

CENTRAL INFORMATION COMMISSION

2nd Floor, August Kranti Bhavan

Bhikaji Cama Place

New Delhi-110066

Complaint No. CIC/AT/C/2008/00025

Dated 27.07.2009

Name of the Appellant: Shri Milap Choraria
House No.B-5/52, Sector-7
Rohini-110 085.

Public Authority: Central Board of Direct Taxes
Department of Revenue
Ministry of Finance
New Delhi.

Date of Hearing **12.05.2009**

Date of Decision **27.07.2009**

FACTS OF THE CASE:

1. The Complainant Shri Milap Choraria served a notice under Section 80 of the Code of Civil Procedure intending to file a civil suit against the Department of Revenue. Subsequently, he received a copy of the Caveat filed by the Commissioner of Income Tax Delhi-VII, New Delhi. He thereafter submitted an application under the Right to Information Act, 2005 (RTI Act) seeking to inspect the file in which the matter concerning the said notice served under Section 80 CPC and the caveat as aforesaid has been dealt with especially to verify whether the grievances referred by him in the aforesaid notice were at all fairly examined/considered by the Public Authority. The complainant wanted to inspect the file from the date of receipt of the notice till filing of the caveat with all

other documents including the respective legal advice, if any, received by the Ministry. It appears that the RTI request was received by the CPIO on 3.10.2007.

2. The appellant's request was declined by the CPIO vide his letter dated 17.10.2007 on the following grounds:

- (i) The applicant is seeking reply of a query under the guise of seeking information under the RTI Act and that in terms of the CIC decision in Appeal Case No.CIC/AT/A/2006/00045 dated 21.4.2006, the query raised by the applicant does not qualify as "information" within the meaning of Section 2(f) of the RTI Act.
- (ii) The file containing the information and decisions pertained to no one but the applicant himself and hence it is personal in nature. The inspection of this file has had no relationship to any public activity or interest. The matter being wholly personal to the applicant attracts exemption u/s 8(1)(j) of the RTI Act.

3. The appellant challenged the decision of the CPIO and filed an appeal under Section 19 (1) of the RTI Act before the 1st Appellate Authority on 5.11.2007, which was rejected on the following grounds:

- (a) The appellant has asked whether examination of grievances, inspection of the file from the date of receipt of notice till filing of caveat with all other documents including respective legal advice if any received by the Ministry was done. Hence, the decision arrived at and the process of decision making is being asked for by the appellant Shri Milap Choraria which is questioning the quality of the decision and asking for an explanation which is not in consonance with the provisions of the RTI Act and hence the

ratio of the decision in the cases of Shri Vikas Agarwal and D.V. Rao is applicable.

(b) The CPIO has judiciously applied his mind as can be made out from the detailed order which has been referred to above and the CIC decisions referred to are applicable and it is wrong on part of the appellant to say that the CPIO has contemptuously cited `some order of the CIC'. It is also brought to kind notice that as this appeal is preferred under the provisions of the RTI Act, 2005, the appeal is examined with reference to provisions of RTI Act and decisions of the CIC.

(c) The order of the CPIO is within the purview of the RTI Act and the order passed by the CPIO reflects due application of mind and hence there is no ground for intervention by the appellate authority.

(d) There is nothing to show that public interest is involved and the issues raised by the appellant seems to be an attempt to not only question decision making process but also to force a public authority to accede to a request which is personal to the appellant. In fact, the appellant seems to have asked for the details for personal information and this does not having any relationship to public activity or interest.

(e) The ratio of the decision of CIC in the case of **Amol Ganpat (CIC/AT/A/2007/00307 dt. 31.5.2007)** is applicable. Further reliance is placed on the ratio of the decision of CIC in **S.P. Goyal (CIC/AT/A/2007/00017 dt. 28.3.2007)** wherein the Commission had upheld the view of the CPIO and the appellate authority citing the provisions of the Section 8(1)(j) of the RTI Act and not disclosed information as the

information was personal to the appellant and had no public interest.

4. The complainant through his petition under Section 18(1) of the RTI Act challenged the directions. The complainant could have taken up the matter first u/s 19(3) of the Right to Information Act, 2005 but instead, moved application under Section 18(1) of the RTI Act on the ground that under Section 8(2) of the RTI Act, CPIO and 1st Appellate Authority are not authorised to claim exemption from disclosure of the required information by way of inspection of the related file i.e. from the date of receipt of notice u/s 80 CPC till filing of caveat with all other documents including respective legal advice by taking recourse to u/s 8(1)(j) of the RTI Act. The complainant has therefore requested the Commission for the following :

- a) ***Directing the respondents to ensure supply of information free of charge in compliance with Section 7(6) of the RTI Act***
- b) ***impose penalty upon respondents for delayed response @ Rs.250/- per day not exceeding Rs.25,000/-;***
- c) ***grant award for the amount of damage caused due to non-supply of information; and***
- d) ***pass any other order as may be deemed fit and necessary for ends of justice.***

5. On receipt of the complaint petition the case was listed to be heard and notices were accordingly issued to CPIO and AA to file written submissions. In their comments, CPIO objected to the applicant seeking new set of information, which was not included in Shri Choraria's RTI application. He submitted pointing out that the complainant had not furnished the reasons as to why he was dissatisfied with the reply of the CPIO and the 1st Appellate Authority. He has instead repeated the same matter, what has already been considered by the CPIO and the first Appellate Authority. The First Appellate Authority in his written submissions also offered similar comments. After the comments were received

from the appellant, CPIO and the First Appellate Authority, the matter was listed to be heard by this Commission on 28.5.2008. After hearing both sides, the Single Bench was of the view that —

- i) It is a typical case where the person first serves a Notice under Section 80 CPC threatening to file a civil suit against the public authority and then demands to see the file as to how the public authority has reacted or processed the case.
- ii) As is commonly understood, in most of the cases, State is a defenceless litigant. One of the important issues that arise in this case is as to whether a public authority is obliged to lay open every thing and have no confidentiality in regard to any matter? Can it be that a public authority has no interest at all – personal or otherwise?
- iii) The issue, therefore, is one of harmonious construction between the transparency and accountability in the working of the public authority and the need to preserve confidentiality. This will necessitate having a re-look into at interpretation of some of the exemption clauses that have hitherto been discussed in earlier decisions.

6. The matter was put up to the Chief Information Commissioner, who constituted a three members Full Bench of Commission to hear and decide the matter. The Commission also decided that Cabinet Secretariat and Ministry of Law & Justice, Department of Revenue and CBDT be requested to depute their senior officers to assist the Commission and to file written statements in the matter.

7. In pursuance of the notices issued by the Commission, the appellant as well as CPIO and the First Appellate Authority filed their respective written arguments. CBDT requested the Commission that since DOPT was the coordinating Ministry on the legal issue relating to RTI Act, it should also be requested to file written statement and depute a senior officer to attend the hearing. A request was accordingly, made to DOPT.

8. The Ministry of Law & Justice in their response informed that it would not be appropriate for them to express any opinion on the issue on which decision was essentially to be taken by the CIC in discharge of its statutory functions. They also stated that expressing any opinion or view by them may amount to conflict of interest because the Public Authority against whom the CIC may pass an order can be an officer of the Government or a Government Department to which the Ministry of Law & Justice is supposed to tender legal advice. The Ministry instead suggested to the Commission to take assistance of the legal expertise available within the Commission or may appoint an *amicus curie* if deemed fit.

9. The Full Bench heard the matter on 12.9.2008. The DOPT did not file any written submission and no representative was present at the hearing. Since the Commission felt that the DOPT was a necessary party to the issue involved and that a decision should be taken only after the DOPT was heard, it decided that the latter be requested to assist the Commission by stating its views in the matter. Accordingly, Secretary, DOPT was again requested to file written statement on the issue on or before 22.1.2009. DOPT, however, did not file any written submission but Director, DOPT, Shri K.G. Verma attended the hearing held on 6.2.2009, in which the following were present:

Appellant

Milap Choraria

Respondents

S/Shri Aarsi Prasad CPIO, US (inv. II & II)

PK Dah CIT (Inv) CBDT

D Srinivas AA/Director (Inv. II & III) CBDT

SK Dubey, Advocate for CBDT

Akshay Singh, Advocate for CBDT

KS Achar Cabinet Secretariat

BB Bhardwaj, SO, RTI, Cabinet Secretariat

KG Verma Director, DoPT

At the time of hearing, Shri S.K. Dube, learned counsel for the CBDT asked for some time for filing written submissions. The request was allowed and he was directed to file written submission within 10 days. It was also directed that a copy of the written submissions shall be furnished to the complainant who may, if he so desires, file a reply.

10. Written submissions were filed by the counsel for the CBDT on 26.2.2009, which were received in the Commission on 3.3.2009. The appellant also submitted his reply, which was received on 6.3.2009. The matter was heard again on 12.5.2009, in the presence of the following:

Appellants

Shri Milap Choraria

Respondents

1. S/Shri Aarsi Prasad, CPIO, US(Inv.II & III)
2. P.K. Dash, CIT(Inv), CBDT
3. D. Srinivas, AA/Director (Inv.II & III), CBDT
4. S.K. Dubey, Advocate for CBDT
5. Akshay Singh, Advocate for CBDT
6. K.S. Achar, Director, Cabinet Secretariat
7. B.B. Bhardwaj, SO, RTI, Cabinet Secretariat
8. K.G. Verma, Director, DOPT
9. R.K. Girdhar, US, DOPT

11. The points made by the appellant in his written arguments, submitted from time to time, are summarized as below:

- (i) That the right to information which is implicit under Article 19(1)(a) and that it is irrevocable constitutional guarantee, subject only to reasonable restrictions imposed by the Constitution, which allows curtailment of this right only on the

grounds of the sovereignty and integrity of India, security of State, friendly relationship with foreign state, public order, decency or contempt of court, defamation or incitement. Any restriction imposed on the people's right of information by the RTI Act must fall within the ambit of Article 19(2). What was mandated in Article 19(2) has been incorporated in Section 8 of the RTI Act.

(ii) Central Information Commission is constituted to ensure transparent and accountable Government and that it should make its decision within the scope, meaning and ambit provided by the provisions of the RTI Act and within the parameters fixed by the guidelines set out by the Supreme Court in PUCL Vs. UOI and Secretary, Ministry of Information & Broadcasting Vs. Cricket Association West Bengal.

(iii) The process adopted by the Income Tax Department, under approval from Mr. R. Sharan invoking Section 11 of the RTI Act was beyond the scope, meaning and ambit of the Section 11 of the said Act, since any document supplied by the respective third parties in mandatory compliance of the Income Tax Act, cannot be treated as supplied with the tag of "confidential".

(iv) That the decision taken by the public authority in respect of legal notice served under Section 80 CPC to file caveats cannot be covered within "reasonable restrictions" validly imposed by legislation under Article 19(2) of the Constitution nor the same can be covered within the meaning, ambit and scope of Section 8(1) of the RTI Act. The basic object of serving legal notice under Section 80 CPC upon a Public Authority is to call the attention of the respective Public Authority to the citizen's fundamental rights as well as statutory rights. No public servant

is permitted to perform his duty beyond the scope of good faith or to commit any criminal act for the benefit of any third party.

(v) The arguments submitted by the respondent Public Authority and by the counsel should not be relied upon as under Order VIII of CPC, they are obliged to file written statement with supporting affidavit before the CIC and that comments or observations made by them cannot be relied upon by the Commission.

(vi) According to Section 11(1), a legal bar is provided against invoking/exploring of the exemption u/s 11 of the RTI Act that information which relates to or has been “supplied” by a third party and has been treated as “confidential by that 3rd party”.

(vii) Any document including (1) Income Tax Returns along with annexure therewith; (2) any documents collected by any Public Authority during any (a) raid; (b) searches; (c) enquiries; (d) inspections; (e) investigations etc cannot and should not be treated as “supplied by a 3rd party”, since all those documents either are submitted in compliance of any law or collected by any Investigating/Taxing Authority as part of their functioning.

(viii) A person submitting any documents in compliance of any law, there is no scope to treat that document as “confidential”.

(ix) That Income Tax Returns and any other documents submitted in compliance of any law cannot be treated as supplied by a 3rd party or confidential by that 3rd party. The invoking of Section 11 of the RTI Act before disclosure of such information is illegal.

(x) That disclosure of such documents can be exempted under Section 8(d), (g), (j) of the RTI Act only if the respective private party is a law abiding citizen and there is nothing to claim that he indulged in any criminal activity etc.

(xi) All existing law prior to 12th October, 2005 including Indian Evidence Act and law made by Supreme Court under Article 141 of the Constitution of India were taken into consideration at the time of enactment of the RTI Act by Parliament and thus a borderline was clearly drawn between what can be disclosed and what cannot be disclosed.

12. The respondents in their written arguments, submitted on 1.9.2008, made the following points:

(i) The appellant made several complaints/tax evasion petitions since 1987 against certain persons of Kolkata. Search and Seizure action was conducted in a group namely M/s Martin Burn Limited in the year 1996 resulting into admission of undisclosed income of Rs.9,54,94,906/-. The complainant furnished a petition for reward in this case. The matter was referred by the CBDT to the DGIT (Inv.), Kolkata for report. The DGIT(Inv) Kolkata informed CBDT that no nexus between the information given by the petitioner and the evidence gathered during such action in the group was found and, therefore, the petitioner was not entitled to reward. CBDT was, therefore, requested to send a suitable reply to the informant.

(ii) The contention of the appellant that the aim and purpose of Section 80 CPC is for adjudication of the claims by the Government authorities prior to institution of the suit is totally misconceived. Section 80 CPC is in the nature of

notice giving an opportunity to the Government to look into the matter and to sort out the dispute if possible before the suit is instituted.

(iii) Rule 5(a) of Order XXVII CPC makes it mandatory that in the event of a suit instituted against a public officer for damages or other relief in respect of any act alleged to have been done in his official capacity, the Government shall be joined as a party to the suit. Since the Government is a necessary party to the suit, a Government Advocate representing the Government may file a caveat against the intended filing of frivolous suits against its officers so that public interest is not adversely affected by an ex-parte court order.

(iv) The appellant filed several applications under the RTI Act before various authorities concerning the aforesaid matter. The applicant also filed appeal before the CIC, which was decided on 17th April, 2007 by partly allowing the relief. Before deciding these appeals, CIC had called for comments of DGIT(Inv) Kolkata, which was duly furnished. In their comments, DGIT (Inv) Kolkata made the following remarks: "In view of the aforesaid, it is also requested that the overall conduct of the appellant and his motive may kindly be kept in mind while deciding individual appeals referred by him."

(v) Service of Notice under Section 80 CPC and filing of caveat under Section 148-A CPC against such notice virtually emanated from these comments. The inspection of the file was denied on the ground that it had no relationship to any public interest and the interest being wholly personal to the applicant to further his own personal agenda.

(vi) It is thus unambiguously established that the Public Authority is not obliged to lay open everything and have no confidentiality in regard to any matter. Disclosure of the information to the complainant as to how the file has been processed by the Public Authority to file caveat in his case will be prejudicial to the conduct of public affair and will lay open the confidential decisions including the advice by the counsel on the notice by the complainant and this may adversely affect the decision making process.

(vi) The expenses were incurred for filing the caveat under Section 148-A CPC in the public interest. To maintain efficient operations of the Government, is in the public interest and, therefore, payments made out of Consolidated Funds, therefore, do not suffer from any infirmities.

13. ISSUES FOR DETERMINATION:

- I. A public officer cannot be compelled to disclose a communication made to him in official confidence when he considers that the public interest would suffer by such disclosure — Whether provisions of Sections 123, 124 and 129 of the Indian Evidence Act stand overridden by *non-obstante* clause appearing in Section 22 of the RTI Act?
- II. Can a Public Authority claim exemption from disclosure by invoking Section 11(1) of the RTI Act?
- III. Whether a Public Authority is obliged to disclose everything even though the said disclosure is considered to be contrary to public interest?
- IV. Whether denial of information in the instant case is justified?

DECISIONS & REASONS:

14. Appellant's main query is regarding the action, if any, taken after a notice u/s 80 CPC was served on him. He also wanted to inspect the file in which the matter has been dealt with from the date of receipt of the notice till the date of filing of caveat by the Public Authority. The request for information includes copies of 18 documents including legal advice, if any, received by the Ministry. The requested information was denied on the ground that what was being asked for did not qualify as information within the meaning of Section 2(f) of the RTI Act and that the information asked for was wholly personal to the applicant attracting exemption under Section 8(1)(j) of the RTI Act, which exempted disclosure of personal information which had no relationship to any public activity or interest, or which would cause unwarranted invasion of privacy of the individual unless the CPIO was satisfied that larger public interest justifies disclosure of such information.

15. During the hearing, the appellant, taking the broad meaning of the term "public interest", argued that every act of a Public officer was in "public interest". The respondents on the other hand have argued that the question of applicability of Section 8 (1) (j) mandates disclosure only when larger public interest so justified and must be read in the context of Section 123 of the Indian Evidence Act. The learned counsel appearing on behalf of respondent Public Authority submitted that a public officer could not be compelled to disclose communications made to him in official confidence when he considered that public interest would suffer by such disclosure. This means that the existence or otherwise of public interest is to be determined by the officer concerned. The learned counsel also argued that under Section 123 of the Indian Evidence Act, no public servant could be permitted to give any evidence derived from any public official or public records relating to affairs of the State except with the permission of the Head of Department. The decision to disseminate information concerning official matters, therefore, was required to be taken by the Head of Department and not by the CPIO. He submitted that disclosure of the

information asked for by the appellant would be prejudicial to public interest and, therefore, attracted the bar under Section 8(1)(j) read with Sections 123, 124 and 129 of the Indian Evidence Act, 1872.

16. Sections 123, 124 and 129 of the Indian Evidence Act read as follows:

123. Evidence as to affairs of State - *No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.*

124. Official communications - *No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.*

129. Confidential communication with Legal Advisers - *No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness in which case he may be compelled to disclose any such communication as may appear to the Court necessary to be known in order to explain any evidence which he has given, but not others.*

17. The appellant on the other hand submitted that the provisions of Sections 123 and 124 of the Indian Evidence Act stand overridden by Section 22 of the RTI Act, which reads as under:

“Section 22:

The provisions of this 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 this Act.”

18. One of the questions that the Commission needs to determine is whether Sections 123 and 124 of the Indian Evidence Act are inconsistent with the provisions of the RTI Act so as to stand overridden in terms of Section 22 of the Act.

19. The question of applicability of Section 123 and 124 of the Indian Evidence Act came up before AP High Court in **Writ Petition No.156717 of 2008** in which it was clearly stated that even a document claimed to be privileged under Article 74 of the Constitution of India read with section 123 of the Evidence Act will have to be disclosed under RTI Act, i.e. if it was not exempted u/s 8(1) of the RTI Act. The court has further held that it is not permissible to read “implied prohibitions” or “invisible mandates” in RTI Act. This being so, the question of any inconsistency between the law of evidence and the obligations to disclose under the RTI Act need to be contextualized, i.e. such determination is to be made in the context of each case given its circumstances and facts. It is important to note that Section 123 of the Indian Evidence Act *per se* does not bar disclosure of an unpublished official record relating to an affair of the State. It only provides that evidence in regard to a record shall not be permitted except with the permission of the officer at the head of the department concerned. It thus only provides a mechanism about disclosure of information concerning unpublished official records relating to affairs of the State.

20. The decision to disclose documents that relate to affairs of State, which are a part of unpublished official records as per the Indian Evidence Act lies with the Head of Department who becomes the holder of the information within the meaning of Section 2(j) of the RTI Act. It follows from it that the CPIO before disclosing any such information shall have to refer the matter to the HOD for disclosing the information to the requester. This will give an opportunity to the

HOD to consider whether disclosure is covered by any of the exemptions provided for in the RTI Act and/or whether the requested information came within the scope of Section 11(1) read with Section 2(n) of the RTI Act. The responsibility for not disclosing the information and to defending its decision will, therefore, lie with the HOD in terms of the provisions of the RTI Act as the holder of the information.

21. Similar is the relationship between Section 124 of the Indian Evidence Act and the RTI Act. A public officer cannot be compelled to disclose communication made to him in official confidence when he considers that it would jeopardize public interest. The disclosure of any such information, which is a part of official confidence, is therefore, permissible only when larger public interest commands it. Read in this context, there is no inconsistency between the RTI Act and Section 124 of Evidence Act. The only issue that needs be decided is whether it would be in larger public interest if the information requested by the appellant is disclosed.

22. Although it is admitted that the expression 'public interest' is not capable of precise definition and it has no rigid meaning, it takes color from the statute in which the expression has been used. It varies from case to case and as observed by Hon'ble Supreme Court in State of Bihar Vs. Kameshwar Singh (AIR 1952 SC 252) what is 'public interest' today may not remain so a decade later. Public interest therefore, can be taken to be what is the opposite of a private interest of a person. Public interest must concern either the public in general or at least a section of the public. It cannot be the solitary interest of one single individual.

23. If the facts and circumstances of this case are taken into consideration, it would be clear that the appellant is spearheading a private interest — his own interest — rather than any public interest. He first filed a notice u/s 80 CPC threatening to file a civil suit against the Government and thereafter filed another

RTI application seeking to know as to what Government has done or would be doing in his case. What he is seeking is a matter of internal confidential official communications, which is well within the meaning of section 124 of the Indian Evidence Act. The respondents have forcefully submitted that disclosure in such a case is permissible only when Public interest so demands and absence of any such interest disentitles the appellant to receive the information.

24. As is obvious under the scheme of the Indian Evidence Act, contained in its Sections 123 and 124, the Government and the public authorities are allowed to hold confidential certain categories of documents in public interest. As has been held by the High Court of Andhra Pradesh, a decision to hold confidential an information under the Indian Evidence Act will be no bar to examine the disclosability of the same information in terms of the RTI Act. In other words, if an information which was held confidential under the Indian Evidence Act is found to be disclosable under the RTI Act, such disclosure shall be authorized, the decision of the public authority under Indian Evidence Act notwithstanding.

25. This context, however, changes when an information held confidential in terms of Sections 123 and 124 of the Indian Evidence Act is also found to be either exempt under Section 8(1) of the RTI Act or on the basis of it being a third-party information whose disclosability is to be tested in terms of Section 11(1) of the RTI Act. In case, a certain set of information, which has been held confidential under the Indian Evidence Act, is also found to be exempt under the provisions of the RTI Act, then there should be no inconsistency between the provisions of the both Acts and the information shall not be liable for disclosure.

26. We have noted that the concept of public interest appears both in the Indian Evidence Act (Sections 123 and 124 as well as in various sub-sections of Section 8(1), and 8(2) as well as in Section 11(1) of the RTI Act. It is to be noted that 'public interest' is the reason which allows the Head of the Department to 'withhold' a given information under the Sections 123 and 124 of the Indian

Evidence Act. In case of the RTI Act, the concept of public interest has been used as 'override' in Sections 8(2) principally, as well as in sub-sections 8(1)(d) and 8(1)(e); only in Section 8(1)(j) of the RTI Act 'public interest' is a pre-condition for disclosure of a personal information, which is otherwise to be held undisclosed.

27. Therefore, if a public authority takes a position that a certain information should be held to be non-disclosable under Section 123 and 124 of the Indian Evidence Act, it will hold good only so long as the relevant Section of the RTI Act also allows the public authority to withhold such information in public interest. In other words, if within the meaning of the RTI Act, an information is to be disclosed in public interest and if the same information is held confidential in public interest within the meaning of the Indian Evidence Act, then the provisions of the Indian Evidence Act shall be inconsistent with the RTI Act. There may be circumstances, however, where, as in Section 8(1)(j) of the RTI Act, a personal information can be held to be non-disclosable unless warranted by public interest. If such personal information is also held confidential under any Section of the Indian Evidence Act on grounds of public interest, there shall be perfect compatibility / harmony between that withholding of the information or any order to withhold the information under Section 8(1)(j) of the RTI Act.

28. The question of consistency or inconsistency between the provisions of the RTI Act and the Indian Evidence Act will have to be decided on the facts of each case and the applicability of the specific provisions of the RTI Act. The issue is decided accordingly.

29. It has also been submitted before us that the information asked for by the appellant relates to a Public Authority and has been treated as confidential by it, any disclosure relating to it will adversely affect the interest of the Public Authority and this being the case, the Public Authority under Section 11(1) of the RTI Act is entitled to object to the disclosure. The Commission, therefore, is also

required to decide and determine as to whether Public Authority as a third party can claim exemption from disclosure by invoking section 11 of the RTI Act.

30. In this context, it will be pertinent to refer to the definition of “third party” appearing in Section 2(n) of the RTI Act which reads as under:

“Sec.2(n):

“third party” means a person other than the citizen making a request for information and includes a public authority.”

31. Section 11 of the Right to Information Act, 2005 reads as under:

Sec.11 (1)

Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.”

32. The inclusive definition provided under section 2 (n) certainly covers a Public Authority and as such in cases where the CPIO intends to disclose an information or record or part thereof to an applicant which “relates to” a 3rd party (Public Authority in this case) and has been treated as confidential by that 3rd party, CPIO is duty bound to hear and consider the objections before deciding whether to allow disclosure. In this case, this situation did not arise as the PIO decided not to disclose the information. But if ever a PIO decides to disclose such information, which relates to a Public Authority and has been treated as confidential by such Public Authority the PIO before deciding to disclose such information must at least take the view of the HOD.

33. A Public Authority as a 3rd party is, therefore, entitled to protect from disclosure an information which relates to it and which it has considered confidential. The disclosure of such an information by the PIO is possible only after hearing the party and taking into account the objections, if any, raised by it to the intended disclosure. The PIO can order disclosure only if the public authority decides that public interest in disclosure outweighs any possible harm or injury to the interest of such Public Authority as third party.

34. A Public Authority being a 3rd party, therefore, cannot be denied its right to object to any intended disclosure by the PIO if it is of the view that the disclosure is likely to cause any harm or injury to its interest.

35. This present appeal raises, apart from others, a larger issue, which is the rights and the liabilities of a public authority as a party to a litigation. If the interpretation of the RTI law by the appellant is to be accepted, it would mean that even when the Government is litigating vis-à-vis another person, that person will have the right to access all information about how the Government is seeking to defend its position in the legal proceeding without having any corresponding right to access similar information of the opposite party. On any scale of equity, this will appear to be biased against the public authority. Before the enactment

of the RTI Act, such public authorities received protection to its position and the information held by it was exempt from disclosure in any suit or legal proceeding, under several provisions of the Indian Evidence Act, which have been mentioned in para 16 above. Now, with the advent of the RTI Act it is, arguably, no more possible for such public authority to hold its side of information and evidence from being directly accessed by the opposite party except for exemptions contained in RTI Act. In normal course, the Government as well as the opposite party would have produced their evidences and arguments before the court of law, who would have then decided how to allow the evidence to be shared between the parties and at what stage. Now, private litigants are choosing to invoke RTI Act in order to equip themselves in advance about the position taken or likely to be taken by the public authority in an ongoing litigation in order to counter it .It will need to be examined whether such interpretation of the RTI Act is possible —i.e. to allow a party to a litigation to access the other party's (which in this case happens to be a public authority) evidence and stated position in order to build his own case against that position.

36. The point for consideration before us is whether the public authority can hold confidentially its side of the information and the internal deliberations it may have had in order to put up its case before a court and whether it is obliged to disclose all this information to the very person whom it intends contesting in the court of law.

37. We have been referred to the provisions under Section 2(n) and Section 11(1) of the RTI Act by the Counsel for the respondents. It has been argued before us that within the meaning of Section 2(n), a public authority is a 'third-party', who under Section 11(1) can hold or supply an information confidentially. In that sense, the present public authority (CBDT) has claimed that it holds confidential information regarding how it wishes to contest the legal challenge which the appellant has thrown at one of its officers and also at the public authority. They are disinclined to share this information with the appellant on the

ground that it serves no public interest and the appellant cannot be allowed to disguise his own personal interest as public interest. They have also claimed that it is their inherent right not to disclose the evidence they want to marshal in litigation and the line of argument they want to adopt to defend the public authority's position and interest

38. In the present case, the reason offered by the public authority for not disclosing the information held by them was that they were disinclined to share with the very person they were engaged in a litigation or who seeks to engage the public authority in litigation, the information which they hold and which they have internally processed through consultations with others, such as the legal advisers, officers of the department, etc. The public authority does not want to share with the appellant any information about 'which officer of the public authority took what position in recording his notes on the file vis-à-vis the appellant's Section 80 CPC notice. They are also disinclined to disclose the advice they have received from legal sources. They doubt the motive of the appellant in seeking to access this information which they believe seeks to inflict harm on the very public authority through whose avenue the litigant is seeking the information to be disclosed. It is the claim of the public authority that under the law of the land, they are obliged to produce the evidence only before a law court and are under no obligation to share it in advance with the appellant who is seeking to engage the public authority in a legal proceeding. They have argued that if this line is accepted, serious harm shall be inflicted on the government and the public authority's ability to safeguard public interest, against intrusive action by self-seeking litigants. A public authority is duty-bound to defend its officers' bona-fide interest as well as its own interest in any litigation with the opposite party, and if it is forced to submit to that opposite party's demand for all information about, what decision was taken to defend the government's interest; what evidence was marshalled and how the evidence was collected and the decision made, would irretrievably damage the public authority's interest as litigant and compromise its ability to carry out its mandate of defending the public

authority through its actions. A public authority must not be obligated to explain its conduct by revealing the entire decision-making process to the very litigant with whom it may be engaged in a dispute —legal or otherwise.

39. The sum-total of the respondents' arguments, therefore, is that appellant has tried to conflate his personal interest with public interest in order to force the public authority to share with him all that it knows confidentially about how it wished to defend its position in the law suit by the appellant.

40. The respondents have derived strength from Sections 123, 124 and 129 of the Indian Evidence Act, which authorize them under certain circumstances to withhold from public disclosure information held by the officers of the public authority in confidence, except when public interest warrants such disclosure.

41. They have further argued that these provisions of the Indian Evidence Act were entirely consistent with the provisions under Section 11(1) of the RTI Act. The CPIO is duty-bound under Section 11(1) to consider the grounds which a public authority urges to keep confidential information undisclosed and to decide on the validity of the grounds for its decision. According to the public authority, the grounds for non-disclosure of present set of information are: no public interest was being served but the appellant's personal interest; disclosure would compromise the ability of the public authority to find the best way to legally defend the interest of one of its officers, who is threatened by legal action of the appellant; the right of the Government not to share the evidence and the records it holds in that regard with the very person threatening to drag it to the law court; the larger implication of such right being conferred on litigants to access all information held by Government relating to litigation they themselves start; such disclosures would compromise the public authority's ability to carry out its mandate and to attend with the best of its ability to the responsibilities it is entrusted to discharge, etc.

42. In our view, respondents have persuasively argued that under Section 11(1) of the Act, there are compelling grounds for them to hold confidential information relating to how they wished to defend their legal position in litigation or a threatened litigation. Their reference to the violation of the norms of equity in allowing the very person, who seeks to drag the public authority to court, all information about how the public authority wishes to defend itself is also quite convincing.

43. In our view, appellant has failed to cite any public interest that would commend superseding the protected interest in the matter of disclosure of the requested information, within the meaning of Section 11(1) of the RTI Act.

The appeal petition, therefore, fails scrutiny and is dismissed.

Reserved in the hearing, this Decision is announced on this the 27th. day of July 2009. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner

(Prof. M.M. Ansari)
Information Commissioner

(A.N. Tiwari)
Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(L.C. Singhi)
Registrar