IN THE HIGH COURT OF DELHI AT NEWDELHI

WP (C) 3530/2011

THE REGISTRAR,
SUPREME COURT OF INDIA ..... **Petitioner**

Through: *Mr. Sidharth Luthra, Senior Advocate with Ms. Maneesha Dhir, Mr. Abhishek Kumar, Mr. Nitin Saluja, Mr. Soumya RoopSanyal, Ms. Advitiya Awasthi and Mr. Sidharth Agarwal, Advocates*

Versus

R S MISRA ..... **Respondent**

Through: Mr. Ramesh Singh, Advocate, Amicus Curiae.
Ms. Deepali Gupta, Advocate for respondent.

Reserved on: 27th September, 2017
Date of Decision: 21st November,2017

CORAM: HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J :

1. Present writ petition has been filed challenging the decision of the Central Information Commission (for short "CIC"), dated 11th May, 2011 passed in Appeal No. CIC/SM/A/2011/000237. The CIC vide the impugned order allowed the appeal of the respondent and directed the Central Public Information Officer, Supreme Court of India (for short "CPIO") to answer the queries 1 to 7 raised by the said respondent in his application dated 20th April, 2010. The CIC also directed the CPIO to provide information pertaining to a judicial matter in which the respondent himself was a party, i.e. in Special Leave Petition (C) No. 8219-8220 of 2010 and was represented by a lawyer. The relevant portion of the impugned order is reproduced herein below:-

> *"In view of the foregoing arguments, this Commission respectfully disagrees with the decision of the then Chief Information Commissioner that the PIO, Supreme Court may choose to deny the information sought under the RTI Act and ask an applicant to apply for information under Order XII of the SC Rules.*
>
> *This Bench further rules that all citizens have the right to access information under Section 3 of the RTI Act and PIOs shall provide the information sought to the citizens, subject always to the provisions of the RTI Act only.*
>
> *Where there are methods of giving information by any public authority which were in existence before the advent of the RTI Act, the citizen may insist on invoking the provisions of the RTI Act to obtain the information. It is the citizen's prerogative to decide under which mechanism, i.e. under the method prescribed by the public authority or the RTI Act, she would like to obtain the information.*

The Appeal is allowed. The PIO is directed to provide the complete information as available on record in relation to queries 1 to 7 to the Appellant before June 5, 2011."

2. The respondent's application under Right to Information Act, 2005 (for short "RTI Act") dated 20th April, 2010 is reproduced hereinbelow:-

"Dated 20.04.2010

To,
The CPIO,
Supreme Court of India,
New Delhi

Sub: Information required under RTI Act, 2005 with due permission to get published my clear victimization in leading daily newspapers and role of courts.

Sir,

Details of Information required are as under:-

1. *Inform me the action taken and status report of my application dated 14.09.2009 to Hon'ble Chief Justice of India and his companion all 26 Judges for struck down Article 81(b) of Education Code of Kendriya Vidayalaya Sangathan Unconstitutional, unguided and ultra virus and void.*

2. *Inform me the action taken and status report of my letters dated 25.2.2010 to each Judge of Hon'ble Supreme Court for struck down of Article 81(b) of EC of KVS and its misuse in an arbitrary manner with ulterior motives being unconstitutional null and void without regular inquiry.*

3. *Inform me the action taken and status report of my application dated 22.3.2010 for deprivation of natural justice of W.P.(C) and SLP dismissed by all the courts without providing complete legible, readable typed copies of complete Inquiry Report and 69 (sixty nine) pages of the statement of the witnesses vide decision given by CIC and upheld by Hon'ble High Court of Delhi dispensing regularing inquiry rightly.*

4. *Inform me the action taken by Hon'ble Chief Justice, Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Mr. Justice Ashok Ganguli on my application dated 05.03.2010 in the matter of RS Misra Vs. UOI & Ors. for natural justice and malafidy of the case SLP (C) Nos. 8219-8220 of 2010 unheard.*

5. *Inform me the action taken by Hon'ble Chief Justice, Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Mr. Justice Ashok Ganguli against clear cut victimization by authorities of KVS without any evidence specific allegations, time, date and period on my application dated 15.3.2010 and without providing opportunities of natural justice. SLP (C) Nos. 8219-8220 of 2010 unheard.*

6. *Inform me the action taken by Hon'ble Chief Justice of India, Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Mr. Justice Ashok Ganguli against my application dated 30.3.2010 for malafide intention, contention and vindictive attitude of respondents regularly.*

7. *Inform me the action taken by Hon'ble Chief Justice of India on application of my wife Mrs. Rampati Misra against clear victimization of her husband Shri R.S. Misra before 7 days of retirement without regular inquiry and report of summary inquiry to be provided from the authorities of KVS on petition dated 26.3.2010 in the matter of RS Misra Vs. UOI & Ors.*

8. *Requisite fee Rs. 10.00 vide IPO No. 86E 954536 dated 10.09.2010 enclosed.*

9. *Inform me the law under which Tribunal, High Court and also Apex Court dutifully dismiss the case without examining facts, grounds and circumstances of alleged allegations from Manipuri girls through rumoured bad conduct fraudulent Manipuri lady Principal Mrs. Radharani Devi openly supported by KVS, CBI and CVC without enquiry.*

R.S. MISRA
APPLICANT

S-93, NEW PALAM VIHAR
PHASE-I
GURGAON-122017"

3. Though the respondent informed this Court that he was not in possession of any of the letters referred to, by him, in his RTI application, yet the petitioner had placed on record the letters dated 22nd March, 2010 and 26th March, 2010. Both the said letters read like a writ petition and the same have not been reproduced to avoid prolixity.

PETITIONER'S ARGUMENTS

4. Mr. Siddharth Luthra, learned senior counsel for petitioner contended that the CIC vide the impugned order, in Second Appeal, without considering whether the queries raised by the respondent in his RTI application were maintainable under the RTI Act, gave a general direction that all such queries should be answered by the CPIO on or before 5th June, 2011.

5. He submitted that the impugned order is contrary to prior decisions of CIC Benches of similar strength and even if the CIC was inclined to disagree with the prior decisions on the same issue, the case should have been referred to a larger bench. He pointed out that the CIC in a number of previous decisions had repeatedly held that access to documents filed on the judicial side can only be obtained through the mechanism of Supreme Court Rules (for short "SCR") and that the provisions of the RTI Act cannot override the SCR. He, however, stated that the CIC in the impugned judgment took a view contrary to the settled position of law and held that "*in accordance with Section 22 of the RTI Act, the provision of RTI Act shall override the Supreme Court Rules.*"

6. Learned Senior Counsel for the petitioner also submitted that there is no inconsistency between the SCR, 1966 and the RTI Act, 2005. He stated that the SCR have been framed under Article 145 of the Constitution of India and they provide for regulating the practice and procedure of the Court and have the effect of law. He pointed out that the SCR provide for a mechanism for inspection and search of pleadings on payment of prescribed fees under Order XII. According to him, as it was open for the respondent in the present case to obtain certified copies of the order sheets, the CIC was not justified in directing the petitioner to furnish copies of the same free of cost.

7. Mr. Luthra contended that as there is no inconsistency between the RTI Act and the SCR, the RTI Act will not have an overriding effect over the SCR. Furthermore, according to him, since Order XII of the SCR and provisions of the RTI Act serve the same purpose, it would be a complete waste of public funds to permit information to be provided both under the RTI Act as well as the SCR, as erroneously held in the impugned judgment. In support of his submission, he relied upon judgment of this Court in ***Registrar of Companies and Others Vs. Dharmendra Kumar Garg and Another, (2017) 172 Comp Cas 412 (Delhi)***.

8. He also pointed out that the Karnataka High Court in ***State Public Information Officer and Deputy Registrar, High Court of Karnataka Vs. N. Anbarasan (ILR 2003 KAR 3890)*** has held that as some of the information sought in the said case was available under Karnataka High Court Act and Rules made thereunder, it was not open for the respondent to ask for copies of the same under the RTI Act. He stated that the information in respect to Item Nos. 6 to 17 in the said case related to Writ Petition No.17935/2006 and as the respondent was a party to the said proceeding, it was open to the respondent to file an application, in accordance with the Rules, for certified copies of the order sheets or the relevant documents.

9. According to Mr. Luthra, the non-obstante clause in Section 22 of the RTI Act did not mean an implied repeal over all statutes. In support of his submission, he relied upon the judgment of the Supreme Court in ***R.S. Raghunath Vs. State of Karnataka, AIR 1992 SC 81*** wherein it has been held that

> "*the general rule to be followed in case of conflict between the two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied:*
>
> *i. The two are inconsistent with each other*
>
> *ii. There is some express reference in the later to the earlier enactment.*
>
> *If either of these two conditions is fulfilled, the later law, even though general, would prevail."*

10. Mr. Luthra lastly submitted that any interference with the work of a Judge in the discharge of his duties amounts to Contempt of Court. He contended that by way of the RTI application, the respondent sought to know in substance as to why

his SLP had been dismissed, which is not permissible under any law. He pointed out that the Allahabad High Court in ***Baij Nath Prasad Vs. Madan Mohan Das, AIR 1952 All 108*** has held that a party making a private communication in the form of private letters was totally out of place in Courts, as it is likely to give rise to a feeling that he has familiarity with the presiding Magistrate.

RESPONDENT'S ARGUMENTS

11. Per contra, Ms. Deepali Gupta, learned counsel for the respondent stated that the impugned order dated 11th May, 2011 passed by the CIC was well reasoned and justified.

12. She submitted that as the SCR and the RTI Act co-exist, it is the citizens' prerogative to choose under which mechanism he would like to obtain information. She clarified that as both the laws, i.e. the RTI Act and SCR were consistent, the applicant had the prerogative of choosing the law under which he/she wanted to obtain information. She stated that for instance in a dispute between a workman and management, a workman had a right to proceed either under the Labour Law (Labour Court) or under the Service Law (CAT). She stated that similarly in a dispute pertaining to consumers, a person could proceed under the Civil Law or the Consumer Protection Act. Applying the same analogy, she stated that the applicant is free to choose a particular forum to pursue his/her remedies.

13. Ms. Deepali Gupta submitted that Rule 2, Order XII of the SCR appears to impose a restriction on access to information held by or under the control of a Public Authority which is prima facie inconsistent with the RTI Act. She pointed out that under Section 6(2) of the RTI Act an applicant is not to give reason for seeking the information and only nominal fee has to be paid. According to her, the same is not so under Rule 2, Order XII of the SCR, as good cause has to be shown. Hence, she submitted that purpose and reasons for seeking information are called for under the SCR.

14. She contended that the RTI Act provides for a specific time period in which information is to be provided. According to her, a procedure for appeal is provided and penalty has been prescribed in case information is not provided. She stated that the SCR does not provide any such procedure. She also stated that under the RTI Act the information can be denied to an applicant only under Sections 8 and 9.

However, in the present matter the information had been declined to the applicant without taking recourse either to Section 8 or 9 of the RTI Act and hence the same was against the statutory mandate.

15. Ms. Deepali Gupta submitted that Section 22 of the RTI Act being the non-obstante clause specifically provides that the said 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. Therefore, according to her, in accordance with Section 22 of the RTI Act, the provisions of the RTI Act shall override the SCR.

16. She further submitted that whereas the RTI Act is a substantive Law and a statutory enactment, the SCR are subordinate legislation, being Rules and Regulations framed under Article 145(1) of the Constitution, which lay down the procedure to provide certified copies of documents, etc. The scope of records that can be provided under Section 2(i) of RTI Act is much wider than the records that can be provided under the SCR. In support of her submission, she relied upon ***Dr. Vijay Laxmi Sadho vs. Jagdish, (2001) 2 SCC 247*** wherein it has been held "*Rules framed by the High Court in exercise of powers under Article 225 of the Constitution of India are only Rules of procedure and do not constitute substantive law.*"

17. She submitted that the SCR have been framed under Article 145 of the Constitution to govern the Supreme Court proceedings but not to control proceedings under the RTI Act. The Rules are framed to provide certified copies but not information and thus according to her the scope and object of the RTI Act and SCR are altogether different. Consequently, according to her, the finding of the CIC that,

> "*Therefore this Commission respectfully disagrees with the observation of the then Chief Information Commissioner and holds that Rule 2, Order XII of the SCR, appears to impose a restriction on access to information held by or under the control of a Public Authority, which is prima facie inconsistent with the RTI Act. Therefore in accordance with Section 22 of the RTI Act, the provisions of the RTI Act shall override the SCR*" is well reasoned and justified.

18. She lastly stated that the CIC had already held in case of ***Subhash Chandra Agarwal vs. Supreme Court of India, Appeal no. CIC/WB/ A/2008/00426 dated 6th January 2009*** that the contention of the respondent Public Authority that RTI Act is not applicable in case of Supreme Court cannot be accepted.

19. Since important questions of fact and law arose for consideration in the present matter, the Court appointed Mr. Ramesh Singh, Advocate as Amicus Curiae to assist it.

SUBMISSIONS OF AMICUS CURIAE

20. Mr. Ramesh Singh, learned Amicus Curiae submitted that the access to the information under SCR 1966 / SCR 2013, which includes right to inspection, search and copy is not the information covered / contemplated under the provisions of RTI Act, as Section 2(j) of the RTI Act is concerned with only that information which is under the exclusive control of the "*public authority*". He submitted that this Court in ***Registrar of Companies Vs. Dharmendra Kumar Garg*** (supra) has interpreted Section 2(j) of the RTI Act in the said fashion.

21. He stated that even though a full Bench of this Court in ***Secretary General, Supreme Court of India Vs. Subhash Chandra Agrawal, (2010)166 DLT 305*** defines the meaning of the words "*held by*" or "*under the control of*" in the aforesaid Section 2(j), yet it does not deal with the aspect of exclusive control as has been dealt with in the case of ***Registrar of Companies Vs. Dharmendra Kumar Garg*** (supra).

22. Learned Amicus Curiae submitted that Section 22 of the RTI Act does not contemplate overriding those legislations, which aim to ensure access to information. In fact, according to him, the said provision contemplates harmonious existence with the enactments which, like the RTI Act, also provide for dissemination of information. He submitted that Section 22 comes into operation only in case of inconsistency between any other law and the provisions of the RTI Act.

23. He stated that a Division Bench of this Court in ***Eliamma Sebastian Vs. Ministry of Home Affairs and Ors., MANU/DE/0650/2016*** has dealt with the interplay of Section 22 of the RTI Act vis-a-vis Section 139 of the Delhi Co-operative Societies Act, the latter provision dealing with *„Right to Information"* under the said

Co-operative Societies Act, and has held *„that it does not necessarily mean that any other legislation, which aims to ensure access to information with respect to a private body, is overridden by Section 22 of the RTI Act*'. The Division Bench in the said decision further articulated the manner of accessing information first under the provisions of Delhi Co-operative Societies Act and thereafter under the RTI Act, qua that information which a Co-operative society may not possess. According to him, the aforesaid interpretation/position fits in with the well settled legal position, namely of resorting to harmonious construction, which has also been applied in the context of Section 22 of the RTI Act.

24. He pointed out that cases in which Section 22 of the RTI Act had been invoked to direct access to information are those where the other statutes completely bar access to information. He stated that in ***CBSE Vs. Aditya Bandopadhyay, (2011) 8 SCC 497*** the bye laws provided for a complete bar as to "*disclosure or inspection of the answer books or other documents"*. Further, in ***Reserve Bank of India Vs. Jayantilal N. Mistry, (2016) 3 SCC 525*** the basic question formulated was "*whether the Right to Information Act 2005 overrides various provisions of the special statute which confer confidentiality in the information obtained by the RBI"*.

25. Learned Amicus Curiae submitted that when there is no inconsistency between the enactments/provisions and the RTI Act, the information is to be accessed only through the mechanism provided in the said enactments/ provisions. He further stated that as under SCR, dispensation of information is a part of the judicial function, exercise of which cannot be taken away by any statute. Consequently, he stated that, the only recourse is to accord an intra vires interpretation to Section 22 of the RTI Act, something, which the Courts have repeatedly adopted failing which, the RTI Act would have to be held to be unconstitutional insofar as it affects the functioning of the Courts in the discharge of its judicial functions under the SCR 1966/SCR 2013.

26. He submitted that the Supreme Court in ***K.M. Nanavati Vs. The State of Bombay, (1961) 1 SCR 497*** harmonized the power of the Governor under Article 161 of the Constitution of India, to order suspension of sentence with Order XXI Rule 5 of the SCR, to hold that the said power of the Governor does not deal with suspension of the sentence during the time when the matter is sub-judice before the Supreme Court. The Supreme Court adopted the said approach on the ground that Article 161 will not operate when the matter is sub-judice, as the same can

effectively interfere with the judicial function and therefore avoidance of such a possible conflict will incidentally prevent any invasion of the rule of law, which is the very foundation of the Constitution.

27. He also submitted that the aforesaid view in ***Nanavati's*** case was affirmed in ***SCBA vs. UOI, (1998) 4 SCC 409***, by holding that it is one thing to say that "*prohibitions or limitations in a statute*" cannot come in the way of exercise of jurisdiction under Article 142, but quite a different thing to say that while exercising jurisdiction under Article 142, Supreme Court can altogether ignore the substantive provisions of a statute.

28. Mr. Ramesh Singh stated that Section 28 of the RTI Act provides for the competent authority to make rules to carry out the provisions of this Act. He stated that the Delhi High Court had framed rules in terms of the said provisions, wherein Rule 5 provides that the information specified under Section 8 of the RTI Act shall not be disclosed, particularly such information which relates to judicial functions and duties of the Court and matters incidental and ancillary thereto. According to him, the said provision has been framed to carry out the provisions of the RTI Act.

29. The learned Amicus Curiae submitted that even though Article 145 of the Constitution of India (under which SCR 1966/ SCR 2013 have been framed) starts with the phrase "*subject to the provisions of any law made by Parliament*", which phrase has been interpreted to mean that Parliamentary law would prevail over Rules framed under Article 145, which Rules will be subservient to the same [See in Re : ***Lily Isabel Thomas (1964) 6 SCR 229 at 233***], then also it cannot mean that the RTI Act (a Parliamentary law) will prevail over the power of the Court to decide on dissemination of information, inasmuch as Rules made under Article 145 are in aid of the powers given to the Supreme Court under Article 142 to pass judicial orders.

30. He stated that it has been held that function of a judge even in purely administrative/non-adjudicatory matters amounts to administration of justice as the said function is also in judicial capacity. In support of his submission, he relied upon ***Shri Baradakanta Mishra Vs. The Registrar, Orissa High Court, (1974) 1 SCC 374***.

31. The learned Amicus Curiae lastly submitted that even if the provisions of SCR dealing with dispensation of information is held to be inconsistent with the provisions of RTI Act, then also it is the provision of SCR which will prevail over the provisions of RTI Act.

COURT'S REASONING

UPON ANALYSIS OF THE FACTS OF THE PRESENT CASE, THIS COURT IS OF THE VIEW THAT IT IS STRANGE THAT DESPITE THE RESPONDENT CHALLENGING THE IMPUGNED TERMINATION ORDER AND ALLEGATIONS OF SEXUAL HARASSMENT LEVELLED AGAINST HIM BY WAY OF LEGAL PROCEEDINGS, HE NOT ONLY RE-AGITATED THE SAME ISSUES BUT ALSO QUESTIONED THE JUDICIAL ORDERS BY EITHER FILING LETTERS ON THE ADMINISTRATIVE SIDE OR APPLICATIONS UNDER THE RTI ACT

32. Having perused the paper book this Court finds that the respondent was holding the post of Postgraduate Teacher (Chemistry) in KVS and his services were terminated by the Commissioner of KVS under Article 81(b) of the Education Code on 05th November, 2003. The respondent challenged the order of termination before the Central Administrative Tribunal in OA No.996 of 2006 which was dismissed. Writ petition No.3902 of 2008 before the High Court and SLP (C) No.8219 of 2010 before the Supreme Court filed by the respondent were also dismissed.

33. Thereafter the respondent sought information by way of an RTI application dated 20th April, 2010 as to why his SLP(C) 8219-8220 of 2010 had been dismissed and it was contended in the said application that the SLP had been decided against the principles of natural justice. The Review Petitions Nos. 963-964 of 2010 were also dismissed by the Apex Court on 15th July, 2010.

34. Subsequently, the respondent's other Special Leave Petition against the judgment and order dated 5th February, 2010 of the High Court in CM No.14140/2009 in WP(C) 3902/2008 was allowed and the said judgment is reported as ***R.S. Misra v. Union of India & Others: (2012) 8 SCC 558***.

35. From the facts on record, it is apparent that letters had been written by the respondent to the Hon'ble Judges of the Apex Court when they were seized of the respondent's case in their judicial capacity.

36. It seems strange to this Court that despite the respondent challenging the impugned termination order and allegations of sexual harassment by way of legal proceedings, he not only re-agitated the same issues but also questioned the judicial orders by either filing letters on the administrative side or applications under the RTI Act.

37. In fact, the respondent even sought quashing of Article 81(b) of Education Code of KVS as unconstitutional by way of applications on the administrative side and wanted to know the outcome of such applications under RTI Act! This is all the more unusual as the respondent is well conversant with the judicial process inasmuch as he has filed more than double digit judicial proceedings before various forums and courts till date.

THE CIC SHOULD NOT HAVE DIRECTED THE PETITIONER TO SUPPLY INFORMATION, WITHOUT CONSIDERING WHETHER THE QUERIES RAISED WERE MAINTAINABLE UNDER THE RTI ACT. THIS COURT IS OF THE VIEW THAT WHERE THERE IS NO INFORMATION TO BE GIVEN OR APPLICANT IS SEEKING NON-EXISTENT INFORMATION OR WHERE THE QUERY IS INHERENTLY ABSURD OR BORDERING ON CONTEMPT, LIKE IN THE PRESENT CASE, THE CIC SHOULD NOT HAVE DIRECTED THE PETITIONER TO SUPPLY INFORMATION.

38. A Judge speaks through his judgments or orders passed by him. A Judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. If any party feels aggrieved by the order/judgment passed by a Judge, the remedy available to such a party is to challenge the same by a legally permissible mode.

39. No litigant can be allowed to seek information through an RTI application or a letter on the administrative side as to why and for what reasons the Judge had come to a particular decision or conclusion. A Judge is not bound to explain later on for what reasons he had come to such a conclusion.

40. The Supreme Court in ***Khanapuram Gandaiah Vs. Administrative Officer & Ors. (2010) 2 SCC 1*** has held as under:-

> *"13. A Judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. The application filed by the petitioner before the public authority is per se illegal and unwarranted. A judicial officer is entitled to get protection and the object of the same is not to protect malicious or corrupt Judges, but to protect the public from the dangers to which the administration of justice would be exposed if the judicial officers*

concerned were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly affect the independence of the judiciary. A Judge should be free to make independent decisions."

41. Consequently, this Court is of the view that where there is no information to be given or the applicant is seeking non-existent information or where the query is inherently absurd or bordering on contempt, like in the present case, the CIC should not have directed the petitioner to supply information and that too without considering whether the queries raised were maintainable under the RTI Act.

THERE IS NO INHERENT INCONSISTENCY BETWEEN SCR AND RTI ACT. BOTH ENABLE THE THIRD PARTY TO OBTAIN THE INFORMATION ON SHOWING A REASONABLE CAUSE FOR THE SAME.

42. The restriction with regard to 'third party information' in SCR 1966 and 2013 is similar to restriction imposed under Sections 8(1)(j) and 11 of the RTI Act. Therefore, it cannot be said that there is any inconsistency between SCR and RTI Act, regarding providing information to the third party. Both the RTI Act and the SCR enable the third party to obtain the information on showing a reasonable cause for the same.

43. Not only that, the SCR are more advantageous with regard to charges and time for delivery of copies than the RTI Act.

THE NON-OBSTANTE CLAUSE UNDER SECTION 22 OF THE RTI ACT DOES NOT MEAN AN IMPLIED REPEAL OVER ALL STATUTES, BUT ONLY AN OVERRIDING PROVISION IN CASE OF AN INHERENT INCONSISTENCY. SINCE BOTH RTI ACT, 2005 AND THE SCR AIM AT DISSEMINATION OF INFORMATION, THE RTI ACT DOES NOT PREVAIL OVER THE SCR.

44. Undoubtedly, the Rule making power of the Supreme Court is "subject *to*" only two limitations, i.e. subject to the laws made by the Parliament and such rules cannot override the provisions of the Constitution. The law made by the Parliament, would prevail over the rules made by the Supreme Court, only if there is any provision of law made by the Parliament by which either the right to make a rule is restricted or which contain provisions contrary to the rules.

45. Section 22 of the RTI Act has an overriding effect over other laws in case there are inconsistencies. However, Section 22 of the RTI Act does not contemplate to override those legislations, which aims to ensure access to information.

46. In fact, it contemplates harmonious existence with the other enactments which, like the RTI Act, also provides for dissemination of information. In ***Namit Sharma Vs. Union of India, (2013) 1 SCC 745***, the Supreme Court has held as under:-

> *"79. Let us now examine some other prerequisites of vital significance in the functioning of the Commission. In terms of Section 22 of this Act, the provisions of the Act are to be given effect to, 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. This Act is, therefore, to prevail over the specified Acts and even instruments. The same, however, is only to the extent of any inconsistency between the two. Thus, where the provisions of any other law can be applied harmoniously, without any conflict, the question of repugnancy would not arise."*

47. The non-obstante clause under Section 22 of the RTI Act does not mean an implied repeal over all statutes, but only an overriding provision in case of an inherent inconsistency. The Apex Court in ***Basti Sugar Mills Co. Ltd. Vs. State of U.P, (1979) 2 SCC 88*** has held as under:-

> *"23. ...."Inconsistent", according to Black's Legal Dictionary,means "mutually repugnant or contradictory; contrary, the one to the other so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other". So we have to see whether mutual coexistence between Section 34 of the Bonus Act and Section 3(b) of the U.P. Act is impossible. If they relate to the same subject-matter, to the same situation, and both substantially overlap and are co-extensive and at the same time so contrary and repugnant in their terms and impact that one must perish wholly if the other were to prevail at all — then, only then, are they inconsistent. In this sense, we have to examine the two provisions. Our conclusion, based on the reasoning which we will presently indicate, is that "inconsistency" between the two provisions is the produce of ingenuity and consistency between the two laws flows from imaginative understanding informed by administrative realism. The Bonus Act is a long-range remedy to produce peace; the U.P. Act provides a distress solution to produce truce. The Bonus Act adjudicates rights of parties; the U.P. provision meets an emergency situation on an administrative basis. These social projections and operational limitations of the two statutory provisions must be grasped to resolve the legal conundrum....."*

48. Section 22 provides for repugnancy vis-a-vis provisions contained in the Official Secrets Act, 1923 and any other law for the time being in force, which other law, by virtue of the principle of *ejusdem generis*, would also have to be of the same nature as the Official Secrets Act, 1923, namely, a statute contemplating lack of transparency/access to information. [***See: F.C.I Vs. Yadav Engineer & Contractor, (1982) 2 SCC 499, paras 4, 10, 12; Ishwar Singh Bagga Vs. State***

of Rajasthan, (1987) 1 SCC 101, para 9; *and* ***State of U.P. Vs. Harish Chandra and Co., (1999) 1 SCC 63, para 10***].

49. Since both the RTI Act, 2005 and the SCR aim at dissemination of information, there is no inherent inconsistency, other than the procedural inconsistency at the highest between the RTI Act and the SCR.

50. Furthermore, the SCR is a special law dealing with subject covered by the RTI Act. The Supreme Court in ***Justiniano Augusto De Piedade Barreto Vs. Antonio Vicente Da Fonseca and Otheres, (1979) 3 SCC 47*** has held as under:-

> *"12. ..... A special law is a law relating to a particular subject while a local law is a law confined to a particular area or territory. Used in an Act made by Parliament the word local may refer to a part or the whole of one of the many States constituting the Union. Though a law dealing with a particular subject may be a general law in the sense that it is a law of general applicability, laying down general rules, yet, it may contain special provision relating to bar of time, in specified cases, different from the general law of limitation. Such a law would be a special law for the purpose of Section 29(2). The rule of limitation contained in Section 417(4) of the Code of Criminal Procedure of 1898 was accordingly held to be a 'special law' in Kaushalya Rani v. Gopal Singh. Similarly, a law which may be a law of general applicability is yet a local law if, its applicability is confined to a particular area instead of generally the whole country....."*

51. Consequently, it is incorrect to state that the RTI Act would prevail over the SCR.

IF ANY INFORMATION CAN BE ACCESSED THROUGH THE MECHANISM PROVIDED UNDER ANOTHER STATUTE, THEN THE PROVISIONS OF THE RTI ACT CANNOT BE RESORTED TO.

52. The preamble of the RTI Act reads as under:-

> *An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto WHEREAS the Constitution of India has established democratic Republic; AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;*

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

53. The preamble shows that the RTI Act has been enacted only to make accessible to the citizens the information with the public authorities which hitherto was not available. Neither the Preamble of the RTI Act nor does any other provision of the Act disclose the purport of the RTI Act to provide additional mode for accessing information with the public authorities which has already formulated rules and schemes for making the said information available. Certainly if the said rules, regulations and schemes do not provide for accessing information which has been made accessible under the RTI Act, resort can be had to the provision of the RTI Act but not to duplicate or to multiply the modes of accessing information.

54. This Court is further of the opinion that if any information can be accessed through the mechanism provided under another statute, then the provisions of the RTI Act cannot be resorted to as there is absence of the very basis for invoking the provisions of RTI Act, namely, lack of transparency. In other words, the provisions of RTI Act are not to be resorted to if the same are not actuated to achieve transparency.

55. Section 2(j) of the RTI Act reveals that the said Act is concerned only with that information, which is under the exclusive control of the 'public authority'. Providing copies/certified copies is not separate from providing information. The SCR not only deal with providing 'certified copies' of judicial records but also deal with providing 'not a certified copy' or simply a 'copy' of the document. The certification of the records is done by the Assistant Registrar/Branch Officer or any officer on behalf of the Registrar. In the opinion of this Court, in case of a statute which contemplates dissemination of information as provided for by the Explanation to Section 4 of the RTI Act then in such situation, public will have minimum resort to the use of the RTI Act to obtain such information.

56. There are other provisions of the RTI Act which support the said position, namely, Sections 4(2), (3) and (4) which contemplate that if an information is disseminated then the public will have minimum resort to the use of the RTI Act to obtain information. In the present case, the dissemination of information under the

provisions of the SCR squarely fits into the definition of "*disseminated*" as provided in the aforesaid Explanation to Section 7(9) and the Preamble contemplate a bar for providing information if it "*disproportionally diverts the resources of the public authority"*.

57. Section 42 also provides that it shall be constant endeavour of every public authority to take steps in accordance with the requirements of sub-Section (1) thereof and to provide as much information suo-motu to the public at regular intervals through various means of communications including intervals so that the public has minimum resort to the use of the RTI Act to obtain information.

58. A Division Bench of this Court in ***Prem Lata CPIO Trade Marks Registry, Delhi Vs. Central Information Commission & Ors., 2015 SCC OnLine Del 7604*** in the context of accessing information from the Registrar of Trade Marks was concerned with the question whether information suo-motu being made available by a public authority through means of information including intervals in fulfillment of obligations under Section 4 of the Act can be requested for under Section 6 of the Act. For detailed reasons therein, it was held that neither can information already suo-motu made available by the public authority in discharge of obligations under Section 4(b) be requested for under Section 6 of the RTI Act nor the CPIO was required to reject the said request giving reasons. It was held that the purport of the RTI Act is to make the information available to the public at large and the same can be deciphered also from Section 44 of the RTI Act providing for dissemination of information in a cost effective and easy mode to the extent possible. Consequently, information which is already available under any other statutory mechanism will not be covered under the provision of the RTI Act.

59. In the present case, maintaining two parallel machinery: one under SCR and the other under the RTI Act, would clearly lead to duplication of work and unnecessary expenditure, in turn leading to clear wastage of human resources as well as public funds. Also, request for hard copies of information (as contemplated under Section 7 of the RTI Act) in respect of those information which are already available and accessible in the public domain, under the mechanism contemplated under the SCR, will further lead to unnecessary diversion of resources and conflict with other public interest which includes optimal use of limited fiscal resources.

60. A Coordinate Bench of this Court in ***Registrar of Companies and Others Vs. Dharmendra Kumar Garg and Another*** (supra) has held as under:-

> *"35. The mere prescription of a higher charge in the other statutory mechanism (in this case Section 610 of the Companies Act), than that prescribed under the RTI Act does not make any difference whatsoever. The right available to any person to seek inspection/copies of documents under Section 610 of the Companies Act is governed by the Companies (Central Government"s) General Rules & Forms, 1956, which are statutory rules and prescribe the fees for inspection of documents, etc. in Rule 21A. The said rules being statutory in nature and specific in their application, do not get overridden by the rules framed under the RTI Act with regard to prescription of fee for supply of information, which is general in nature, and apply to all kinds of applications made under the RTI Act to seek information. It would also be complete waste of public funds to require the creation and maintenance of two parallel machineries by the ROC - one under Section 610 of the Companies Act, and the other under the RTI Act to provide the same information to an applicant. It would lead to unnecessary and avoidable duplication of work and consequent expenditure.*
>
> *xxxx xxxx xxxx xxxx*
>
> *37. ....Nobody can go overboard or loose ones equilibrium and sway in one direction or assume an extreme position either in favour of upholding the right to information granted by the RTI Act, or to deny the said right."*

61. A Division Bench of this Court in ***Eliamma Sebastian Vs. Ministry of Home Affairs and Ors.*** (supra) has similarly held as under:-

> *"17. The RTI Act is aimed at bringing within its ambit the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto. This, however, in the Court's opinion does not necessarily mean that any other legislature, which aims to ensure access to information with respect to a private body (as per the RTI Act), is overridden by Section 22. The answer will have to be in the negative. The RTI is with respect to Public Authorities. Section 139 makes a separate distinct provision with respect to transactions of a cooperative society. The applicability of the RTI Act does not exclude the operation of the DCS Act, insofar as it enables access to information that is possessed by a cooperative Society. The latter can clearly be sourced by the person concerned from the Society, in view of Section 139.*
>
> *18. In view of the above discussion this Court is of opinion that the information which is in the possession of the Cooperative Society is accessible to its members and those interested, in Section 139 of the DCS Act. The absolute nature of this obligation to furnish information to those entitled to apply and receive is reinforced by the consequences which are spelt out in Section 139 (2). However, information which the Society may not possess, but pertaining to it, in the form of records with the Registrar of Cooperative Societies, have to be provided by the latter, under the RTI Act, as there is no doubt that such official*

- who discharges statutory functions - is a "public authority". However, the grounds of exemption spelt out under the RTI Act too would be attracted, wherever applicable."

THE JUDICIAL FUNCTIONING OF THE SUPREME COURT OF INDIA IS SEPARATE/ INDEPENDENT FROM ITS ADMINISTRATIVE FUNCTIONING. THE DISSEMINATION OF INFORMATION UNDER THE SCR IS A PART OF JUDICIAL FUNCTION, EXERCISE OF WHICH CANNOT BE TAKEN AWAY BY ANY STATUTE. THE SCR WOULD BE APPLICABLE WITH REGARD TO THE JUDICIAL FUNCTIONING OF THE SUPREME COURT; WHEREAS FOR THE ADMINISTRATIVE FUNCTIONING OF THE SUPREME COURT, THE RTI ACT WOULD BE APPLICABLE.

62. Also, the judicial functioning of the Supreme Court of India is separate/independent from its administrative functioning. In the opinion of this Court, the RTI Act cannot be resorted to in case the information relates to judicial functions, which can be challenged by way of an appeal or revision or review or by any other legal proceeding.

63. The Supreme Court in ***Riju Prasad Sarma v. State of Assam: (2015) 9 SCC 461*** has held that when the High Court or the Supreme Court acts in its administrative capacity, then only it is considered to fall within the definition of "*State*" within the meaning of Article 12. The relevant portion of the said judgment is reproduced hereinbelow:-

"*68. Hence, in accordance with such judgments holding that the judgments of the High Court and the Supreme Court cannot be subjected to writ jurisdiction and for want of requisite governmental control, judiciary cannot be a State under Article 12, we also hold that while acting on the judicial side the courts are not included in the definition of the State. Only when they deal with their employees or act in other matters purely in administrative capacity, the courts may fall within the definition of the State for attracting writ jurisdiction against their administrative actions only. In our view, such a contextual interpretation must be preferred because it shall promote justice, especially through impartial adjudication in matters of protection of fundamental rights governed by Part III of the Constitution.*"

64. In fact, the Supreme Court has framed rules with regard to *dissemination* of information under Article 145 of the Constitution of India, i.e. the SCR, 1966. The Rules under Article 145 of the Constitution have been framed in aid of the powers conferred to the Supreme Court under Article 142 of the Constitution to make such orders as is necessary for doing complete justice in any cause or matter pending before it. The SCR provide for regulating the practice and procedure of the Supreme Court.

65. It is pertinent to mention that during the pendency of the present petition, the SCR, 1966 was repealed and replaced by the SCR, 2013. Under the SCR, 1966, the relevant provision is Order XII, which deals with search/inspection of all pleadings and other documents or records in the case and for getting copies of the same on payment of prescribed fees and charges. The said provision has two parts, one dealing with requests by a party to any cause, appeal or matter and the other dealing with requests by a person who is not a party to the case, appeal or matter. While in the first case, the party concerned seems to be entitled to inspect the records and get copies thereof as a matter of right, in the second case the said party, who is only entitled to copies (and not inspection or search) has to first make an application to the Court for the said purpose and the Court being satisfied that there is a good cause, may allow the said application thereafter.

66. Rule 2 of the SCR cannot be read in isolation and needs to be read along with Rule 1. Rule 1 of the SCR allows a party to a proceeding in the Supreme Court to apply and receive certified copies of all pleadings, judgment, decree or order, documents, etc. Therefore, both Rule 2 and Rule 1 of the SCR aim at dissemination of information. However, Rule 2 of the SCR, merely imposes a condition on a person who is not a party to the case (pending or disposed) to show a good cause to obtain a copy of the same.

67. Insofar as the SCR, 2013 is concerned, while Order X deals with *'inspection and search'* by the party to any cause, Order XIII deals with copies of the pleadings, judgments, decrees or orders, documents and deposition. Like the SCR, 1966 the said provision also has two similar parts; one dealing with requests by a party to any cause, appeal or matter and the other dealing with requests by a person who is not a party to the appeal or matter. Further, Rule 7 of the Order XIII deals with documents of any confidential nature and the restrictions regarding obtaining copies of the same.

68. Since under Order V Rule 37 under the SCR, 2013, the application of a person who is not a party to the case, appeal or matter, for inspection or grant or search for grant of copies, is exercised by a Single Judge sitting in Chamber, the obtaining of documents/inspection would fall within the judicial functioning of the Supreme Court and thus such information would be available under the SCR framed under Article 145 of the Constitution of India.

69. The right/access to the information under the SCR which includes right of inspection, search of copies would all be judicial function of the Supreme Court, therefore such information would not be covered or contemplated under the RTI Act.

70. In ***Parashuram Detaram Shamdasani Vs. Sir Hugh Golding Cocke, AIR 1942 Bomb. 246*** the Bombay High Court has held that the discretion to allow inspection of the record of the Court has to be exercised judicially. The relevant portion of the aforesaid judgment is reproduced hereinbelow:-

> *"Under the Criminal Procedure Code, Section 548 gives to any person affected by a judgment or order passed by a criminal Court the right to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record on the terms specified in the section. Then Section 554 gives a right to Chartered High Courts to make rules for the inspection of the records of subordinate Courts. For many years after Section 548 was passed, there were no rules of this Court relating to inspection, and I understand that the practice was for a Magistrate or Judge to give inspection of the record of his Court as he thought proper. I have no doubt that, except as controlled by any rule made by the High Court, a Magistrate or Judge of a subordinate Court has a discretion to allow inspection of the record of his Court, but such discretion must be exercised judicially. In exercising his discretion, a Magistrate or Judge would be bound to have regard to the terms of Section 548, and in my opinion it would be difficult, and generally improper, for him to refuse inspection of any document of which a party was entitled to a certified copy under that section. The right to a certified copy seems to me to presuppose a right of inspection, because a party cannot be expected to make up his mind whether he wants to have a copy of a document, if he is not entitled in the first place to read it, and see what it is about. To require a party to take certified copies of all documents on the record in order to determine of which documents he really requires a copy would seem to involve unnecessary expense and trouble. Therefore, I think prima facie under Section 548 a party would have an implied right to ask the presiding Magistrate or Judge to allow him inspection of the record referred to in the section."*

71. Consequently, the decision to allow or deny inspection or to give copies of the judicial file is clearly a part of and/or in the course of discharge of judicial function.

72. This Court is also of the opinion that the SCR does not make sense unless they are read as indicating that, save when permitted under the Rules, documents on the Court file are not intended to be inspected or copied. That is the necessary corollary of the Rules granting only a limited right to inspect and take copies. The Chancery Division in ***394 Dobson and Another Vs. Hastings and Others, [1992] Ch. 394*** has held as under:-

"This is a committal application with an unusual background. It concerns the unauthorised inspection of a document on a court file, and the subsequent publication of information obtained from that inspection. The respondents are Mr. Max Hastings, the editor of "The Daily Telegraph", Miss Antonia Feuchtwanger, a journalist employed by "The Daily Telegraph", and the Daily Telegraph Plc. On 31 August and 3 September 1991 articles written by Miss. Feuchtwanger appeared in "The Daily Telegraph" newspaper. Both articles referred to a report submitted to the High Court by Mr. Burns, deputy official receiver, in proceedings brought by the official receiver.....

With that introduction I turn first to the legal framework: the provisions in the rules of court relating to inspection of documents on the file maintained by the court for disqualification proceedings. Unfortunately, the history of this matter has been clouded a little by some confusion about which of two sets of rules is applicable to inspection of documents filed in disqualification proceedings: the Rules of the Supreme Court, or the Insolvency Rules. Indeed, one of the issues before me concerns which of these two sets is the relevant set.

The upshot of all this is that the relevant rules regarding inspection of the court file in the present case are the Rules of the Supreme Court. Under R.S.C., Ord. 63 rr. 4 and 4A any person, on payment of the prescribed fee, was entitled to search for, inspect and take a copy of the originating summons. The official receiver's report could be inspected and copied with the leave of the court, which might be granted on an ex parte application. The provision in the Insolvency Rules, for the inspection of the court file by a creditor of the company to which the insolvency proceedings relate, had and has no application.

Inspection of documents on the court file otherwise than in accordance with the rules.

The Rules of the Supreme Court do not expressly prohibit inspection and taking copies of documents otherwise than in accordance with the rules. What the rules do is to require parties to proceedings to file certain documents in the court office. Ord. 63 r. 4 provides that of the documents which must be filed, some are to be open to general inspection. Other documents may be inspected with the leave of the court. Rule 4 provides further that this requirement is not to prevent parties to proceedings from inspecting or obtaining copies of documents on the file. In my view these provisions do not make sense unless they are read as indicating that, save when permitted under the rules, documents on the court file are not intended to be inspected or copied. That is the necessary corollary of the rules granting only a limited right to inspect and take copies. In other words, a court file is not a publicly available register. It is a file maintained by the court for the proper conduct of proceedings. Access to that file is restricted. Non-parties have a right of access to the extent, provided in the rules. The scheme of the rules is that, by being filed, documents do not become available for inspection or copying save to the extent that access to specified documents or classes of documents is granted either generally under the rules or by leave of the court in a particular case.

The purpose underlying this restriction presumably is that if and when affidavits and other documents are used in open court, their contents will

become generally available, but until then the filing of documents in court, as required by the court rules for the purpose of litigation, shall not of itself render generally available what otherwise would not be. Many documents filed in court never see the light of day in open court. For example, when proceedings are disposed of by agreement before trial. In that event, speaking generally, the parties are permitted to keep from the public gaze documents such as affidavits produced in preparation for a hearing which did not take place. Likewise with affidavits produced for interlocutory applications which are disposed of in chamber. Again, there are certain, very limited, classes of proceedings, such as those relating to minors, which are normally not heard in open court. Much of the object sought to be achieved by a hearing in camera in these cases would be at serious risk of prejudice if full affidavits were openly available once filed.

73. Consequently, the SCR would be applicable with regard to the judicial functioning of the Supreme Court; whereas for the administrative functioning of the Supreme Court, the RTI Act would be applicable and information could be provided under it. The dissemination of information under the SCR is a part of judicial function, exercise of which cannot be taken away by any statute. It is settled legal position that the legislature is not competent to take away the judicial powers of the court by statutory prohibition. The legislature cannot make law to deprive the courts of their legitimate judicial functions conferred under the procedure established by law.

74. Also, the RTI Act does not provide for an appeal against a Supreme Court judgment/order that has attained finality. It is clarified that queries under the RTI Act would be maintainable to elicit information like how many leaves a Hon'ble Judge takes or with regard to administrative decision an Hon'ble Judge takes; but no query shall lie with regard to a judicial decision/function.

THE CIC BY THE IMPUGNED ORDER COULD NOT HAVE OVERRULED EARLIER DECISIONS OF OTHER COORDINATE BENCHES OF THE SAME STRENGTH

75. This Court is in agreement with the submission of the learned Amicus Curiae and the learned senior counsel for petitioner that the CIC by the impugned order could not have overruled earlier decisions of other Coordinate Benches of the same strength. Judicial discipline required that if the CIC did not agree with the earlier settled legal position, it ought to have referred the matter to a larger Bench.

76. The Supreme Court in ***Gammon India Limited Vs. Commissioner of Customs, Mumbai, (2011) 12 SCC 499*** has held as under:-

> *"34. Before parting, we wish to place on record our deep concern on the conduct of the two Benches of the Tribunal deciding appeals in IVRCL Infrastructures & Projects Ltd. [(2004) 166 ELT 447 (Tri)] and Techni Bharathi Ltd. [(2006) 198 ELT 33 (Tri)] After noticing the decision of a coordinate Bench in the present case, they still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment, thereby creating a judicial uncertainty with regard to the declaration of law involved on an identical issue in respect of the same exemption notification.*
>
> *35. It needs to be emphasised that if a Bench of a tribunal, in an identical fact situation, is permitted to come to a conclusion directly opposed to the conclusion reached by another Bench of the tribunal on an earlier occasion, that will be destructive of the institutional integrity itself. What is important is the tribunal as an institution and not the personality of the members constituting it. If a Bench of the Tribunal wishes to take a view different from the one taken by the earlier Bench, propriety demands that it should place the matter before the President of the Tribunal so that the case is referred to a larger Bench, for which provision exists in the Act itself.*

77. A Co-ordinate Bench of this on an identical question of law, as involved in the present case, passed strictures against the same learned CIC, who passed the present impugned order. The relevant portion of the observations of the co-ordinate Bench in ***Registrar of Companies v. Dharmender Kumar Garg*** *(supra)*, are reproduced hereinbelow:-

> "*56. In the present case, the Central Information Commissioner Mr. Shailesh Gandhi has also demonstrated complete lack of judicial discipline while rendering the impugned decisions. By no stretch of imagination, it cannot be said that the earlier decisions were not on the point. Particularly, the decision rendered by Sh. A.N. Tiwari in F. CIC/T/A/2007/0012 dated 12.04.2007 directly deals with the very same issue, and is an exhaustive, and detailed and considered decision. If the Central Information Commissioner Sh. Shailesh Gandhi had a different view in the matter - which he was entitled to hold, judicial discipline demanded that he should have recorded his disagreement with the view of Sh. A.N. Tiwari, Central Information Commissioner, and, for reasons to be recorded by him, required the constitution of a larger bench to re-examine the issue. He could not have ridden rough shot over the earlier decisions of Sh. A.N. Tiwari and Prof. M.M. Ansari, particularly when he was sitting singly to consider the same issue of law.*
>
> *57. The consequence of the improper conduct of Sh. Shailesh Gandhi, Central Information Commissioner, is that there are now two sets of conflicting orders-taking diametrically opposite views, on the issue aforesaid. Therefore, unless the said legal issue is settled one way or the other by a higher judicial forum, it would be open to any other Information Commissioner to choose to follow one or the other view. This would certainly lead to confusion and chaos. It would also lead to discrimination between the querists/public authority, who are either seeking information or are defending the action under the RTI Act. One such instance, cited by learned counsel for the petitioner is in the case of Smt. Dayawati v. Office of Registrar of Companies, in CIC/SS/C/2011/000607*

decided on 23.03.2012. In this case, once again the same issue had been raised. The Central Information Commissioner Smt. Sushma Singh has preferred to follow the view of Sh. A.N. Tiwari in the case of K. Lall v. Ministry of Company Affairs, Appeal No. CIC/AT/A/2007/00112 dated 14.04.2007."

78. Consequently, on this short ground the impugned judgment is also liable to be set aside.

79. Before parting with the case, this Court must admit that the level of debate in the present case was of a very high quality. This Court places on record its appreciation for the efforts put in by Mr. Siddharth Luthra, Ms.Deepali Gupta and, in particular, the Amicus Curiae, Mr. Ramesh Singh, who not only argued with clarity but also carried out a meticulous research on the legal issues involved.

CONCLUSION

80. Keeping in view of the aforesaid conclusions, the present writ petition is allowed and the order of the CIC dated 11th May, 2011 passed in Appeal No. CIC/SM/A/2011/000237 directing the CPIO to answer the queries raised by the respondent, is set aside.

MANMOHAN, J
NOVEMBER 21, 2017