

CENTRAL INFORMATION COMMISSION
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Decision No. CIC/SG/A/2011/001966/16167
Appeal No. CIC/SG/A/2011/001966

Relevant Facts emerging from the Appeal:

Appellant : Mr. Raja M. Shanmugam,
President – Forex Derivative Consumer's Forum,
33B, Vaikkal Thottam,
Sherieff Colony,
Tiruppur – 641604

Respondent : Central Public Information Officer,
Reserve Bank of India,
Foreign Exchange Department,
Central Office, Central Office Building,
Shahid Bhagat Singh Marg,
P.B. No. 1055, Mumbai – 400001

RTI application filed on : 12/10/2010
PIO replied on : 16/11/2010
First Appeal filed on : 13/12/2010 (Copy not enclosed)
First Appellate Authority order of : 25/01/2011
Second Appeal received on : 07/06/2011

S.No.	Information sought	Reply of the Public Information Officer (PIO)
1.	Before the Orissa High Court, RBI has filed an affidavit stating that the total mark to market losses on account of currency derivatives is to the tune of more than Rs. 32,000 crores. Please give bank wise breakup of the MTM losses.	The information sought is exempted under Sections 8(1)(a) and (e) of RTI Act.
2.	What is the latest figure available with RBI of the amount of losses suffered by Indian business houses? Please furnish the latest figures bank wise and customer wise.	
3.	Please update on action taken against the erring banks who sold the exotic derivative products in contravention to FEMA Act and RBI Guidelines as per the RBI's submissions to the Orissa High Court.	-
4.	Recent press reports suggests RBI has also issued Show Cause Notices to Several banks that have violated RBI guidelines on the sale of exotic derivative products. Give the list of banks to which show-cause notices were issued along with the copy of the notice issued to banks.	-

5.	Whether any reply received from any of the banks in response to the Show Cause Notice? If so please furnish copies of the same.	-
6.	RBI has listed out several violations of RBI guidelines by banks in the sale of exotic derivative products in its report filed before Orissa High Court. Whether periodical Audit of Sank branches in the years 2007 and 2008 revealed any such violation? If so please furnish RBI Audit Report indicating the said violation.	-
7.	RBI has issued a circular dated the 29th of October 2008 asking the banks to park the proceeds on account of derivative losses in a separate account. However, few banks, especially State Bank of India is said to have refused to adhere to the said circular despite repeated demands from the exporters. Whether R5 has received any complaint stating that any bank is refusing to adhere to the specific circular cited above? If so furnish as copy of the same.	-
8.	Also if any complaint is received by RBI as stated above, please give the detail of enquiry and action taken by the RBI on the erring banks.	-
9.	Whether the issue of derivative losses to Indian Exporters was discussed In any of the meetings of Governor I Deputy Governor or senior official of the Reserve Bank of India? If so please furnish the minutes of the meeting where the said issue was discussed.	The CPIO, Foreign Exchange Department did not have information on this query.
10.	Any other Action Taken Reports by RBI in this regard.	The CPIO, Foreign Exchange Department did not have information on this query.

Grounds for First Appeal:

Incomplete and unsatisfactory information provided by the PIO.

Order of First Appellate Authority (FAA):

The FAA noted that queries 1, 2, 9 and 10 were replied to by the CPIO, FED against which First Appeal was filed by the Appellant. Queries 3 to 8 were replied to by the CPIO, DBS. The FAA observed:

“...I have gone through the papers and also considered the grounds of appeal stated by the appellant. My observations thereon are as under:

Query No. 1:

The appellant has sought for bank wise break up of the MTM losses, CPIO has claimed exemption from disclosure under S. 8(1)(a) & (e) of RTI Act.

My observation:

I agree with the CPIO that disclosure of bank wise break up of MTM losses in the derivative transactions would affect the economic interests of the state as such disclosure to the public could be detrimental to the interest of the subject bank and to the banking system in general. Also, information relating to MTM

position of banks are obtained by Reserve Bank for discharging the regulatory and supervisory functions and are held by the Reserve Bank in fiduciary capacity; Therefore, I do not find any infirmity in the exemption claimed by the CPIO under S. 8(1)(a) & (e) of the RTI Act. The decision of the Hon'ble Delhi High Court, referred to by the appellant, is not applicable to the facts of this case. The observations of the Full Bench of CIC in the case of Shri Ravin Ranchhodlal Patel & ----. Reserve Bank of India (Decided on December 7, 2006), wherein absolute discretion was granted to the Reserve Bank to assess the desirability of disclosure of Inspection Report in individual cases, are equally relevant to the kind of information sought by the appellant especially when he desires to have bank wise break up. I do not consider that this is a fit case warranting invocation of S. 8(2) of RTI Act by the CPIO and accordingly, no fault can be found on the part of CPIO in not disclosing the information sought by the appellant.

Query No. 2.

The appellant desired to know the amount of losses suffered by Indian Business Houses and its latest figures, bank wise and customer wise.

My Observations:

CPIO has not given a separate reply to this Query. Instead, he has made a cross reference to his reply to Query No. 1. I direct the CPIO to clarify to the appellant whether the information relating to the losses suffered by Indian Business Houses is available with the Reserve Bank. If available, CP is directed to consider the request of the appellant subject to the exemptions provided under the RTI Act.

Query Nos. 9&10:

The appellant wanted to know whether the issue of derivative losses to Indian exporters was discussed in any of the meetings of the Governor/ Deputy Governor or senior official of Reserve Bank and if so, to furnish the minutes of the meeting. In Query No. 10, the appellant sought for Action taken Reports by RBI in the matter. CPIO has replied that no information is available.

My Observations:

Whether a particular state of fact exist or not, ideally has to be replied either in the affirmative or in the negative. Replying that no information is available is not appropriate. In my view, based on the records, CPIO should state whether there were any meetings or action taken reports, as sought by the appellant. Therefore, I direct the CPIO to revisit Query Nos. 9 & 10 and give appropriate replies to the appellant. However, I wish to clarify that disclosure of minutes of meetings or copies of reports, if any, shall be subject to the exemptions provided under the RTI Act.”

Grounds for Second Appeal:

Dissatisfied with the order of the FAA.

Relevant Facts emerging during Hearing held on 15 November 2011:

The following were present:

Appellant: Mr. Raja M. Shanmugam via video- conference from NIC Studio – Tiruppur;

Respondent: Absent.

“The Appellant gave written submissions to the Commission. The Respondent neither appeared on the said date nor did the Commission receive any submissions. The appellant stated that he wanted to draw the attention of the Commission to the Orissa High Court Judgement in W. P. (CrI.) No. 344/2009.”

The order was reserved on 15/11/2011.

Decision announced on 7 December 2011:

The Commission has perused the papers including the submissions of the Appellant. The Appellant is now seeking information on queries 1, 2, 9 and 10.

In queries 1 and 2, the Appellant has sought the following information:

1. Before the Orissa High Court, RBI has filed an affidavit stating that the total market to market losses on account of currency derivatives are to the tune of more than Rs. 32,000 crores. Provide bank-wise breakup of the MTM losses; and

2. What is the latest figure available with RBI of the amount of losses suffered by Indian business houses? Provide latest figures bank-wise and customer wise.

The PIO has denied the information on the basis of Sections 8(1)(a) and (e) of the RTI Act. The FAA has upheld the PIO's reply in query 1 and cited the Commission's decision in R. R. Patel v. RBI CIC/MA/A/2006/00406 and 00150 dated 07/12/2006. As regards query 2, the FAA directed the CPIO to consider the Appellant's request subject to the provisions of the RTI Act.

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

The Respondent has denied the information sought in queries 1 and 2 under Section 8(1)(a) of the RTI Act. The FAA agreed with the reply of the CPIO in query 1 and observed that disclosure of bank-wise break-up of MTM losses in the derivative transactions would affect the economic interests of the State as such disclosure to the public could be detrimental to the interest of the subject bank and the banking system in general. The FAA relied on the Commission's Full Bench decision in R. R. Patel v. RBI CIC/MA/A/2006/00406 and 00150 dated 07/12/2006. The FAA also stated that it did not consider this as a fit case for invoking Section 8(2) of the RTI Act.

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. This is not the issue before this Bench and therefore, this precedent may not be entirely relevant. Nonetheless, this Bench has considered the R. R. Patel Case. One of the issues before the Full 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. 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 is 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 whether the information sought in queries 1 and 2 is protected under Section 8(1)(a) of the RTI Act. While this Bench has considered RBI’s reply 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 and 2 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 bank-wise breakup of the MTM losses and latest figures available with RBI of the amount of losses suffered by Indian business houses with latest figures bank-wise and customer wise.

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. 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 banks and financial institutions along with flow of public funds and forex in accordance with applicable law. In the present matter where MTM losses on currency derivatives are to the extent of more than Rs. 32,000 crores, it is certainly a matter of national importance. There appears to be a large financial scam affecting the economy as a whole and citizens have a right to know about the same. The Orissa High Court in *Pravanjan Patra v. Union of India & Ors.* W. P. (Crl.) No. 344/2009 had dealt with the present matter and in this context, it would be relevant to quote its observations, as follows:

“14. From the above mentioned facts and circumstances, it appears that besides serious irregularities as admitted in the report of the CBI, as indicated above, the following criminal actions cannot be ruled out (i) making false declaration deliberately by users/customers in

making hedge transactions in excess of their exposures, (ii) IDG has identified violations which are serious in nature and appear to be intentional and deliberate which also forms mensrea in commission of offence, (iii) booking of contracts under past performance basis beyond 50% of eligible limit without obtaining CA certificate, (iv) misuse of transactions by using photocopies of the same underlying to enter into different contracts with different banks. The CBI has specifically observed in its report that there was clear cut violations of the guideline of RBI and it may be said that there is enough in this world for every one needs but not for any one's greed. There are apparent violations of FEMA and if investigation is done by the CBI, the violation of FEMA can also be seen and on that basis criminal offences can also be found out.

15. From the fact that false declarations were made as also from the above mentioned actions, the commission of offences of cheating, fraud and criminal conspiracy cannot be ruled out. The CBI has conducted a thorough enquiry...The instant matter is a matter of national interest. If the allegations are found to be true, then the CBI would be busting a large financial scam affecting the economy of the country."

Whether information sought in queries 1 and 2 is exempt from disclosure 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;*". 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 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.

The PIO has denied information on queries 1 and 2 on the basis of Section 8(1)(e) of the RTI Act. This was upheld by the FAA which further observed that information relating to MTM position of banks are obtained by RBI for discharging the regulatory and supervisory functions and are held by RBI in fiduciary capacity.

In the present matter, it is clear that while banks may have given information to RBI in confidence or in trust, there does not appear to be any duty cast upon RBI to act in their benefit. RBI being a regulator of the banking sector obtains/maintains such information in regulatory/ supervisory capacity. Therefore, there is no element of choice as such available to banks. There does not appear to be a creation of any fiduciary relationship between RBI and the banks, as laid down above. Therefore, the PIO's contention that information in queries 1 and 2 is exempt under Section 8(1)(e) of the RTI Act is rejected. Moreover, for the reasons mentioned above- 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 whether information sought in query 1 and 2 is exempted under Section 8(1)(e) of the RTI Act, Section 8(2) of the RTI Act would mandate disclosure of the information sought.

Further, as regards queries 9 and 10, the CPIO has not claimed any exemption either in the initial reply or subsequently for denying the information.

The Appeal is allowed.

The CPIO, FED is directed to provide the complete information as per record on queries 1, 2, 9 and 10 to the Appellant **before 5 January 2012.**

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
7 December 2011

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