

CENTRAL INFORMATION COMMISSION
Club Building (Near Post Office)
Old JNU Campus, New Delhi - 110067
Tel: +91-11-26161796

Decision No. CIC/SM/A/2011/001376/SG/15684
Appeal No. CIC/SM/A/2011/001376/SG

Relevant facts emerging from the Appeal:

Appellant : Mr. P. P. Kapoor,
81/5, Manav Vihar, Jorasi Road,
Samalkha – 132101 – 03,
District Panipat, Haryana

Respondent : Dr. N. Krishna Mohan,
PIO & Chief General Manager,
Reserve Bank of India,
Dept. of Banking Supervision,
Central Office, Centre – I,
Cuffe Parade, Colaba, Mumbai – 400005

RTI application filed on : 16/08/2010
PIO replied on : 14/10/2010 and 22/10/2010
First Appeal filed on : 03/12/2010
First Appellate Authority order of : 24/12/2010
Second Appeal received on : 11/05/2011

Information sought:

1. Total amount of money deposited by Indian citizens in nationalized Indian banks during the periods 2006, 2007, 2008, 2009 and 2010. Provide information for each year separately;
2. (a) Information till date regarding total amount of loan taken but not repaid by industrialists from Indian nationalized banks and the total amount of interest accumulating on such unpaid loans; and

(b) Details of default in loans taken from public sector banks by industrialists. Out of above list of defaulters, top 100 defaulters, name of the businessman, address, firm name, principal amount, interest amount, date of default and date of availing loan.

(c) Steps being taken for putting information sought in query 2(a) and list of defaulters on the website of the Respondent – public authority.

Reply of Public Information Officer (PIO):

By letter dated 14/10/2010, the CPIO informed the Appellant that query 1 was transferred to DEAP, queries 2(b) and (c) were transferred to DBS and query 2(a) was transferred to DBOD/DBS.

By letter dated 22/10/2010, the CPIO denied information on query 2(b) on the basis that it was held in fiduciary capacity and was exempt from disclosure under Sections 8(1)(a) and (e) of the RTI Act.

Grounds for First Appeal:

Information provided by CPIO was incomplete.

Order of First Appellate Authority (FAA):

The FAA stated inter alia that the CPIO, DEAP had provided certain information vide letter dated 12/10/2010. The Appellant filed the First Appeal as he was dissatisfied with the information received vide letters dated 12/10/2010 and 22/10/2010.

‘As regards the contention of the appellant with respect to his query at Point 2(b) (which relate to the default in loans taken by industrialists from Public sector banks and matters associated with them), I find that the CPIO, DBS has specified that the information received from banks in this regard is held by the Reserve Bank in a fiduciary capacity and as such it cannot be disclosed in terms of clauses (a) and (e) of Section 8(1) of the Act. There can be no doubt that the information on defaulters received from banks are held by the Reserve Bank in a fiduciary capacity and are confidential in nature. Therefore, the exemption claimed under Section 8(1)(e) is, without doubt, proper in the eyes of law. Whether the exemption provided by clause (a) of Section 8(1) would be attracted in a given case would depend upon the factual position. In this matter, since Section 8(1)(e) is clearly attracted, I do not propose to consider the other exemption which the CPIO, DBS has made use of for withholding the information.’

Grounds for Second Appeal:

Dissatisfied with order of FAA, since information not provided on Query 2 (b) and (c)

Relevant Facts emerging during Hearing held on 8 November 2011:

The following were present:

Appellant: Mr. P. P. Kapoor via video - conference from NIC Studio – Panipat (Haryana);

Respondent: Ms. Mini Kutti Krishnan, Assistant Legal Advisor on behalf of Dr. N. Krishna Mohan, PIO & Chief General Manager via video - conference from NIC Studio- Mumbai.

“The Respondent stated that the information sought by the appellant in query 2 (b) was held by RBI in fiduciary capacity on behalf of the banks. The Commission enquired whether the information is provided by banks to RBI in fulfillment of statutory requirements. The PIO admitted that the Banks were providing the information in fulfillment of statutory requirements. The Commission pointed out that information provided in fulfillment of statutory requirements, cannot be considered to be information held in a fiduciary capacity. The Respondent then submitted that information about customers is held by banks in a fiduciary capacity and hence disclosure of the same would violate the fiduciary - trust placed by borrowers of the banks.”

The order was reserved at the hearing held on 8 November 2011.

Decision announced on 15 November 2011:

Based on perusal of papers and submission of parties, it appears that no information has been provided in relation to query 2(c), despite the order of the FAA. As regards query 2(b), the Respondent has contended that the information sought was exempt under Section 8(1) (a) & (e) of the RTI Act. The Commission will first consider the claim of exemption under Section 8 (1) (a) of the RTI Act made by the PIO. The PIO has claimed exemption under Section 8 (1) (a) but not explained how this would apply. The First appellate authority has not given any comment on this. No justification was offered at the time of hearing as well. Section 8 (1) (a) exempts, ‘*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*’. It appears that the PIO is claiming that the economic interests of the State would be prejudicially affected. It is impossible to imagine that any of the other interests mentioned in the provision could be affected. This bench rejects the contention of the PIO that the economic interests of India would be affected by disclosing the names and details of defaulters from Public sector Banks. If it means that such borrowers would not bank with public sector banks for fear of exposure, it would infact be in the economic interest of the Nation. This Commission does not accept the claim of exemption under Section 8 (1) (a) by the PIO. It is also unlikely that the economic wellbeing of the Nation could get affected adversely by disclosing the names and details of defaulters. The Indian economy is dependent on far stronger footings.

The Commission will now examine the claim for exemption under Section 8 (1) (e) of the RTI Act. Section 8(1)(e) of the RTI Act exempts from disclosure “*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*”.

This Bench, in a number of decisions, has held that the traditional definition of a fiduciary is a person who occupies a position of trust in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g. doctor, lawyer, financial analyst or trustee. Another important characteristic of such a relationship is that the information must be given by the holder of information who must have a choice - as when a litigant goes to a particular lawyer, a customer chooses a particular bank, or a patient goes to a particular doctor. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the one who is providing the information. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a license, cannot be considered to have been given in a fiduciary relationship.

Information provided by banks to RBI is done in furtherance of statutory compliances. In fact, where RBI requires certain information to be furnished to it by banks and such banks have no choice but to furnish this information, it would appear that such requirement of RBI is directory in nature. Moreover, no specific benefit appears to be flowing to the banks from RBI on disclosure of the information sought by the Appellant. Consequently, no fiduciary relationship is created between RBI and the banks.

The Respondent has also argued that information about customers is held by banks in a fiduciary capacity and hence disclosure of the same would violate the fiduciary - trust placed by borrowers of the banks. The Commission finds some merit in this argument. Information of customers is held by banks in a fiduciary capacity. If this information is disclosed to the RBI and subsequently furnished to the citizens under the RTI Act- it may violate the fiduciary relationship existing between the customers and the banks. Therefore, the information sought in query 2(b) is exempt from disclosure under Section 8(1)(e) of the RTI Act. However, if a customer defaults in repayment, should the information about the default also be considered as information held in a fiduciary capacity, is a moot question. The lender is likely to take all measures including filing suits to recover the money due, and these actions would mean publicly disclosing the default amounts. In such circumstances the Bank would make these details public, and not feel fettered by the fiduciary nature of the relations.

However, I am not going into delving into this trend of thought and accepting that the information about the default by a borrower may be considered to be information held by a bank in a fiduciary capacity. When the Commission comes to the conclusion that the exemptions of Section 8 (1) of the RTI Act apply, it needs to consider the provision of Section 8(2) of the RTI Act which stipulates as follows:

“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.”

Section 8(2) of the RTI Act mandates that even where disclosure of information is protected by the exemptions under Section 8(1) of the RTI Act, if public interest in disclosure outweighs the harm to such protected interests, the information must be disclosed under the RTI Act. There is no requirement for the existence of any public interest to be established when seeking or giving information. However, if an exemption applies, then it must be considered whether the public interest in disclosure outweighs the harm to the protected interests.

According to P. Ramanatha Aiyar's, *The Law Lexicon* (2nd edition; Reprint 2007) at page 1557, "public interest" 'means those interests which concern the public at large'. Banks and financial institutions in India heavily finance various industries on a routinely basis. However, it is a fact that large sums of such amounts are sometimes not recovered. In some cases, loans availed of are not repaid despite the fact that the industrialist(s) may actually be in a financial position to pay. Where financial assistance is given to industries by banks, in the absence of financial liquidity, it would result in a blockade of large funds creating circumstances that would retard socio- economic growth of the Nation.

At this stage the Commission would like to quote Thomas J of the High Court of New Zealand 1995, 'The primary foundation for insisting upon openness in government rests upon the sovereignty of the people. Under a democracy, parliament is "supreme", in the sense that term is used in the phrase "parliamentary supremacy", **but the people remain sovereign**. They enjoy the ultimate power which their sovereignty confers. But the people cannot undertake the machinery of government. That task is delegated to their elected representatives ...

... the government can be perceived as the agent or **fiduciary of the people**, performing the task and exercising the powers of government which have been **devolved to it in trust** for the people.

... the **information held by government is essentially the people's information being held on their behalf** pursuant to this devolution of authority. ... The people's sovereignty ultimately determines their right to insist upon openness in government'

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. The Supreme Court of India in *U. P. Financial Corporation v. Gem Cap India Pvt. Ltd.* AIR 1993 SC 1435 has noted that "Promoting industrialisation 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 the citizens' knowledge; there is certainly a larger public interest that would 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.

Many Revenue departments publish lists of defaulters and All India Bank Employees Association has also published list of Bank defaulters. It would be relevant to rely on the observations of the Supreme Court of India in its landmark decision in *Mardia Chemicals Ltd. v. Union of India* (decided on 08/04/2004). The Supreme Court of India was considering the validity of the SARFAESI Act and recovery of 'non- performing assets' by banks and financial institutions in India. While discussing whether a private contract between the borrower and the financing institution/ bank can be interfered with, the Court observed:

“...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.” (Emphasis added)

There are times when experts make mistakes, other times when corruption influences decisions. It is dangerous to put complete faith in the judgment of a few wise people to alert everyone. Democracy requires reducing inequality of opportunity. Asymmetry of information deprives the citizens of an opportunity to take proper decisions. The Commission is aware that information on defaulters is being shared by Reserve Bank with an organisation called CIBIL. In such a situation, it is difficult to understand the reluctance to share this information with citizens using RTI. RBI's circular of 1994,- mentioned above,- infact appears to promise to share this information *suo moto* with the public.

In view of the arguments given above, the Commission is of the considered view that the details of defaulters of public sector banks should be revealed since it would be in larger public interest. Revealing these would serve the object of reining in such defaulters, warning Citizens about those who they should stay away from in terms of investments and perhaps shaming such persons/entities. This could lead to safeguarding the economic and moral interests of the Nation. The Commission is convinced that the benefits accruing to the economic and moral fibre of the Country, far outweigh any damage to the fiduciary relationship of bankers and their customers if the details of the top defaulters are disclosed.

Hence, in view of Section 8(2) of the RTI Act, the Commission rules that information on query 2(b) must be provided to the Appellant, since there is a larger public interest in disclosure. The Commission also directs the Governor, RBI to display this information on its website, in fulfillment of its obligations under Section 4 (1) (b) (xvii) of the RTI Act. This direction is being given under the Commission's powers under Section 19 (8) (a) (iii)

The Appeal is allowed.

The PIO shall provide the complete information as per records on queries 2(b) and 2(c) to the Appellant **before 10 December 2011.**

The Commission also directs the Governor, RBI to display this information on its website, in fulfillment of its obligations under Section 4 (1) (b) (xvii) of the RTI Act. This direction is being given under the Commission's powers under Section 19 (8) (a) (iii). This should be done before 31 December, 2011 and updated each year.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi
Information Commissioner
15 November 2011

(In any correspondence on this decision, mention the complete decision number.)(BK)