do is legislation by amending the law. In our opinion, this will not be a legitimate judicial function.”*

After considering the law on the subject, this Hon'ble Court in **V.K. Naswa v. Home Secretary, Union of India, (2012) 2 SCC 542** held that:

“18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner.”

- C. FOR THAT certain directions contained in the impugned judgment are in the teeth of certain provisions of the RTI Act, thus rendering the smooth functioning of the Act unworkable. These contrary directions, which are elaborated upon below, have the potential to create disarray in the functioning of the Central and State Information Commissions. Such directions amount to a clear error apparent on the face of the record, being in absolute disregard of the provisions of the Act.

This Hon'ble Court, in the case of **Lily Thomas v. Union of India, (2000) 6 SCC 224** has held that *“Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law.”* (see para 58)

- D. FOR THAT under Section 13(1) of the RTI Act, 2005, the Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office. The proviso to the Section states that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years. Section 13(2) stipulates a similar period for an Information Commissioner.

As per the directions issued by this Hon'ble Court in the impugned judgment, the Chief Information Commissioner at the Centre or State level shall only be a person who is, or has been, a Chief Justice of a High Court or a Judge of the Supreme Court. The

retirement age for a Judge of the Supreme Court being sixty-five years, it naturally follows that no retired judge of the Supreme Court can be considered for appointment to the post of Chief Information Commissioner. This direction, contrary to the provision in the Act, is a patent error on the face of the record.

- E. FOR THAT under Section 27(1) of the RTI Act, the appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of the Act. Section 27(2) provides for the matters that such rules may provide for.

The direction issued by this Hon'ble Court in the impugned judgment that the Central Government and/or the competent authority shall frame all practice and procedure related rules to make working of the Information Commissions effective and in consonance with the basic rule of law amounts to a clear encroachment of the Union into the powers given to State Governments to make rules. This direction issued by the Court amounts to a patent error on the face of the record.

- F. Under Section 25(1) of the Act, the Central or State Information Commission shall, at the end of each year, prepare a report on the implementation of the provisions of the Act during the year, and forward a copy of the report to the appropriate Government. The Central or State Government, as the case may be, shall cause a copy of the report to be laid before each House of Parliament, or before each House of the State Legislature where there are two

Houses, and where there is one House of the State Legislature, before that House.

In view of the directions issued by this Hon'ble Court in the impugned judgment, wherein the Commission has been described as and granted the status of a 'judicial tribunal', there is bound to arise a conflict caused by the requirement of placing this report prepared by the Commissions before the Houses of Parliament or the State Legislature.

G. FOR THAT as per Section 12(2) of the RTI Act, the Central Information Commission shall consist of (a) the Chief Information Commissioner and (b) such number of Information Commissioners, not exceeding ten, as may be deemed necessary. Therefore, it is clear that the number of Information Commissioners is necessity-based.

This Hon'ble Court, in the impugned judgment, has directed that the selection process should be commenced at least three months prior to the occurrence of vacancy. It is pertinent to note that the word 'vacancy' is used nowhere in the Act with respect to the appointment of Information Commissioners. Therefore, this makes it technically unfeasible to implement this direction of this Hon'ble Court.

H. FOR THAT this Hon'ble Court ought to have clarified whether two-member benches have to start functioning immediately, or when the necessity arises. The work of the Commissions is bound to

suffer, as there are no judicial members in the Central Information Commission or the State Information Commissions.

- I. FOR THAT this Hon'ble Court, while laying down the direction that Information Commissions at various levels shall henceforth work in Benches of two members, with a judicial member and an expert member, ought to have appreciated the distinction between the duty to act judicially and the requirement of a judicial member on each bench of the Information Commissions.
- J. FOR that this Hon'ble Court failed to consider its own judgment, rendered in **S.D. Joshi v. High Court of Judicature At Bombay, (2011) 1 SCC 252**, wherein it referred to Justice Hidayatullah's judgment in **Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala, AIR 1961 SC 1669**, which discussed the different meanings of the word 'judicial'. The relevant portion of S.D. Joshi's case is extracted hereinbelow:

“29. This question need not detain us any further, as the law in this regard is no more res integra and stands finally stated by a Constitution Bench of this Court in Harinagar Sugar Mills Ltd. v. Hidayatullah, J. as His Lordship then was, while giving his own reasons concurred with other Judges in allowing the appeal setting aside the order of the Central Government. While commenting upon the maintainability of the appeals, he drew a distinction between a “court” and a “tribunal” and dealt with the question as to whether the Central Government, while hearing this appeal, was a tribunal and held as under: (AIR pp. 1680-81, paras 32-33 & 36)

“32. With the growth of civilisation and the problems of modern life, a large number of Administrative Tribunals have come into existence. These tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath, but they are not part of the ordinary courts of civil judicature. They share the exercise of the judicial power of the State, but they are brought into existence to implement some administrative policy

or to determine controversies arising out of some administrative law. They are very similar to courts, but are not courts. When the Constitution speaks of 'courts' in Article 136, 227 or 228 or in Articles 233 to 237 or in the Lists, it contemplates courts of civil judicature but not tribunals other than such courts. This is the reason for using both the expressions in Articles 136 and 227...

33. In my opinion, a court in the strict sense is a tribunal which is a part of the ordinary hierarchy of courts of civil judicature maintained by the State under its Constitution to exercise the judicial power of the State. These courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction. **The word 'judicial', be it noted, is itself capable of two meanings.** They were admirably stated by Lopes, L.J. in *Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson*⁷ in these words: (QB p. 452)

'The word "judicial" has two meanings. It may refer to the discharge of duties exercisable by a judge or by justices in court, or to administrative duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind — that is, a mind to determine what is fair and just in respect of the matters under consideration.'

That an officer is required to decide matters before him 'judicially' in the second sense does not make him a court or even a tribunal, because that only establishes that he is following a standard of conduct, and is free from bias or interest."

K. FOR THAT this Court has, while observing that the decisions of the Commission cannot be termed as an 'administrative decision' but are clearly in the domain of 'judicial determination', failed to appreciate the purpose of the RTI Act. The principle under the RTI Act is of maximum disclosure and minimum exemptions. The role of the PIO is to disclose information sought under the Act, if it is permissible to release such information. No educational qualification has been prescribed for the officer performing the role

of a PIO. The rule of law requires the decision passed by the authorities under the Act to be just and judicious. The functions of the PIO, FAA, and the Commissions are not of a judicial nature and, the requirement is of knowledge regarding administrative working. None of the relevant officers is required to possess a legal background.

L. FOR THAT this Honble Court ought to have considered the fact that the decision regarding whether or not to disclose the information sought is not judicial, to be taken according to the provisions of the Act. Sections 8 and 9 of the RTI Act provide the reasons for rejecting the information sought. If the applicant is not satisfied with the response of the PIO, he may approach the FAA, who is an officer senior in rank to the PIO in the same public authority. After weighing the interest at large vis a vis the disclosability of the desired information, the FAA makes a decision, which is not judicial. The PIO and FAA only determine whether the information sought is capable of being disclosed as per the provisions of the Act. This is a not a judicial function, and does not necessitate a legal background.

M. FOR THAT the second appeal against the decision of the FAA lies with the Information Commission. The purpose of having a second tier of appeal is the review of the decisions of the PIO and the FAA by an external, independent body. The role of the Information Commission is limited to adjudication on the issue of whether the non-disclosure of information by the PIO is as per the provisions of the Act and whether the information has been provided within time or not.

N. FOR THAT the competence of the existing CPIOs and FAAs, who usually do not possess any degree in law, in taking a just and judicious decision is evident from that only about 4.5% of RTI applications filed with Central Public Authorities have gone up to the stage of the Second Appellate Authority as an appeal or a complaint

O. FOR THAT in **Union of India v. R. Gandhi, President, Madras Bar Association, (2010) 11 SCC 1**, this Hon'ble Court held that:

“108. ...When the legislature proposes to substitute a tribunal in place of the High Court to exercise the jurisdiction which the High Court is exercising, it goes without saying that the standards expected from the judicial members of the Tribunal and standards applied for appointing such members, should be as nearly as possible as applicable to the High Court Judges, which are apart from a basic degree in Law, rich experience in the practice of law, independent outlook, integrity, character and good reputation...”

Therefore, it was felt that the need for legal expertise and experience arose in those cases where the legislature proposed to substitute a tribunal in place of the High Court to exercise the jurisdiction which the High Court is exercising, which is not the case here

P. FOR THAT Section 19(8) of the Act provides that in its decision, the Central Information Commission or the State Information Commission, as the case may be, has the power to

- (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—
 - i) by providing access to information, if so requested, in a particular form;

- ii) *by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;*
- iii) *by publishing certain information or categories of information;*
- iv) *by making necessary changes to its practices in relation to the maintenance, management and destruction of records;*
- v) *by enhancing the provision of training on the right to information for its officials;*
- vi) *by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;*

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

It is evident from the above that the function exercised when taking a decision is not judicial.

Q. FOR THAT Section 25(5) of the Act provides that *“If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a **recommendation** specifying the steps which ought in its opinion to be taken for promoting such conformity.”* This reinforces the contention that the functions of the Commissions are akin to the machinery of administration, and are not judicial determinations.

R. FOR THAT Section 18(1) of the Act provides that *“Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person.....”*. Section 18 (2) of the Act provides that *“Where the Central Information*

Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into a matter, it may initiate an inquiry in respect thereof.” This reinforces the submission that the functions performed by the Information Commissions are not of a judicial nature.

- S. FOR THAT the Information Commission performs a number of administrative functions as mentioned above. In view of the directions issued by this Hon’ble Court in the impugned judgment, wherein the Commission has been described as and granted the status of a ‘judicial tribunal’, there is bound to arise a conflict regarding a ‘judicial tribunal’ performing primarily administrative functions of the State.
- F. FOR THAT this Hon’ble Court has failed to consider that the Petitioner herein the Petitioner did not get the opportunity to adequately address this Hon’ble Court on the issues raised in the Writ Petition, resulting in a grave miscarriage of the basic tenets of natural justice. The request to file a Counter Affidavit was not allowed. The Petitioner was only informed about the matter on 18.07.2012, and had to brief the Learned Additional Solicitor General overnight. The request of the Learned Additional Solicitor General to file Written Submissions was also, initially, not acceded to.
- U. FOR THAT this Hon’ble Court, in the impugned judgment, has neither considered the oral arguments of the Petitioner herein, nor the Written Submissions filed by the Petitioner on 11.09.2012, putting forth the case of the Petitioner. The impugned judgment, at

no place, records the submissions made by the counsel for the Petitioner when the matter was heard.

V. FOR THAT this Hon'ble Court, in the case of **Indian Charge Chrome Ltd. v. Union of India, (2005) 4 SCC 67**, held that non-consideration of a contention regarding illegality of a particular communication amounted to an error apparent on the record. In the present case, no contention of the Petitioner herein has been considered.

W. FOR THAT this Hon'ble Court has failed to appreciate that the decision of the legislature to not lay down a specific procedure to be followed by the High Powered Committee for the selection of Chief Information Commissioner and Information Commissioners was deliberate. The eligibility under Section 12(5) is of being a person of eminence in one of the several fields laid down therein. The job profile of a Chief Information Commissioner or an Information Commissioner is not of such a nature for which precise technical and academic qualifications could be prescribed. It was left to the discretion of the High Powered Committee chaired by the Hon'ble Prime Minister to select such persons from a wide field, who in the opinion of the Committee, can perform the tasks laid down under the Act, and can take judicious decisions.

X. FOR THAT this Hon'ble Court has in its directions, described the Commissions as, and granted the Commissions the status of a 'judicial tribunal', with the trappings of a Court. It has been stated that the Commission is a part of the court attached system of administration of justice, unlike a ministerial tribunal which is

more influenced and controlled and performs functions akin to the machinery of administration. This Hon'ble Court has failed to consider that the Information Commissions cannot be equated to a civil Court. It possesses only limited powers, as compared to those exercised by civil Courts. Section 18(3) of the Act lays down the matters in respect of which the Central Information Commission or State Information Commission shall have the same powers as are vested in a civil Court while trying suits under the Civil Procedure Code, 1908. These have been reproduced below:

*“(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
(b) requiring the discovery and inspection of documents;
(c) receiving evidence on affidavit;
(d) requisitioning any public record or copies thereof from any Court or office;
(e) issuing summons for examination of witnesses or documents; and
(f) any other matter which may be prescribed.”*

Section 18(4) of the Act stipulates that:

“Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.”

Further, Section 20 of the Act deals with penalties. From a bare perusal of the Section, it is apparent that the Commissions can only impose penalties of a pecuniary nature, and can, at best, recommend for disciplinary action against the CPIO or the State PIO

Y. FOR THAT this Hon'ble Court has failed to appreciate that in light of what has been submitted above, the Information Commissions are not a judicial authority, and primarily perform administrative

functions. It is not necessary for these Commissions to be chaired by a judicial person, because the nature of the work being does not require such a person.

Z FOR THAT this Hon'ble Court, in **Jaswant Sugar Mills Ltd. v. Lakshmi Chand, 1963 Supp (1) SCR 242**, held that:

"11. ...A judicial decision is not always the act of a judge or a tribunal invested with power to determine questions of law or fact: it must however be the act of a body or authority invested by law with authority to determine questions or disputes affecting the rights of citizens and under a duty to act judicially..."

19. The duty to act judicially imposed upon an authority by statute does not necessarily clothe the authority with the judicial power of the State. Even administrative or executive authorities are often by virtue of their constitution, required to act judicially in dealing with question affecting the rights of citizens. Boards of Revenue, Customs authorities, Motor Vehicles Authorities, Income Tax and Sales Tax Officers are illustrations prima facie of such administrative authorities, who though under a duty to act judicially, either by the express provisions of the statutes constituting them or by the rules framed thereunder or by the implication either of the statutes or the powers conferred upon them are still not delegates of the judicial power of the State..."

AA. FOR THAT there are various examples wherein an appeal lies to the Central Government, and the said appeal is decided by an officer of the Central Government, who is not a judicial person:

- (i) under Section 22(5) of the Banking Regulations Act 1949, any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under that section may, within 30 days from the date on which such decision is communicated to it, appeal to the Central Government.

- (ii) under Section 20 of the SEBI Act, an appeal lies to the Central Government against an order passed by the Securities and Exchange Board.
- (iii) under Section 11 of the Passports Act, 1967, an appeal is provided for to the appellate authority against an order passed. Rule 14 of the Passport Rules, 1980 provides that the appellate authority may either be the Chief Passport Officer, Ministry of External Affairs, New Delhi, or the Additional Secretary or Secretary, Ministry of External Affairs, New Delhi, depending on who the order is passed by.
- (iv) under Section 15 of the Citizenship Act, 1955, any person aggrieved by an order made by the prescribed authority or other authority may, within a period of 30 days from the date of the order, make an application to the Central Government for revision of that order. Section 15A provides for the review of an order of the Central Government.
- (v) under the Income Tax Act and the Customs Act as well, the officers deciding appeals filed are not judicial officers.

These are prime examples of instances where there is no judicial member present, and the Central Government acts judicially.

BB. FOR THAT this Hon'ble Court has failed to appreciate that the Central Information Commission is neither directly subordinate to, nor under the administrative control of, the High Court.

CC. FOR THAT this Hon'ble Court failed to consider that the powers of a civil Court exercised by the Central Information Commission or the State Information Commissions are clearly delineated in the RTI Act. These limited powers do not grant these Commissions the status of a 'court'. These Commissions are not constituted under the Constitution, but are statutory Commissions.

DD) For that, this Hon'ble Court failed to consider that the judgment of this Hon'ble Court in **Union of India v. R. Gandhi, President, Madras Bar Association, (2010) 11 SCC 1**, while deciding the Constitutional validity of the National Company Law Tribunal, has no bearing on the present case. That judgment was based on a situation where the Legislature has enacted a law transferring the jurisdiction exercised by courts to a tribunal. In the present case, no such transfer of jurisdiction has happened with respect to the Central Information Commission or the State Information Commissions. In that judgment, this Hon'ble Court was considering a case of a 'tribunal' constituted under Articles 323A and 323B of the Constitution of India. The CIC is not a tribunal constituted under either of these Sections. Also, in that judgment, the Court was dealing with 'judicial function'.

EE. FOR THAT in the **R. Gandhi** case, this Hon'ble Court has gone on to hold that:

"108. ...When the legislature proposes to substitute a tribunal in place of the High Court to exercise the jurisdiction which the High Court is exercising, it goes without saying that the standards expected from the judicial members of the Tribunal and standards applied

for appointing such members, should be as nearly as possible as applicable to the High Court Judges, which are apart from a basic degree in Law, rich experience in the practice of law, independent outlook, integrity, character and good reputation...

Therefore it is apparent that legal expertise has been held to be necessary only in cases where the legislature proposes to substitute a tribunal in place of the High Court to exercise the jurisdiction which the High Court is exercising. This is not the case here.

FF. The case of **L. Chandra Kumar**, reported in **(1997) 3 SCC 261**, also dealt with a tribunal constituted under Article 323A of the Constitution of India. Quoting from the Statement of Objects and Reasons of the Act, the judgment observed that *“it was expected that “the setting up of such Administrative Tribunals to deal exclusively with service matters would go a long way in not only reducing the burden of the various courts and thereby giving them more time to deal with other cases expeditiously but would also provide to the persons covered by the Administrative Tribunals speedy relief in respect of their grievances”*. Therefore, this was also a case of transfer of jurisdiction.

In the present case, the Commissions can, at best, be said to be quasi-judicial bodies, carrying on primarily administrative work.

GG. FOR THAT the impugned judgment has sought to complicate a simple statute, enacted for the benefit of the common man, to ensure an informed democracy. The objective behind the Act is to provide the applicant with the information which is capable of being disclosed in a timely manner, so as to promote transparency and accountability in the working of all public authorities. The PIO,

FAA, and CIC/SICs all work towards furthering this objective. The present setup as it is, disposes off applications expeditiously.

III. FOR THAT the RTI Act is being used as a tool to acquire information by the common man, without any legal formalities. The mechanism in place has worked effectively and expeditiously. It is submitted that if the status of the Commissions were altered to that of a judicial tribunal, and a court attached system of justice, this would only result in a delay at various levels, especially at the second appellate level. Unnecessary steps, such as engaging an advocate, and other legal formalities associated with court procedures will be added, causing unnecessary delay. If it takes 3-4 years for the disposal of an appeal, the entire mechanism would stop working effectively and the citizens would not be able to get the desired information within time. This is bound to adversely affect the common man, and his right to information and to be informed.

II FOR THAT the success of the Act lies in the simplicity with which an applicant can make appeals, without any assistance from advocates or complicated Court procedures. It is submitted that if the status of the Commissions were altered to that of a judicial tribunal, and a court attached system of justice, this would only bring unnecessary complications in the form of legal formalities associated with court procedures. This will result in a feeling of disenchantment amongst the applicants to avoid such legal formalities, thus defeating the very purpose of the Act.

PRAYER

It is most respectfully prayed that this Hon'ble Court may be pleased to :

- A) Allow the present Review Petition seeking review of the judgment dated 13.09.2012 passed by this Hon'ble Court in WP (Civil) 210 of 2012,
- B) Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER, AS IN DUTY BOUND, SHALL EVER PRAY.

S.V. RAMA RAU, Esq.
(ADVOCATE FOR THE PETITIONER)

Drawn by: Anoopam N. Prasad

Settled by: Mr. G.R. Velamuri
Attorney General for India

Date of Filing:

Place of Filing: