

CENTRAL INFORMATION COMMISSION
Block IV, 5th Floor, Old JNU Campus
New Delhi 110067

Appeal No. CIC/WB/A/2008/00426

Name of the Appellant: Shri Subhash Chandra Agrawal
1775, Kucha Lattushah, Dariba
Delhi-110 006.

Public Authority: Supreme Court of India
New Delhi.

Date of Hearing 05.11.2008

Date of Decision 06.01.2009

FACTS OF THE CASE:

1. Appellant Shri SC Agrawal submitted an application under the Right to Information Act on 10.11.2007 requesting the CPIO of Supreme Court of India to provide him a copy of the Resolution dated 7.5.2007 passed by all the judges of the Supreme Court which required every judge to make a declaration of assets in form of real estate or investments held in their names or in the name of their spouses and any person dependent on them to the Chief Justice. The appellant also requested the CPIO to provide him information on any such declaration of assets etc ever filed by the Hon'ble Judges of the Supreme Court. The RTI application also covered a request for information concerning any declarations filed by the High Court Judges about their assets to the respective Chief Justices in the various High Courts. While the CPIO of the Supreme Court provided a copy of the resolution dated 7.5.19997, as referred to above, he declined to provide the remaining part of the information concerning the declaration of assets by the Hon'ble Judges of the Supreme Court and High Courts on the ground that the said information is not held by or under the control of the Registry of the Supreme Court of India.

2. The appellant filed an appeal under Section 19(1) of the Right to Information Act requesting the First Appellate Authority to direct the CPIO to transfer his RTI application under Section 6(3) of the RTI Act to any concerned Public Authority having the said information.

3. The First Appellate Authority after hearing the appellant in person and after perusal of the records decided to remand back the matter to the CPIO to consider the question as to whether Section 6(3) of the RTI Act is liable to be invoked by the CPIO. The CPIO heard the appellant again in respect of the applicability of Section 6(3) of RTI Act to the facts and circumstances of the case and after considering the matter decided as follows:

“In the case at hand, you yourself knew that the information sought by you is related to various High Courts in the country and instead of applying to those Public Authorities you have taken a short circuit procedure by approaching the CPIO, Supreme Court of India remitting the fee of Rs.10/- payable to one authority and getting it referred to all the Public Authorities at the expense of one Central Public Information Officer. In view of this, the relief sought by you cannot be appreciated and is against the spirit of Section 6(3) of the Right to Information Act, 2005.

You may, if so advised, approach the concerned Public Authorities for desired information.”

4. The appellant in his appeal petition before this Commission had contended that —

- (i) CPIO at the time of hearing on 24.1.2008 had indicated that he had no objection in transferring the petition under Section 6(3) of the RTI Act to various High Courts in the country for providing the required information about declaration of assets etc having been filed by any judge of any of the High Courts to respective Chief Justices of States in accordance with the Resolution adopted in the full court meeting of the Supreme Court on 7.5.1997. The CPIO also agreed that he had no objection in placing the petition before Hon'ble Chief Justice of India for similar information about judges of Supreme Court.

- (ii) The appellant wanted to know if such an important resolution adopted by full court meeting of all the 22 judges of the Supreme Court is implemented in practice at Supreme Court and High Courts. Therefore, he prayed that the learned CPIO at Supreme Court might be directed to arrange for the appellant the sought information either by himself or by placing his petition before Hon'ble the Chief Justice of India and/or by transferring the petition to all the High Courts of the country.
- (iii) The appellant also prayed that the CPIO might be directed to either provide the information on declaration of assets by Hon'ble judges of the Supreme Court. In case that information is not available with Registry, then this petition may kindly be directed be transferred to the office of Hon'ble the Chief Justice of India.

5. The case was listed to be heard on 11.7.2008 and the CPIO and the Appellate Authority of the Supreme Court were notified to appear and present their case. The appellant was also asked to remain present in person or through duly authorized representative or if the appellant so desires, he may opt not to be present in the hearing. The hearing was however adjourned as the Registry of the Supreme Court wanted to file counter to the appeal.

6. The Full Bench of the Commission heard the matter on 5th November, 2008. The following were present:

Appellant:

Appellant not present but was represented by:

1. Shri Prashant Bhushan, Advocate
2. Shri Mayank Misra, Advocate

Respondents:

1. Shri Raj Pal Arora, Additional Registrar & CPIO, Supreme Court
2. Shri Amarendra Sharan, Additional Solicitor General
3. Shri Amit Anand Tiwari, Advocate

7. The learned counsel appearing on behalf of appellant stated that the First Appellate Authority has observed that the appellant is justified in contending that if the CPIO was not holding the information he should have considered the question of applicability of Section 6(3) of the Right to Information Act and

transferred the matter to the concerned CPIO/Public Authority holding the said information. At the time of arguments, Mr. Prashant Bhushan counsel for the appellant submitted that the First Appellate Authority while deciding the first appeal has upheld the right of the appellant to get the information regarding declaration of the assets filed by the judges. At the time of hearing of the 1st appeal it was contended by the CPIO that they do not hold the information. The First Appellate Authority felt that he should consider as to whether it can be transfer to the authority holding the information. CPIO instead of forwarding has rejecting the application on the ground that the appellant knew that the information related to various High Courts and that he has taken a short circuit procedure. CPIO of the Supreme Court has observed that the appellant has remitted a fee of Rs.10 only. The learned counsel also argued that even if it is accepted that the information concerning the declaration of assets by the judges of the Supreme Court may be available with the concerned Chief Justice of the High Courts but the report concerning the declaration of the assets by the Supreme Court judges must be available only in the Supreme Court. The CPIO has maintained a total silence in regard to this part of information and has not mentioned even a word about the information concerning the Supreme Court judges.

8. Learned counsel appearing on behalf of the Supreme Court of India submitted that the RTI application had two parts, the first part related to copy of Resolution, which has already been provided to the appellant, and the 2nd part relates to declaration of assets by the Supreme Court judges. CPIO submitted that the Registrar of the Supreme Court does not hold the information. The learned counsel submitted that the Resolution passed by the judges is an in-house mechanism. The declaration regarding assets of the judges is only voluntary. The resolution itself describes submission of such declarations as “confidential”. It was also submitted that any disclosure of these declarations would be breach of fiduciary relationship. The learned counsel also submitted that the declarations are submitted to the Chief Justice of India not in his official capacity but in his personal capacity and that any disclosure will be violative of

the Resolution of the Hon'ble judges which seeks to make these declarations 'confidential'. It was also contended that the disclosure will also be contrary to the provisions of section 8(1)(e) of the Right to Information Act.

9. The learned counsel appearing for the appellant submitted that the declaration of assets by the judges is 'information' within the meaning of section 2(f) of the RTI Act and the same is held by the Supreme Court, which is therefore accessible within the meaning of section 2(h) of the Act. If the Registrar of the Supreme Court states that the information is not held by them but held by Chief Justice of India then the Chief Justice of India is a separate Public Authority independent and distinct from the Supreme Court of India. The Commission, therefore, has to decide as to whether Supreme Court of India and the Chief Justice of India are part of the same Public Authority or the CJI constituted a separate and independent Public Authority. If the two are different and distinct Public Authorities then the CPIO should have transferred the RTI application to the Chief Justice of India under Section 6(3) of the Right to Information Act. He also argued that the information held either by the Supreme Court or by the Chief Justice of India cannot be denied to a citizen seeking the same under the provisions of the Right to Information Act.

DECISION AND REASONS:

10. The Right to Information Act 2005 was enacted in order to promote transparency and accountability in the working of every Public Authority and the Act entitles a citizen to get information held by or available with a Public Authority unless disclosure of such information is exempted under the Act. The Act also recognizes that an informed citizenry and transparency of information are vital to the functioning of a democracy. It has been contended before us that the RTI Act applies only to the executive Government and the Supreme Court of India being a constitutional body is outside the purview of the RTI Act. In this context, it would be pertinent to refer to the provisions of Section 2(h) of the RTI Act, which defines a "Public Authority" as under:

“2(h) "public authority" means any authority or body or institution of self- government established or constituted—

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government,

and includes any—

(i) body owned, controlled or substantially financed;

(ii) non-Government organization substantially financed,

directly or indirectly by funds provided by the appropriate Government;”

11. The term “Public Authority” as defined u/s 2(h) of the Right to Information Act, therefore, means any authority or body or institution of self Government established or constituted by or under the Constitution. The 1st Para of the Preamble to the Act also states that the Act seeks to promote transparency in the working of **every** Public Authority. In this context, it would also be pertinent to refer to Article 124 of the Constitution of India clause (1) of which reads as under:

“Article 124: Establishment and constitution of Supreme Court.

(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

12. The Supreme Court of India is an institution created by the Constitution and is, therefore, a Public Authority within the meaning of Section 2(h) of the Right to Information Act.

13. The status and position of the Chief Justice of India is unique under the RTI Act. The Chief Justice of India is also designated as “Competent Authority” under Section 2(e) of the Right to Information Act, which reads as under:

- “2(e) *“Competent authority” means—*
- (i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;*
 - (ii) the Chief Justice of India in the case of the Supreme Court;*
 - (iii) the Chief Justice of the High Court in the case of a High Court;*
 - (iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;*
 - (v) the administrator appointed under article 239 of the Constitution;”*

14. The Chief Justice of India in case of Supreme Court of India and the Chief Justice of High Court in case of High Court are also thus designated as “Competent Authority” within the meaning of Section 2(e) of the RTI Act and Section 28 of the Right to Information Act empowers them to frame Rules to carry out provisions of Right to Information Act. Section 28 of the Act is reproduced below:

“Section 28:

- (1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.*
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—*
 - (i) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;*
 - (ii) the fee payable under sub-section (1) of section 6;*
 - (iii) the fee payable under sub-section (1) of section 7; and*

- (iv) any other matter which is required to be, or may be, prescribed.”

15. It may further be mentioned that while the Rules made by the Central Government under Section 27 are required to be laid before each House of Parliament and the Rules made by the State Governments are required to be laid before each House of Legislature, there is no such requirement in respect of the Rules framed by the Chief Justice of India in case of Supreme Court and Chief Justice of a High Court in case of a High Court u/s 28 of Right to Information Act.

16. The rule making power has been explicitly given for the purpose of carrying out the provisions of the RTI Act. The Act, therefore, empowers the Supreme Court and the other Competent Authorities under the Act and entrusts upon them an additional responsibility of ensuring that the RTI Act is implemented in letter and spirit. In view of this, the contention of the respondent Public Authority that the provisions of Right to Information Act are not applicable in case of Supreme Court cannot be accepted.

17. The learned counsel appearing on behalf of the Supreme Court during the course of hearing argued that the information concerning the declaration of assets by the judges is provided to the Chief Justice of India in his personal capacity and it is “voluntary” and “confidential”. From what was presented before us, it can be inferred that the declaration of assets are filed with the Chief Justice of India and the office of the Chief Justice of India is the custodian of this information. The information is maintained in a confidential manner and like any other official information it is available for perusal and inspection to every succeeding Chief Justice of India. The information, therefore, cannot be categorized as “personal information” available with the Chief Justices in their personal capacity.

18. The only issue that needs to be determined is as to whether the Chief Justice of India and the Supreme Court of India are two distinct Public Authorities or one Public Authority. In this context, it would be pertinent to refer again to the

provisions of Section 2(h) of the Right to Information Act, the relevant part of which reads as under:

“2(h) "public authority" means any authority or body or institution of self- government established or constituted...”

19. The Public Authority, therefore, can only be an “authority”, “body” or an “institution” of self-government, established or constituted, by or under the Constitution or by any other law, or by an order made by the Appropriate Government.

20. The words “authority, “body” or “institution” has not been distinctly defined in the Act. The expression “authority” in its etymological sense means a Body invested with power to command or give an ultimate decision, or enforce obedience or having a legal right to command and be obeyed. *Webster’s Dictionary* of the English language defined “authorities” as “official bodies that control a particular department or activity, especially of the Government”. The expression ‘other authorities’ has been explained as ‘authorities entrusted with a power of issuing directions, disobedience of which is punishable as an offence, or bodies exercising legislative or executive functions of the State’ or ‘bodies which exercise part of the sovereign power or authority of the State and which have power to make rules and regulations and to administer or enforce them to the detriment of the citizens.’ In the absence of any statutory definition or judicial interpretation to the contrary, the normal etymological meaning of the expression, has to be accepted as the true and correct meaning.

21. According to the dictionary meaning, the term “institution” means a body or organization or an association brought into being for the purpose of achieving some object. Oxford Dictionary defines an “institution” as an establishment, organization or an association instituted for the promotion of some objects especially one of public or general utility, religious, charitable, educational etc. The definition of the “institution”, therefore, includes an authority as well as a body. By very implication, the three terms exclude an “individual”. Even the

Hon'ble Apex Court in **Kamaraju Venkata Krishna Rao Vs. Sub-Collector, Ongole – AIR 1969 SC 563** has observed that it is by no means easy to give definition of the word “institution” that would cover every use of it. Its meaning must always depend upon the context in which it is found.

22. If the provisions of Article 124 of the Constitution are read in view of the above perspective, it would be clear that the Supreme Court of India, consisting of the Chief Justice of India and such number of Judges as the Parliament may by law prescribe, is an institution or authority of which the Hon'ble Chief Justice of India is the Head. The institution and its Head cannot be two distinct Public Authorities. They are one and the same. Information, therefore, available with the Chief Justice of India must be deemed to be available with the Supreme Court of India. The Registrar of the Supreme Court of India, which is only a part of the Supreme Court cannot be categorized as a Public Authority independent and distinct from the Supreme Court itself.

23. In view of this, the question of transferring an application under Section 6(3) of the Right to Information Act by the CPIO of the Supreme Court cannot arise. It is the duty of the CPIO to obtain the information that is held by or available with the Public Authority. Each of the sections or department of a Public Authority cannot be treated as a separate or distinct Public Authority. If any information is available with one section or the department, it shall be deemed to be available with the Public Authority as one single entity. CPIO cannot take a view contrary to this.

24. In the instant case, admittedly, the information concerning the Judges of the Supreme Court is available with the Supreme Court and the CPIO represents the Supreme Court as a Public Authority. Under the RTI Act, he is, therefore, obliged to provide this information to a citizen making an application under the RTI Act unless the disclosure of such information is exempted under the law.

25. During the course of hearing, it has been argued that the declaration of assets submitted by the judges of the Supreme Court are confidential and the

information has been provided to the Chief Justice of India in a fiduciary relationship and as such, its disclosure is exempted under Section 8(1)(e) of the RTI Act.

26. In this context it will be pertinent to reiterate what the appellant has asked for in his RTI application and which is as follows:

- (i) I will be obliged if your Honour very kindly arranges to send me a copy of the said Resolution passed by the Judges of the Supreme Court on 7.5.2007;
- (ii) I will be obliged if Your Honour kindly provides me information on any such declaration of assets etc ever filed by Honorable judges of the Supreme Court.
- (iii) Kindly also arrange information if High Court judges are submitting declaration about their assets etc to respective Chief Justices in States.

27. The information in regard to point (i) as above has already been provided. As regards the information covered by point No.(ii) & (iii) above, the same has been denied on the ground that it is not held by or under the control of the Registrar of the Supreme Court of India and, therefore, cannot be furnished by the CPIO.

28. The First Appellate Authority while deciding the matter assumed that the CPIO of the Supreme Court was not holding the information concerning the declaration of the assets made by the High Court Judges and that this information is held by the Chief Justices of the State High Courts and accordingly, he observed that the appellant is justified in contending that if the CPIO was not holding the information, he should have considered the question of invoking Section 6(3) of the RTI Act. Accordingly, the matter was remanded back by him to the CPIO of the Supreme Court for fresh consideration on limited point i.e. transfer of application to various High Courts u/s 6(3) of the RTI Act. It

will not be out of context to reproduce what the Appellate Authority has decided in his order:

“In the above circumstances, the impugned order to the above extent is liable to be remanded back. The matter is remanded to the CPIO to consider the question whether Section 6(3) of the Act, is liable to be invoked by the CPIO.

The matter is remanded to the CPIO for afresh consideration on the above limited point after giving a reasonable opportunity of being heard to the appellant.”

29. CPIO on receiving the matter back on remand rejected the application of the appellant. It appears that both the CPIO and the First Appellate Authority have remained silent as regards the information concerning declaration of assets by the judges of the Supreme Court. At the time of hearing, it was admitted that the information concerning declaration of assets by the judges of the Supreme Court is not available with the Registry, but the office of the Chief Justice of India holds the same. The information requested under the RTI Act was denied only on the ground that the Registry does not hold the information. But the First Appellate Authority did not find as to where the information is available. The CPIO maintained silence as regards this matter even after he received the matter on remand. At the time of hearing before this Commission, however, it was submitted that the information might be available with the office of the Chief Justice of India. It is clear that neither the CPIO nor the First Appellate Authority has claimed that the information asked for by the appellant is exempt either under Section 8(1) (e) of the Act being received in fiduciary relationship or that this information is ‘personal information’ attracting exemption under Section 8(1) (j).

30. The appellant Shri S C Agrawal is apparently not seeking a copy of the declarations or the contents therein or even the names etc. of the judges filing the declaration, nor is he requesting inspection of any such declaration already filed. He is seeking simple information as to whether any such declaration of assets etc. has ever been filed by the Judges of the Supreme Court or High

Courts. What he is seeking cannot be held to attract exemption under Sections 8(1)(e) or 8(1)(j).

31. The only question that remains to be decided is as to whether CPIO was justified in turning down the request of the appellant to transfer the RTI application to the concerned CPIO of the High Courts even after the First Appellate Authority remanded the case to him. In this connection, it may be mentioned that the request for transfer under Section 6(3) of the Right to Information Act has been turned down on the ground that the appellant was well aware that the information is available with the respective High Courts which are separate and distinct Public Authorities. This point has not been pressed at the time of hearing. As such, it is not necessary to decide this issue at this stage.

32. In view of what has been observed above, the CPIO of the Supreme Court is directed to provide the information asked for by the appellant in his RTI application as to whether such declaration of assets etc. has been filed by the Hon'ble judges of the Supreme Court or not within ten working days from the date of receipt of this Decision Notice.

Announced in open chamber on this the 6th day of January 2009. Notice of this decision be given free of cost to the parties.

(A.N. Tiwari)
Information Commissioner

(Prof. M.M. Ansari)
Information Commissioner

(Wajahat Habibullah)
Chief 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