REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10044 OF 2010

CENTRAL PUBLIC INFORMATION OFFICER, SUPREME COURT OF INDIA ... **APPELLANT**

VERSUS

SUBHASH CHANDRA AGRAWAL ... **RESPONDENT**

WITH

CIVIL APPEAL NO. 10045 OF 2010
AND
CIVIL APPEAL NO. 2683 OF 2010

J U D G M E N T

N.V. RAMANA, J.

"In the domain of human rights, right to privacy and right to information have to be treated as co-equals and none can take precedence over the other, rather a balance needs to be struck"

1. I have had the opportunity to peruse the erudite judgments of my learned brothers, who have reflected extensively on the importance of this case, concerning the aspect of privacy and right to information in detail. However, while concurring with the view of the majority, I feel the need to provide independent reasons with respect to certain aspects for coming to the aforesaid conclusion,

as this case has large ramification on the rights of an individual in comparison to the rights of the society. The aspect of transparency and accountability which are required to be balanced with right to privacy, has not been expounded by this Court anytime before, thereby mandating a separate opinion.

2. This case concerns the balance which is required between two important fundamental rights i.e. right to information and right to privacy. Often these two rights are seen as conflicting, however, we need to reiterate that both rights are two faces of the same coin. There is no requirement to see the two facets of the right in a manner to further the conflict, what is herein required is to provide balancing formula which can be easily made applicable to individual cases. Moreover, due to the fact of infancy in privacy jurisprudence has also contributed to the meticulous task we are burdened herein.

3. In this view, this case is before us to adjudicate whether the application dated 06.07.2009 (hereinafter referred to as "**first application**") seeking information by the respondent, separate

applications dated 23.01.2009 (hereinafter referred to as "**second application**") and 10.11.2007 (hereinafter referred to as "**third application**") are maintainable or not. The first application concerns the information relating to complete correspondence between the Chief Justice of India and Mr. Justice R. Reghupati. The second application concerns the collegium file notings relating to the appointment of Justice H. L. Dattu, Justice A. K. Ganguly and Justice R. M. Lodha. The third application relates to information concerning declaration of assets made by the puisne judges of the Supreme Court to the Chief Justice of India and the judges of the High Courts to the Chief Justices of the respective High Courts.

4. The respondent/applicant submitted that the aforesaid three applications before the Central Public Information Officer of the Supreme Court of India (hereinafter "**CPIO, Supreme Court of India**") came to be dismissed *vide* orders dated 04.08.2009, 25.02.2009 and 30.11.2007 respectively.

5. Aggrieved by rejection of the first application the respondent approached the first appellate authority in appeal which was also

dismissed *vide* order dated 05.09.2009. Being aggrieved, the respondent further preferred a second appeal to the Central Information Commission [for short "**CIC**"]. The CIC allowed this appeal *vide* order dated 25.11.2009 and directed the disclosure of information sought. Aggrieved by the same, the CPIO, Supreme Court of India has preferred Civil Appeal No. 10045 of 2010.

6. Concerning the second application, the CPIO, Supreme Court of India, by order dated 25.02.2009 had denied the information sought therein. Being aggrieved, the respondent preferred the first appeal which came to be dismissed *vide* order dated 25.03.2009 by the first appellate authority. The second appeal filed before the CIC was allowed *vide* order dated 24.11.2009. Aggrieved the CPIO, Supreme Court of India has preferred Civil Appeal No. 10044 of 2010.

7. The third application was dismissed by the CPIO, Supreme Court of India *vide* order dated 30.11.2007 on the ground that the information was not held by the Registry of the Supreme Court of India. The first appeal was disposed of with an order directing the CPIO, Supreme Court of India to consider the question of

applicability of Section 6(3) of the Right to Information Act, 2005 (hereinafter "**the RTI Act**"). The CPIO *vide* order 07.02.2009 required the respondent/applicant to approach the concerned public authority of the High Courts. Aggrieved the respondent/applicant directly approached the CIC in appeal which was allowed by order dated 06.01.2009. Aggrieved by the same the appellant filed Writ Petition (C) No. 288 of 2009 before the Delhi High Court. The Ld. Single Judge by order dated 02.09.2009 directed the CPIO, Supreme Court of India to release the information sought by the respondent. Being aggrieved, the CPIO, Supreme Court of India filed Letter Patent Appeal No. 501 of 2009 which was subsequently referred to a full Bench of the High Court. The full Bench by order dated 12.01.2010 dismissed the letter patent appeal. Aggrieved, CPIO, Supreme Court of India has filed Civil Appeal No. 2683 of 2010 before this Court.

8. In this context, all the three appeals were tagged by an order dated 26.11.2010, a reference was made for constituting a larger Bench and accordingly it is before us.

9. Before we dwell into any other aspect a preliminary objections were taken by the appellants that this Bench could not have dealt with this matter considering the fact that this Court's functionality had a direct impact on the same. We do not subscribe to the aforesaid opinion for the reason that this Court while hearing this matter is sitting as a Court of necessity. In the case of ***Election Commission of India v. Dr Subramaniam Swamy,*** (1996) 4 SCC 104, it was held as under:

> **16.** We must have a clear conception of the doctrine. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases of bias where there is no other authority or Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit there from. Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them, a stalemate situation may develop. In such cases the doctrine of necessity comes into play. If the choice is between

> allowing a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making. In the present case also if the two Election Commissioners are able to reach a unanimous decision, there is no need for the Chief Election Commissioner to participate, if not the doctrine of necessity may have to be invoked.

10. In this light, appellants have to accept the decision of this Court which is the final arbiter of any disputes in India and also the highest court of constitutional matters. In this light, such objections cannot be sustained.

11. Before we proceed any further we need to have a brief reference to the scheme of RTI Act. The statement of objects and reasons envisage a noble goal of creating a democracy which is consisting of informed citizens and a transparent government. It also provides for a balance between effective government, efficient operations, expenditure of such transparent systems and requirements of confidentiality for certain sensitive information. It recognises that these principles are inevitable to create friction *inter se* and there needs to be harmonisation of such conflicting interests and there is further requirement to preserve

the supremacy of democratic ideal. The recognition of this normative democratic ideal requires us to further expound upon the optimum levels of accountability and transparency of efficient operations of the government. Under Section 2(f), information is defined as '*any material in any form including records, documents, memos, e-mails, opinions, advises, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.*'

12. The purport of this section was to cover all types of information contained in any format to be available under the ambit of the RTI Act. The aforesaid definition is further broadened by the definition of *'record'* provided under Section 2(i) of the RTI Act. Right to Information as defined under Section 2(j) of the RTI Act means the right to information accessible under this Act which is held by or under the control of any public authority.

13. Chapter II of the RTI Act begins with a statement under Section 3 by proclaiming that all citizens shall have right to information

subject to the provisions of the RTI Act. Section 4 creates an obligation on public authorities to maintain a minimum standard of data which would be freely available for the citizens. Further this section also mandates proactive dissemination of data for informing the citizens by utilizing various modes and means of communications. Section 5 requires every public authority to designate concerned CPIO or SPIO, as the case may be for providing information to those who seeks the same.

14. Section 6 of the RTI Act provides for procedure required to be followed by a person who desires to obtain information under the RTI Act. Section 7 further provides the time frame within such designated officers are to decide the applications filed by the information seeker. For our purposes Section 8 deems relevant and is accordingly extracted hereunder –

> "**8. Exemption from disclosure of information**.—
>
> (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,
>
> …
>
> (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive

position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

15. It may be relevant to note Section 10 of the RTI Act which deals with severability of the exempted information. The mandate of the section is that where a request for access to information contains both exempted as well as non-exempted parts, if the non-exempted parts could be revealed, such parts which could be reasonably severed and can be provided as information under the Act.

16. Section 11 which is material for the discussion involved herein states as under -

*"**11. Third party information.—***

(1) Where a Central Public Information Officer or the 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.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an

opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision."

17. The mandate under Section 11 of the RTI Act enshrines the principles of natural justice, wherein, the third party is provided with an opportunity to be heard and the authority needs to consider whether the disclosure in public interest outweighs the possible harm in disclosure to the third party. It must be noted that the use of term 'confidential' as occurring under Section 11, subsumes commercial confidential information, other types of confidential information and private information.

18. We may not concentrate on other procedural section provided under the RTI Act as they do not have any bearing on the case concerned.

19. Having observed the scheme of the RTI Act we need to understand that right to information stems from Article 19(1)(a) of the

Constitution which guarantees freedom of expression. Accordingly, this Court in ***State of Uttar Pradesh v. Raj Narain***, (1975) 4 SCC 428 and ***S.P. Gupta v. Union of India***, (1981) Supp. (1) SCC 87, held that a citizen cannot effectively exercise his freedom of speech and expression unless he/she is informed of the governmental activities. Our country being democratic, the right to criticise the government can only be effectively undertaken if accountability and transparency are maintained at appropriate levels. In view of the same, right to information can squarely said to be a corollary to the right to speech and expression.

20. Firstly, the appellants have contended that the information are not held with the Registry of the Supreme Court, rather the Chief Justice of India is holding the aforesaid information concerning the exchanges between Mr. Justice R. Reghupati and the then Chief Justice of India. In this context, the term *'held'* acquires important position. The term *'held'* usually connotes the power, custody, or possession with the person. However, the mandate of the Act requires this term to be interpreted wherein the association between held and the authority needs to be taken into

consideration while providing a meaning for the aforesaid term. At this juncture, we need to observe the case of ***University of New Castle upon Tyne v. Information Commissioner and British Union for Abolition of Vivisection***, *[2011] UKUT 185 AAC*, wherein the upper tribunal has held as under –

> *"'Hold' is an ordinary English word. In our judgment it is not used in some technical sense in the Act. We do not consider that it is appropriate to define its meaning by reference to concepts such as legal possession or bailment, or by using phrases taken from court rules concerning the obligation to give disclosure of documents in litigation. Sophisticated legal analysis of its meaning is not required or appropriate. However, it is necessary to observe that 'holding' is not a purely physical concept, and it has to be understood with the purpose of the Act in mind. Section 3(2)(b) illustrates this: an authority cannot evade the requirements of the Act by having its information held on its behalf by some other person who is not a public authority. Conversely, we consider that s.1 would not apply merely because information is contained in a document that happens to be physically on the authority's premises: there must be an appropriate connection between the information and the authority, so that it can be properly said that the information is held by the authority. For example, an employee of the authority*

may have his own personal information on a document in his pocket while at work, or in the drawer of his office desk; that does not mean that the information is held by the authority."

21. From the aforesaid it can be concluded that a similar interpretation can be provided for term 'held' as occurring under Section 2(j) of the Act. Therefore, in view of the same the term 'held' does not include following information –

> 1. That is, without request or arrangement, sent to or deposited with a public authority which does not hold itself out as willing to receive it and which does not subsequently use it;
>
> 2. That is accidentally left with a public authority;
>
> 3. That just passes through a public authority;
>
> 4. That 'belongs' to an employee or officer of a public authority but which is brought by that employee or officer onto the public authority's premises.[1]

Having clarified the aforesaid aspect we are of the opinion that the nature of information in relation to the authority concerned requires to be seen. The fact that the information sought in the instant matter is in custody with the Chief Justice of India as he is the administrative head of the Supreme Court, squarely require

[1] Phillip Coppel, Information Rights Law and Practice (4th Edn. (2014)), Pg. 362.

us to hold that the concerned authority is holding the information and accordingly the contention of the appellants does not have any merit.

22. The appellants have argued that the information with respect to the assets declared with the Chief Justice of India or Chief Justices of respective High Courts are held in confidence, fiduciary capacity; moreover, the aforesaid information is private information of the judges which cannot be revealed under the RTI Act.

23. The exemptions to right to information as noted above are contained under Section 8 of the RTI Act. Before we analyse the aforesaid provision, we need to observe basic principles, concerning interpretation of exemption clauses. There is no doubt it is now well settled that exemption clauses need to be construed strictly. They need to be given appropriate meaning in terms of the intention of the legislature [see ***Commissioner of Customs (Import) v. Dilip Kumar & Ors.,*** *(2018) 9 SCC 40*; ***Rechnungshof v. Österreichischer Rundfunk and Ors.,*** *C-465/00*].

24. At the cost of repetition we note that the exemption of right to information for confidential information is covered under Section 8(1)(d), exemption from right to information under a fiduciary relationship is covered under Section 8(1)(e) and the exemption from private information is contained under Section 8(1)(j) of the RTI Act.

25. The first contention raised by the appellants is that the aforesaid information is confidential, therefore the same is covered under the exemption as provided under Section 8(1)(d) of the RTI Act. The aforesaid exemption originates from a long time of judge made law concerning breach of confidence (which are recently termed as misuse of private information).

26. Under the classic breach of confidence action, three requirements were necessary for bringing an action under this head. These conditions are clearly mentioned in the opinion of Megarry, J., in ***Coco vs. Clark***, [1968] FSR 415; wherein, the conditions are *first*, the information itself, i.e. 'information is required to have necessary quality about confidence of the same'; *second*, 'the information must have been imparted in circumstances importing

an obligation of confidence'; *third*, 'there must be unauthorized use of information which will be detriment to the party communicating'.

27. Breach of confidence was not an absolute right and public interest, incorporated from long time under the common law jurisprudence. This defence of public interest can be traced to initial case of ***Gartside v. Outram***, (1856) 26 LJ Ch (NS) 113, wherein it was held that there is no confidence as to disclosure in iniquity. This iniquity was later expanded by Lord Denning in ***Fraser v. Evans***, [1969] 1 QB 349, wherein the iniquity was referred as merely as an example of 'justice cause or excuse' for a breach of confidence. This iniquity was widened further in Initial ***Service v. Putterill***, [1968] 1 QB 396, wherein it was held that iniquity covers any misconduct of nature that it ought to be disclosed to others in the public interest. In this line of precedents Thomas Ungoed, J., in ***Beloff v. Pressdram***, [1973] 1 All ER 24, noted that iniquity would cover 'any matter, carried out or contemplated, in breach of country's security or in breach of law including statutory duty, fraud or otherwise destructive of the

country or its people and doubtless other misdeeds of similar gravity.'

28. Eventually the language of iniquity was shaken and discourse on public interest took over as a defence for breach of confidence [*See* ***Lion Laboratories v. Evans***, [1985] QB 526]. It would be necessary to quote Lord Goff in ***Her Majesty's Attorney General v. The Observer Ltd. & Ors.,*** [1991] AC 109, wherein he noted that "it is now clear that the principle [of iniquity] extends to matters of which disclosure is required in public interest".

29. The aforesaid expansion from the rule of iniquity to public interest defence has not caught the attention of Australian courts wherein, Justice Gummow, in ***Corrs Pavey Whiting and Byrne v. Collector of Customs***, (1987) 14 FCR 434 and ***Smith Kline and French Laboratories [Australia] Ltd. v. Department of Community Services and Health***, (1990) 22 FCR 73, reasoned that public interest was "picturesque if somewhat imprecise" and "not so much a rule of law as an invitation to judicial idiosyncrasy by deciding each case on ad-hoc basis as to whether, on the facts

overall, it is better to respect or to override the obligation of confidence".

30. Even in England there has been a shift of reasoning from an absolute public interest defence to balancing of public interest. At this point we may observe the case of ***Woodward v. Hutchins***,[1977] 1 WLR 760, wherein it was observed "It is a question of balancing the public interest in maintaining the confidence against the public interest in knowing the truth".

31. Section 8(1)(d) of the RTI Act has limited the action of defence of confidentiality to only commercial information, intellectual property rights and those which are concerned with maintaining the competitive superiority. Therefore, aforesaid section is only relatable to breach of confidence of commercial information as classically developed. Although there are examples wherein commercial confidentiality are also expanded to other types of breach of confidential information, however, under Section 8(1)(d) does not take into its fold such breach of confidential information actions.

32. Coming to other types of confidentiality, we need to note that the confidentiality cannot be only restricted to commercial confidentiality, rather needs to extend to other types of confidentialities as well. [***Duchess of Argyll v. Duke of Argyll***, 1967 Ch 302] Under the RTI Scheme such other confidential information are taken care under Section 11 of the RTI Act. The language and purport under Section 11 extends to all types of confidentialities, inclusive of both commercial and other types of confidentialities. The purport of this Section is that an opportunity should be provided to third party, who treats the information as confidential. The 'test of balancing public interest' needs to be applied in cases of confidential information other than commercial information as well, under Section 11 of the RTI Act, as discussed. In this light, the concerned third parties need to be heard and thereafter the authorities are required to pass order as indicated herein.

33. Further, the appellants have contended that the information sought herein relating to the third party are covered under exemptions as provided in Section 8(1)(j) of the RTI Act i.e. private information.

34. The development from breach of confidence to misuse of private information/privacy claim was gradual. There was shift from the focus on relationship to whether the information itself had a requisite confidential quality [refer to Her ***Majesty's Attorney General*** case (supra)]. This shift in focus resulted in the evolution of misuse of private information or privacy claim, from its predecessor of confidentiality. In the case of ***Campbell v. M.G.N***., [2004] UKHL 22, wherein the breach of misuse of private information evolved as cause of action. The modification which happened in the new cause of action is that the initial confidential relationship was not material, which was earlier required under the breach of confidence action. The use of term confidential information was replaced with more natural descriptive term information in private. The change from breach of confidence which was an action of equity, to misuse of private information, which was a tort provided more structural definitiveness and reduced the discretionary aspect.

35. The purport of the Section 8(1)(j) of the RTI Act is to balance privacy with public interest. Under the provision a two steps test

could be identified wherein the first step was: (i) whether there is a reasonable expectation of privacy, and (ii) whether on an ultimate balancing analysis, does privacy give way to freedom of expression? We should acknowledge that these two tests are very difficult to be kept separate analytically.

FIRST STEP

36. The first step for the adjudicating authority is to ascertain whether the information is private and whether the information relating the concerned party has a reasonable expectation of privacy. In ***Murray v. Express Newspaper plc***, [2009] Ch 481, it was held as under

> "As we see it, the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher."

37. From the aforesaid discussion we can note that there are certain factors which needs to be considered before concluding whether there was a reasonable expectation of privacy of the person concerned. These non-exhaustive factors are;

1. The nature of information.

2. Impact on private life.

3. Improper conduct.

4. Criminality

5. Place where the activity occurred or the information was found.

6. Attributes of claimants such as being a public figure, a minor etc and their reputation.

7. Absence of consent.

8. Circumstances and purposes for which the information came into the hands of the publishers.

9. Effect on the claimant.

10. Intrusion's nature and purpose.

These non-exhaustive factors are to be considered in order to come to a conclusion whether the information sought is private or does the persons has a reasonable expectations of privacy. In certain cases we may conclude that there could be certain information which are inherently private and are presumptively

protected under the privacy rights. These informations include gender, age and sexual preferences etc. These instances need to be kept in mind while assessing the first requirement under the aforesaid test.

38. If the information is strictly covered under the aforesaid formulation, then the person is exempted from the right to information unless 'the public interest test' requires to trump the same.

SECOND STEP

39. Having ascertained whether the information is private or not, a judge is required to adopt a balancing test to note whether the public interest justifies discloser of such information under Section 8(1)(j) of the RTI Act. The term 'larger public interest' needs to be understood in light of the above discussion which points that a 'balancing test' needs to be incorporated to see the appropriateness of discloser. There are certain basic principles which we need to keep in mind while balancing the rights which are relevant herein.

40. That the right to information and right to privacy are at an equal footing. There is no requirement to take an *a priori* view that one right trumps other. Although there are American cases, which have taken the view that the freedom of speech and expression trumps all other rights in every case. However, in India we cannot accord any such priority to the rights.

41. The contextual balancing involves '***proportionality test***'. [*See* ***K S Puttaswamy v. Union of India,*** (2017) 10 SCC 1]. The test is to see whether the release of information would be necessary, depends on the information seeker showing the 'pressing social need' or 'compelling requirement for upholding the democratic values'. We can easily conclude that the exemption of public interest as occurring under Section 8(1)(j) requires a balancing test to be adopted. We need to distinguish two separate concepts i.e. "*interest of the public*" and "*something in the public interest.*" Therefore, the material distinction between the aforesaid concepts concern those matters which affect political, moral and material welfare of the public need to be distinguished from those for public entertainment, curiosity or amusement. Under Section 8(1)(j) of the RTI Act requires us to hold that only the former is an

exception to the exemption. Although we must note that the majority opinion in ***K S Puttaswamy*** (*supra*) has held that the data privacy is part of the right to privacy, however, we need to note that the concept of data protection is still developing [*refer* **Google Spain v. AEPD**, C/131/12; ***Bavarian Lager* v *Commission***, [2007] ECR II-4523]. As we are not concerned with the aforesaid aspects, we need not indulge any more than to state that there is an urgent requirement for integrating the principles of data protection into the right to information jurisprudence.

42. Coming to the aspect of transparency, judicial independence and the RTI Act, we need to note that there needs to be a balance between the three equally important concepts. The whole bulwark of preserving our Constitution, is trusted upon judiciary, when other branches have not been able to do so. As a shield, the judicial independence is the basis with which judiciary has maintained its trust reposed by the citizens. In light of the same, the judiciary needs to be protected from attempts to breach its independence. Such interference requires calibration of

appropriate amount of transparency in consonance with judicial independence.

43. It must be kept in the mind that the transparency cannot be allowed to run to its absolute, considering the fact that efficiency is equally important principle to be taken into fold. We may note that right to information should not be allowed to be used as a tool of surveillance to scuttle effective functioning of judiciary. While applying the second step the concerned authority needs to balance these considerations as well.

44. In line with the aforesaid discussion, we need to note that following non-exhaustive considerations needs to be considered while assessing the 'public interest' under Section 8 of the RTI Act-

a. Nature and content of the information

b. Consequences of non-disclosure; dangers and benefits to public

c. Type of confidential obligation.

d. Beliefs of the confidant; reasonable suspicion

e. Party to whom information is disclosed

f. Manner in which information acquired

g. Public and private interests

h. Freedom of expression and proportionality.

45. Having ascertained the test which is required to be applied while considering the exemption under Section 8(1)(j) of the RTI Act, I may note that there is no requirement to elaborate on the factual nuances of the cases presented before us. Accordingly, I concur with the conclusions reached by the majority.

.....J.

(N.V. Ramana)

NEW DELHI;
November 13, 2019.