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

Decision No. CIC/SG/A/2011/002254/15743
Appeal No. CIC/SG/A/2011/002254

Relevant facts emerging from the Appeal:

Appellant	:	Mr. Subhash Chandra Agrawal, 1775 Kucha Lattushah, Dariba, Chandni Chowk, Delhi – 110006
Respondent	:	Mr. Jaganmohan Rao, CPIO & Chief General Manager, Reserve Bank of India, Department of Banking Supervision, Central Office, Centre 1, Cuffe Parade, Colaba, Mumbai – 400005

RTI application filed on	:	30/04/2011
PIO replied on	:	08/06/2011
First Appeal filed on	:	14/06/2011
First Appellate Authority order of	:	29/07/2011
Second Appeal received on	:	17/08/2011

The Appellant enclosed a news clipping along with his RTI application. Information was sought in relation to the news clipping and certain information was provided by the CPIO. These details are as follows:

S.No.	Information sought	Reply of Public Information Officer (PIO)
1.	Complete and detailed information including related documents / correspondence / file noting etc of RBI on imposing fines on some banks for violating rules like also referred in enclosed news clipping.	As the violations for which the banks were issued Show Cause Notices and subsequently imposed penalties and based on the findings of the Annual Financial Inspection (AFI) of the banks, and the information is received by us in a fiduciary capacity, the disclosure of such information would prejudicially affect the economic interests of the state and harm the bank's competitive position. The SCNs/findings / reports/ associated correspondences/ orders are therefore exempt from disclosure in terms of the provisions of Section 8 (1) (a), (d) and (e) of the RTI Act 2005.
2.	Complete list of banks which were issued show-cause notices before fine was imposed as also referred in enclosed news clipping	-do-

	mentioning also default for which show-cause notice was issued to each of such banks.	
3.	List of banks out of those in query (2) above where fine was not imposed giving details like if their reply was satisfactory etc.	-do-
4.	List of banks which were ultimately found guilty and fines mentioning also amount of fine on each of the bank and criterion to decide fine on each of the bank.	The names of the 19 banks and details of penalty imposed on them are furnished in Annex 1. Regarding the criterion for deciding the fine, the penalties have been imposed on these banks for contravention of various directions and instructions – such as failure to carry out proper due diligence on user appropriateness and suitability of products, selling derivative products to users not having proper risk management policies, not verifying the underlying / adequacy of underlying and eligible limits under past performance route, issued by RBI in respect of derivative transactions.
5.	Is fine imposed / action taken on some other banks also other than as mentioned in enclosed news- clipping.	No other bank was penalized other than those mentioned in the Annex, in the context of press release No. 2010-2011/1555 of April 26, 2011.
6.	If yes, please provide details	Not Applicable, in view of the information provide in query No. 5.
7.	Any other information	The query is not specific.
8.	File nothings on movement of this RTI petition and on every aspect of this RTI Petition.	Copy of the note is enclosed.

Grounds for First Appeal:
The Appellant was not satisfied with the reply of the PIO.

Order of the First Appellate Authority (FAA):
"*The appellant has in query at point No. 1 to 3 sought details of the file notings, etc which led to the imposition of penalty on the 19 banks referred to in the news clipping as also list of banks which were not imposed fine, despite issue of show – cause notice etc.*

The CPIO has, in reply to the appellant's queries at Point No. 1 to 3, claimed exemption under the provisions of clauses (a), (d) and (e) of Section 8(1) of the Act and replied to the appellant stating that the violations for which the banks on the finding of the Annual Financial Inspection on banks and that the said information is received by the Reserve Bank in a fiduciary capacity, the disclosure of which would prejudicially affect economic interests of the State and harm the Banks competitive position. The CPIO therefore held that the SCNs / findings / reports/ associated correspondences / orders are exempt from disclosure in terms of the provisions of clauses (a), (d) and (e) of Section 8(1) of the Act. I agree with the CPIO that the said request for information of the appellant cannot be acceded to. However, I do not feel inclined to accept that CPIO is justified in claiming exemption under Section 8(1) (d) of the RTI Act. In my view, disclosure of the information sought for in query at Point No. 1 is exempt under clauses (a) and (e) of Section 8(1) of the Act. The particulars sought for in the queries at Point No. 2 and 3, relate to the banks to which Show Cause Notices were issued but no fine was imposed and the details like whether their replies were satisfactory etc. These information are available to the CPIO in fiduciary capacity and as such exempt under clause (e) of Section 8(1). I find no infirmity in the reply given by the CPIO, DBS merely because other clauses of Section 8(1) are also cited by him.

4. There is no merit in the appeal. The appeal is dismissed. This order may be served on the appellant."

Ground for Second Appeal:
The Appellant is not satisfied with the PIO's reply and the order of the FAA.

Relevant Facts emerging during Hearing held on 20 October 2011:
The following were present:
Appellant: Mr. Subhash Chandra Agrawal via telephone no. 9810033711;
Respondent: Ms. Mini Kutti Krishnan, Assistant Legal Advisor on behalf of Mr. Jaganmohan Rao, CPIO & Chief General Manager via video conference from NIC Studio – Mumbai.

Various arguments were made by the Respondent claiming exemption under Sections 8(1)(a) and (e) of the RTI Act. The Respondent claimed that the inspection reports are meant to be confidential and as per the judgment of the Supreme Court of India, these are held in a fiduciary capacity by RBI. The Appellant claimed that only after RTI queries and responses from RBI was ICICI made to release Rs.200 crores which it had unfairly held. The Appellant also mentioned that the Damodaran Committee was appointed only because of RTI applications and that its report should be put up on the website of the department. The appellant's contention was that when information was disclosed in RTI, it led to benefits to general public, alongwith the transparency achieved. The Commission asked both parties to send their written submissions to the commission.

The order was reserved at the hearing held on 20/10/2011.

Decision announced on 17 November 2011:
The Commission has received written submissions from the Respondent, which have been perused by it. Based on the submissions of the parties, it appears that the Appellant is now seeking information in relation to queries 1, 2 and 3 of the RTI application. The information sought pertains to imposition of fines by RBI on certain banks for violation of rules including documents, correspondence, file notings, etc, list of banks which were issued show cause notices before imposition of fine along with the type of default, and list of those banks on which fine was ultimately not imposed along with details.

On the basis of the PIO's reply dated 08/06/2011, the FAA's order dated 29/07/2011, and the written submissions and oral arguments of the Respondent, it appears that information on queries 1, 2 and 3 has been denied on the basis of Sections 8(1)(a) and (e) of the RTI Act.

Whether information sought in queries 1, 2 and 3 is exempt from disclosure under Section 8(1)(a) of the RTI Act

The Respondent has claimed that the information sought in queries 1, 2 and 3 was exempt under Section 8(1)(a) of the RTI Act. The Respondent has submitted that the inspection carried out by RBI often brings out the weaknesses in the financial aspect, management and systems of the inspected entity. Inspection reports and related documents though containing conclusive view points are at times tentative. Therefore disclosure of such information may create misunderstanding in the minds of the public and adversely impact public confidence in banks/financial institutions. This may impact the banking sector on the whole. This could trigger a ripple effect on the deposits of not only one bank to which the information pertains but others as well due to contagion effect. This has serious implication on financial stability which rests on public confidence in banks/financial institution, besides harming their competitiveness.

The Respondent has relied on various decisions of the Supreme Court of India and High Courts in the written submissions which have time and again given due deference to the view of RBI and laid down

that in matters of economic interests and issues related to financial stability, they would be guided by the view of RBI. These decisions have been perused by this Bench and are *Peerless General Finance and Investment Co. v. Reserve Bank of India* (1992) 2 SCC 343, *Joseph Kuruvilla Vellukunnel v. Reserve Bank of India* AIR 1962 SC, *B. Suryanarayana v. Kolluru Parvathi Co- op Bank Ltd*. AIR 1986 AP 244 and *Reserve Bank of India v. Palai Central Bank Ltd*. AIR 1961 Ker 268.

The Commission has perused these decisions and noted that in the said cases, the Courts have accepted RBI's guidance on matters/issues related to economic interests and financial stability of the country. It must be mentioned that these decisions were given before the advent of the RTI Act. While deciding matters, the Commission would necessarily have to consider whether there were any cogent reasons for denial of information under Sections 8 and 9 of the RTI Act. In this regard, RBI's views would be considered important since it is the apex body competent to determine matters/issues of economic interest and financial stability of the country- as held by decisions cited above. These decisions do not mention that RBI is the sole arbiter to decide what information is exempt under the RTI Act. The decision on whether the information is exempt or not has to be consciously made by the Commission.

The Respondent has also relied on the decision of a Full Bench of the Commission in *R. R. Patel v. RBI* CIC/MA/A/2006/00406 and 00150 dated 07/12/2006. In *R. R. Patel's Case*, the Full Bench was considering the specific issue of disclosure of RBI's inspection report of a cooperative bank. One of the issues before the Bench was whether the inspection report was exempt from disclosure under Section 8(1)(a) of the RTI Act. The Full Bench relied on a decision of the Punjab & Haryana High Court in *RBI v. Central Government Industrial Tribunal* (dated 07/05/1958) which had observed that "*In an integrated economy like ours, the job of a regulating authority is quite complex and such an authority has to decide as to what would be the best course of action in the economic interest of the State. It is necessary that such an authority is allowed functional autonomy in decision making and as regards the process adopted for the purpose*". Based on the above, the Full Bench, in paragraph 16, ruled *inter alia* that "*In view of this, and in light of the earlier discussion, we have no hesitation in holding that the RBI is entitled to claim exemption from disclosure u/s 8(1)(a) of the Act if it is satisfied that the disclosure of such report would adversely affect the economic interests of the State. The RBI is an expert body appointed to oversee this matter and we may therefore rely on its assessment. The issue is decided accordingly*".

From a plain reading of the above, it appears that the Full Bench was of the view that if RBI concluded that disclosure of inspection reports would adversely affect the economic interests of the State, the said information may be denied under Section 8(1)(a) of the RTI Act. There is no observation that the Full Bench had come to this conclusion by itself. Further, the observations of the Punjab & Haryana High Court in *RBI v. Central Government Industrial Tribunal* (dated 07/05/1958) relied on by the Full Bench were made much before the advent of the RTI Act and cannot therefore, be a guide for deciding on the applicability of exemptions under the RTI Act. Furthermore, the RBI in *R. R. Patel's Case* claimed that if inspection reports of banks were to be disclosed it would affect the economic interests of the State. The Full Bench decision appears to rely on the submissions of the Deputy Governor of RBI provided vide letter dated 21/09/2006 and were as follows:

> *"(i) Among the various responsibilities vested with RBI as the country's Central Bank, one of the major responsibilities relate to maintenance of financial stability. While disclosure of information generally would reinforce public trust in institutions, the disclosure of certain information can*
> *adversely affect the public interest and compromise financial sector stability.*
> *(ii) The inspection carried out by RBI often brings out weaknesses in the financial institutions, systems and management of the inspected entities. Therefore, disclosure can erode public confidence not only in the inspected entity but in the banking sector as well.*

This could trigger a ripple effect on the deposits of not only one bank to which the information pertains but others as well due to contagion effect.

(iii) While the RBI had been conceding request for information on actions taken by it on complaints made by members of the public against the functioning of the banks and financial institutions and that they do not have any objection in giving information in respect of such action taken or in giving the substantive information pertaining to such complaints provided such information is innocuous in nature and not likely to adversely impact the system.

(iv) However, disclosure of inspection reports as ordered by the Commission in their decision dated September 6, 2006 would not be in the economic interest of the country and such disclosures would have adverse impact on the financial stability.

(v) It would not be possible to apply section 10(1) of the Act in respect of the Act in respect of the inspection report as portion of such reports when read out of context result in conveying even more misleading messages."

Thus RBI argued that it did not wish to share the information sought as some of it could "*adversely affect the public interest and compromise financial sector stability*". RBI was unwilling to share information which might bring out the '*weaknesses in the financial institutions, systems and management of the inspected entities*'. It was further contended that '*disclosure can erode public confidence not only in the inspected entity but in the banking sector as well. This could trigger a ripple effect on the deposits of not only one bank to which the information pertains but others as well due to contagion effect*'. It appears that the RBI argued that citizens were not mature enough to understand the implications of weaknesses, and RBI was the best judge to decide what citizens should know. Citizens, who are considered mature enough to decide on who should govern them, who give legitimacy to the government, and framed the Constitution of India must be given selective information about weaknesses exposed in inspection, to ensure that they have faith in the banking sector. They must see the financial and banking sector only to the extent which RBI wishes.

It follows that if RBI made mistakes, or there was corruption, citizens would suffer. This appears to go against the basic tenets of democracy and transparency. Similar arguments have now been raised by the Respondent in the present matter as well. This Bench would like to remember Justice Mathew's clarion call in State of Uttar Pradesh v. Raj Narain (1975) 4 SCC 428 - "*In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security*".

It is also worthwhile remembering the observations of the Supreme Court of India in S. P. Gupta v. President of India & Ors. AIR 1982 SC 149:

"*It is axiomatic that every action of the government must be actuated by public interest but even so we find cases, though not many, where governmental action is taken not for public good but for personal gain or other extraneous considerations. Sometimes governmental action is influenced by political and other motivations and pressures…*

At times, there are also instances of misuse or abuse of authority on the part of the executive. Now, if secrecy were to be observed in the functioning of government and the processes of government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would all be

shrouded in the veil of secrecy without any public accountability. But if there is an open government with means, of information available to the public there would be greater exposure of the functioning of government and it would help to assure the people a better and more efficient administration. There can be little doubt that' exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open government is clean government and a powerful safeguard against political and administrative aberration and inefficiency…

This is the new democratic culture of an open society towards which every liberal democracy is evolving and our country should be no exception. The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands...

Even though the head of the department or even the Minister may file an affidavit claiming immunity from disclosure of certain unofficial documents in the public interest, it is well settled that the court has residual powers to nevertheless call for the documents and examine them. The court is not bound by the statement made by the minister or the head of the department in the affidavit. While the head of the department concerned was competent to make a judgment on whether the disclosure of unpublished official records would harm the nation or the public service, he/she is not competent to decide what was in the public interest as that it the job of the courts. The court retains the power to balance the injury to the State or the public service against the risk of injustice, before reaching its decision on whether to disclose the document publicly or not."

The idea that citizens are not mature enough to understand and will panic is repugnant to democracy. For over 60 years citizens have handled their democratic rights in a mature fashion, punished leaders who showed tendencies of trampling their rights, and again given them power once the leaders had learnt their lessons not to take liberties with the liberties of the sovereign citizens of India. 'We the people' gave ourselves the Constitution of India, nurtured it and will take it forward. The fundamental rights of citizens, enshrined in the Constitution of India cannot be curbed on a mere apprehension of a public authority. The Supreme Court of India has recognized that the Right to Information is part of the fundamental right of citizens under Article 19 of the Constitution of India. Any constraint on the fundamental rights of citizens has to be done with great care even by Parliament. The exemptions under Section 8 and 9 of the RTI Act are the constraints put by Parliament and adjudicating bodies have to carefully consider whether the exemptions apply before denying any information under the RTI framework.

It is pertinent to mention that in *R. R. Patel's Case*, the Full Bench did not come to any specific conclusion that disclosure of inspection reports would prejudicially affect the economic interests of the State. Instead it left it to RBI to determine whether disclosure of the said information would attract Section 8(1)(a) of the RTI Act. This was primarily on the basis that RBI is an expert body and that any decision taken by it must necessarily be relied upon by the Commission and be the sole decisive factor. No legal reasoning whatsoever was given by the Full Bench for concluding the above. There is no evidence or indication that the Commission after taking cognizance of RBI's views had come to the same conclusion. If the position of the Full Bench is to be accepted, it would lead to a situation where RBI would have the final say in whether information should be provided to a citizen or not. Extending this logic, all public authorities could be the best judge of what information could be disclosed, since they are likely to be experts in matters connected with their working. In such an event the Commission would have no role to play. Parliament evidently expected that the Commission would independently decide whether the exemptions are applicable. It may take the view of RBI into account, but the ultimate decision on whether any exemption would apply or not must be decided by the Commission. The Full Bench did not

give any independent finding that the disclosure of information would affect the economic interests of the State in its decision. This would completely negate the fundamental right to information guaranteed to the citizens under the RTI Act. In the case being considered by the Full Bench, it decided to accept the judgment of RBI. It is open to a Commission to defer to a judgment of another body, but this does not establish any principle of law, and would apply only to the specific matter.

It is apparent from the scheme of the RTI Act that the Commission is a quasi- judicial body which is responsible for deciding appeals and complaints arising under the RTI Act. The Commission cannot abdicate its responsibilities under the RTI Act to RBI on the ground that the latter is an expert body. The Commission cannot rely solely on the decision of the public authority and must look into the merits of the case itself. It must determine, on its own, whether the denial of information by the PIO was justified as per Sections 8 and 9 of the RTI Act. Since the Full Bench has not recorded any comment which shows that it consciously agreed that Section 8 (1)(a) of the RTI Act was applicable in such matters, it does not establish any legal principle or interpretation which can be considered as a precedent or ratio. Thus the decision is applicable only to the particular matter before it, and does not become a binding precedent.

Furthermore, the Full Bench in *R. R. Patel's Case* was constituted to reconsider two decisions dated 06/09/2006 of Professor M. M. Ansari, then Information Commissioner. As described above, the issues to be reconsidered by the Full Bench included whether the claim of RBI for exemption under Section 8(1)(a) of the RTI Act in respect of inspection of reports could be held justified. The Full Bench relied on the Supreme Court's decision in *Grindlays' Bank v. Central Government Industrial Tribunal* AIR 1981 SC 606 and noted that when a review is sought due to a procedural defect, the inadvertent error committed by a tribunal must be corrected *ex debito justitiae* to prevent the abuse of its power and such power is inherent in every court or tribunal. On this basis, the Full Bench proceeded to review the decisions of Professor M. M. Ansari, then Information Commissioner.

The Supreme Court of India in *Patel Narshi Thakershi & Ors. v. Sri Pradyumansinghji* AIR 1970 SC 1273 has noted - "*It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication*". In *Kuntesh Gupta v. Mgmt. of Hindu Kanya Mahavidyalaya, Sitapur & Ors*. AIR 1987 SC 2186, the Supreme Court observed – "*It is now well established that a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction*". It must be noted that a three- Judge Bench of the Supreme Court in *Kapra Mazdoor Ekta Union v. Mgmt. of M/s Birla Cotton* Appeal (Civil) No. 3475/2003 decided on 16/03/2005 held:

> "*…it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such*

illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others (supra), it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again."

From a combined reading of the above decisions, it is clear that a quasi – judicial authority can review a decision on merits only if it is vested with power of review by express provision or by necessary implication. The powers of the Commission are limited under the RTI Act and certainly do not confer upon it the power of review. It is clear from the Full Bench ruling in *R. R. Patel's Case* that it was reviewing the two decisions of Professor M. M. Ansari, then Information Commissioner on merits. The Full Bench certainly did not have the power to do so given the provisions of the RTI Act and the law laid down by the Supreme Court in this regard. In fact, the Supreme Court in the *Kapra Mazdoor Ekta Union Case* clearly considered and clarified the ruling in the *Grindlays' Bank Case* (relied upon by the Full Bench). It appears that the Full Bench reviewed the issues based on merits in *R. R. Patel's Case* in ignorance of the law laid down by the Supreme Court in *Kapra Mazdoor Ekta Union Case*. Therefore, for the reasons detailed above, the *R. R. Patel Case* is *per incuriam* and is consequently, not binding on this Bench.

Having laid down the above, this Bench has examined the contention of the Respondent in the present matter that the information sought in queries 1, 2 and 3 is protected under Section 8(1)(a) of the RTI Act. While this Bench has considered RBI's judgment in the present matter, whether exemption under Section 8(1)(a) of the RTI Act will apply or not, must be decided by the Commission.

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 is unlikely that disclosure of information sought in queries 1, 2 and 3 would prejudicially affect the sovereignty and integrity of India, the security, strategic or scientific interests of the State, or relation with foreign State, or lead to incitement of an offence. Hence it must be examined whether the economic interests of the State are likely to be prejudicially affected by disclosure of the information. The information sought pertains to imposition of fines by RBI on certain banks for violation of rules including documents, correspondence, file notings, etc, list of banks which were issued show cause notices before imposition of fine along with the type of default, and list of those banks on which fine was ultimately not imposed along with details. This Bench is unable to understand how disclosing this information would affect the economic interests of the Indian Nation. Financial stability of a nation cannot lie solely on public confidence in banks/financial institutions, and certainly not where banks/financial institutions holding public funds are involved in irregularities. The submissions of the Respondent appear to suggest that the economic state of this Nation is extremely fragile and therefore, the information sought should not be disclosed.

I am not convinced that the disclosure of information would lead to any harm to the economic interests of India; infact it is my firm conviction that it will help to improve the fundamental strength of the economic foundations of the country and safeguard against sudden disruptions, which could be caused if all the information was not available to public.

Section 8 (2) of the RTI Act states, "*Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interests in disclosure outweighs the harm to the protected interests*". The RBI is a regulatory authority which is responsible for *inter alia* monitoring subordinate banks and institutions. Needless to state significant amounts of public funds are kept with such banks and institutions. Therefore, it is only logical that the public has a right to know about the functioning and working of such entities including any lapses in regulatory compliances. Merely because disclosure of such information may adversely affect public confidence in defaulting institutions, cannot be a reason for denial of information under the RTI Act. If there are certain irregularities in the working and functioning of such banks and institutions, the citizens certainly have a right to know about the same. The best check on arbitrariness, mistakes and corruption is transparency, which allows thousands of citizens to act as monitors of public interest. There must be transparency as regards such organisations so that citizens can make an informed choice about them. In view of the same, this Bench is of the considered opinion that even if the information sought was exempted under Section 8(1)(a) of the RTI Act,-as claimed by the Respondent,- Section 8(2) of the RTI Act would mandate disclosure of the information sought.

At this juncture, it is relevant to refer to the conclusion and recommendation of the Full Bench in the *R. R. Patel Case* in paragraph 21 - "*Before parting with this appeal, we would like to record our observations that in a rapidly unfolding economics scenario, there are public institutions, both in the banking and non-banking sector, whose activities have not served public interest. On the contrary, some such institutions may have attempted to defraud the public of their moneys kept with such institutions in trust. RBI being the Central Bank is one of the instrumentalities available to the public which as a regulator can inspect such institutions and initiate remedial measures where necessary. It is important that the general public particularly the shareholders and the depositors of such institutions are kept aware of RBI's appraisal of the functioning of such institutions and taken into confidence about the remedial actions initiated in specific cases. This will serve the public interest. The RBI would therefore be well advised to be proactive in disclosing information to the public in general and the information seekers under the Right to Information Act, in particular. The provisions of Section 10(1) of the RTI Act can therefore be judiciously used when necessary to adhere to this objective*".

From a plain reading of the above, it follows that the Full Bench had independently come to the above conclusion after applying its mind. It had-, at paragraph 21,- clearly stated that a larger public interest was likely to be served by disclosure of the said information. It suggested that RBI should disclose most of this information in a proactive manner. The Full Bench had effectively given a recommendation to RBI to disclose this information under Section 4 of the RTI Act. This Bench agrees with the conclusion arrived at by the Full Bench that the disclosure of the appraisal of financial institutions by RBI and remedial measures must be shared with public in a proactive manner. Public interest would be served by such disclosure as the bench has concluded on its own, without relying on RBI. It is unfortunate that RBI appears to have taken no steps to proactively disclose this information in the last five years.

However, once the Full Bench had recorded its finding of a public interest in disclosure it should have given reasons why it did not order disclosure as per the provisions of Section 8(2) of the RTI Act. It appears have overlooked the provisions of Section 8 (2) of the RTI Act. The Full Bench had arrived at the conclusion that there was a larger public interest in disclosure, but did not give any directions based on this finding, nor did it give any reasons for not giving any directions. If the Full Bench had considered the provisions of Section 8(2) of the RTI Act, it would have ruled that the requisite information should be disclosed. It may be pointed out that in view of the above, the ruling in *R. R. Patel's Case* is *per incuriam* as it was rendered without considering the statutory provision of Section 8 (2) of the RTI Act.

The Respondent has argued that as per Section 35 of the Banking Regulation Act, 1949, inspection reports prepared by RBI shall be provided only to the banking company that has been inspected. Further, the inspection report of a banking company is confidential in nature and cannot be published by anybody except the Central Government, after giving reasonable notice to the banking company. These inspection reports are not even made available to the Public Accounts Committee of the Parliament. Furthermore, RBI usually claims privilege under the Evidence Act from production of inspection reports in courts. The Respondent has also relied on the decisions of the Punjab & Haryana High Court in *RBI v. Central Government Industrial Tribunal* (1959) I LLJ 539 P & H and High Court of Madras in *RBI v. P. Nadarajan* (reported in 2000 (II) CTC 173). These decisions have been perused by the Bench.

Section 22 of the RTI Act expressly provides that the provisions of the RTI Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act. Section 22 of the RTI Act, in no uncertain terms, lays down that the RTI Act shall override anything inconsistent contained in any other law. The High Court of Delhi in *Union of India v. Central Information Commission & Anr*. 2009 (165) DLT 559 has held that-

> "*Section 22 of the RTI Act gives supremacy to the said Act and stipulates that the provisions of the RTI Act will override, notwithstanding anything to the contrary contained in the Official Secrets Act or any other enactment for the time being in force. This non-obstante clause has to be given full effect to, in compliance with the legislative intent. Wherever there is a conflict between the provisions of the RTI Act and another enactment already in force on the date when the RTI Act was enacted, the provisions of the RTI Act will prevail…*"

On a bare perusal of Section 35 of the Banking Regulation Act, 1949, it appears to impose restrictions on access to information held by or under the control of RBI inasmuch as the inspection reports shall be provided only to the banking company, or can be published only by the Central Government after notifying the banking company. This is *prima facie* inconsistent with the RTI Act, which mandates disclosure of information unless exempted under Sections 8 and 9 of the RTI Act. Therefore, in accordance with Section 22 of the RTI Act, the provisions of the RTI Act shall override the provisions of the Banking Regulation Act as regards furnishing information. Consequently, whether or not information should be furnished has to be examined in light of Sections 8 and 9 of the RTI Act only. Further, the decisions cited by the Respondent were decided before the advent of the RTI Act and are therefore not relevant in determining whether the information sought was exempted under Section 8(1)(e) of the RTI Act.

The Respondent has contended that the information sought in queries 1, 2 and 3 was exempt 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*". It has been submitted by the Respondent that courts have held that inspection reports are confidential based on the trust reposed by banks on RBI and when there is an element of confidentiality and trust, it is held in fiduciary capacity. Reliance has been placed on the observations of the Supreme Court of India in *Chartered Accountants of India v. Shaunak H. Staya & Ors*. 2011 (9) SCALE 639 (paragraphs 16-18) and *Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Ors*. 2011 (8) SCALE 645.

The Supreme Court of India in the *Chartered Accountants Case* has relied on its definition of 'fiduciary' (under Section 8(1)(e) of the RTI Act) culled out in the *Aditya Bandopadhyay Case*. In the *Aditya Bandhopadhyay Case*, the Supreme Court of India has held-

"*21. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and expected not to disclose the thing or information to any third party…*

…But the words 'information available to a person in his fiduciary relationship' are used in section 8(1)(e) of RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary…" (Emphasis added)

It follows from the above ruling that definition of '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 other words, the provider of information gives the information in trust to be used for his benefit. 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. 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. Additionally, this Bench in a number of decisions has held that another important characteristic of a fiduciary 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 particular doctor.

The Respondent has argued that while determining whether a fiduciary relationship exists or not, there is no need to look at if the information was given by choice or as a statutory obligation. The Commission does not agree with the Respondent on this count. However, even while solely relying on the definition of fiduciary laid down by the Supreme Court of India as given above- it is clear that while the banking companies may have given information to RBI in confidence or in trust, there does not appear to be any duty case upon RBI to act in benefit of such companies. In fact, when RBI carries out inspection of banking companies under Section 35 of the Banking Regulation Act, 1949, it does so in a regulatory/monitoring capacity. The information provided to RBI by banking companies is clearly in discharge of statutory obligations. Therefore, there does not appear to be a creation of any fiduciary relationship between RBI and the banking companies in this regard.

The Respondent has also submitted that since the Preamble of the RTI Act itself recognises the fact that since revelation of certain information is likely to conflict with other public interests, there is a need to harmonise these conflicting interests. In this regard, the Respondent has also relied on the observations of the Supreme Court of India in the *Aditya Bandhopadhyay Case* which has been perused by this Bench. The Commission, being an adjudicatory authority set up under the RTI Act, must ensure that the right to information of citizens is effected but at the same time, specific interests mentioned in Sections 8(1) and 9 of the RTI Act are protected. In the present matter, the Commission has adopted this approach and- for the reasons enumerated above, is of the opinion that exemption under Section 8(1)(e) of the RTI Act is not attracted.

It is pertinent to mention once again that citizens have a right to know about the functioning and working of banking companies including any regulatory lapses. If there are irregularities in the functioning of institutions/ banking companies- as sought in queries 1, 2 and 3, citizens certainly have a right to know about the same. A larger public interest would be served by disclosing this information- under Section 8(2) of the RTI Act. In view of the same, this Bench is of the considered opinion that even if the information sought was exempted under Section 8(1)(e) of the RTI Act,-as claimed by the Respondent,- Section 8(2) of the RTI Act would mandate disclosure of the information sought.

The Respondent has further argued that disclosing of inspection reports by RBI would indirectly reveal information provided by customers to the banking companies by way of a fiduciary relationship. The Respondent has also claimed that identities of whistle blowers and other persons who provide information to RBI in this regard must be protected. Reliance has been placed upon *Barings Plc v. Coopers & Lyband* [2000] 1 WLR 2353 and *Re Galileo Group Ltd*. [1999] Ch 100.

The Commission is of the opinion that there is some merit in the contentions raised by the Respondent and complete disclosure of the inspection reports may attract the exemptions contained in Sections 8(1)(e) and (g) of the RTI Act. Section 10(1) of the RTI Act provides as follows:

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

Under Section 10 of the RTI Act, it is possible to severe certain portions of the information before disclosing it to an applicant to ensure that information that is exempt from disclosure under the RTI Act is not disclosed. Therefore, this Commission has decided to apply Section 10 of the RTI Act to the information sought by the Appellant in queries 1, 2 and 3. **Details of customer related information and particulars of informers/ whistle blowers/ source of information contained in the inspection report shall be blanked out and then provided to the Appellant.**

The Appeal is allowed. The PIO is directed to provide the complete information in relation to queries 1, 2 and 3 of the RTI application to the Appellant **before 15 December 2011** after severing details of customer related information and particulars of informers/ whistle blowers/ source of information.

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
17 November 2011

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