

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 18152 of 2016****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BIREN VAISHNAV**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

HIGH COURT OF GUJARAT

Versus

GUJARAT INFORMATION COMMISSION & 1 other(s)

Appearance:

LAW OFFICER BRANCH(420) for the Petitioner(s) No. 1

MR HEMANG M SHAH(5399) for the Petitioner(s) No. 1

MR MM SAIYED(1806) for the Respondent(s) No. 2

MR SHIVANG M SHAH(5916) for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV**Date : 17/01/2023****CAV JUDGMENT**

1. The High Court of Gujarat on its administrative side has filed this petition with a prayer that the

action of the respondent no.1 i.e. Gujarat Information Commission directing the petitioner to provide information and documents to the remaining points, available be declared as illegal and violative of the provisions of the Right to Information Act, 2005 (for short 'the Act'). A further direction is prayed to quash and set aside the judgement dated 23.06.2016 passed by the respondent No.1 in Appeal No.769 of 2014.

2. Facts in brief indicate that the respondent no.2 who is a Judicial Officer submitted an application on 17.02.2014, seeking information in reference to 21 points. The application was received by the Public Information Officer on 18.02.2014. On 19.02.2014 a money order was received. Thereafter, the Public Information Officer initiated a correspondence with the concerned department for collecting the information as

sought for by the respondent no.2 that involved a considerable time.

3. Aggrieved by the action of the Public Information Officer, the respondent no.2 filed First Appeal No.37 of 2014 on 11.04.2014 before the Appellate Authority. He contended that information with regard to certain items viz. item nos.1 to 5, 7, 8, 12 and 13 had not been provided. On hearing the parties, on 16.06.2014, the Public Information Officer addressed a reply to the respondent no.2 providing the details of the information sought by him. In reference to some of the points for which the information was not provided, specific reasons were given. As a result of such information being provided in part and assigning reasons for not being available to provide certain information, the Appellate Authority rejected appeal of the respondent no.2.

While rejecting the appeal the Appellate Authority observed that as far as information pertaining to points 1 to 6, 7, 8, 12 and 14 had already been provided and with regard to the other remaining points i.e. point no.9, 10, 14, 15 and 18 since the information was personal in nature, could not be provided and the information sought on points 17 and 19 was not available on record and certain other information was not clear and hence the appeal was rejected.

4. Aggrieved by the order of the First Appellate Authority dated 19.06.2014, the respondent no.2 filed an appeal before the respondent no.1. By the impugned order dated 23.06.2014, the Appellate Authority has passed a judgement directing the Public Information Officer to provide the remaining information available to the respondent no.2 within 15 days from the

receipt of the order. It is on this ground that the petition has been filed.

5. Mr. Hemang Shah learned advocate for the petitioner submitted that the Information Commission could not direct the respondent to provide the information which it could not provide as it pertained to third party and in view of the embargo imposed in Section 8(1)(j) of the Act, it was rightly not provided. Reading Section 8(1)(j) of the Act, Mr. Shah would submit that the first part stipulates that personal information which has no relationship with any public activity or interest need not be disclosed. The second part indicates that any information which cause unwarranted invasion of privacy of an individual should not be disclosed unless the third part is satisfied and the third part of the section indicates that information which causes

invasion to privacy of an individual will not be disclosed in larger public interest. He would therefore submit that the information was initially not causing as it was providing unwarranted invasion of privacy of any individual. He submitted that the reliance placed on Section 11 on behalf of the respondent no.2 as well as the Public Information Officer had no intent to disclose the third party information and there was therefore no breach of that section.

5.1 In support of his submissions, Mr. Shah would rely on the following decisions:

(I) In case of ***Girish Ramchandra Deshpande v. Cen. Information Commr. And Ors.*** reported in ***(2013) 1 SCC 212.***

(II) ***A.M. Chauhan v. Public Information***

Officer and Under Secretary rendered by High Court of Gujarat in ***Special Civil Application No.15973 of 2019.***

(III) ***R.K.Jain v. Union of India (UOI) and Ors.*** reported in ***2013 14 SCC 794***

(IV) ***Canara Bank v. C.S. Shyam and Ors.*** reported in ***AIR 2017 SC 4040***

6. Mr.M.M.Saiyed learned counsel appearing for the respondent would submit that the respondent no.2 was an ex-judicial officer who asked for certain information from the Public Information Officer. The Public Information Officer provided the information for points 1 to 5, 7, 12 and 13. However, in respect of the remaining points, the officer did not provide such information on the ground that it was personal in nature. The

second appellate authority rightly directed the petitioner to provide such information. He would submit that with regard to the information in context of other judicial officers, the information not being supplied by relying on section 8(1)(j) of the Act was misconceived. He would submit that as far as the representation for transfer submitted by the Judicial Officer Mr.D.S.Rajput and Mr.M.B.Nandani who were in the same batch, the information cannot be denied. There was no violation of any information which could have unwarranted invasion of privacy and therefore, the contention of the learned counsel for the petitioner was misconceived. Even otherwise such information could have been provided by issuing notice to such third parties as held by the Supreme Court in the case of ***C.P.I.O., Supreme Court of India, New Delhi v. Subhash Chandra Agrawal, Kucha Shah,***

Dariba, Delhi reported in ***AIR 2019 SC (Supp) 2258***. He would rely on the conclusions of para 90 of the Supreme Court.

7. Having considered the submissions made by the learned counsels for the respective parties, in order to appreciate the controversy and the information, it will be necessary to set out the particulars of information that the respondent no.2 has sought from the Public Information Officer, High Court of Gujarat. The information on the 21 points which were sought for by the respondent no.2 are as under:

Point - 1 **Certified copy of his Personal Data Form submitted at the time of joining the judicial service under the Hon'ble High Court of Gujarat.**

Information The same is annexed herewith.
:

Point - 2 **Certified copy of his service book.**

Information Not available with High Court.
:

Point - 3 **Certified copy of his Option form for Annual General Transfer submitted from first station-Rajpipla, Dist.Narmada.**

And

Point - 4 **Certified copy of his Option form for Annual General Transfer submitted from his second station-Sami, Dist.Patan.**

And

Point - 5 **Certified copy of his representation for transfer submitted from his second station-Sami, Dist.Patan.**

And

Point - 7 **Certified copy of remarks submitted by the concerned Hon'ble Principal District Judges on my representations for transfer.**

Information The Copies are annexed herewith.
:

Point - 6 **Decisions of Hon'ble High Court of Gujarat on his option**

forms for Annual General Transfer & representations for transfer & communication thereof (if any) to him.

Information: The abovementioned representations made by Mr.P.C.Godigajbar were taken into consideration at the time of Annual General Transfer, however, no order regarding his transfer was made. The Judicial Officer concerned who has made representation regarding transfer as per his/her choice of stations on Educational, Medical, Family or on Personal Grounds, except at the time of Annual General Transfers, are immediately informed, in case of rejection of his / her representation.

Point No.8:

Copies of last ten years transfer policies pertaining to the subordinate judicial officers of the Hon'ble High Court of Gujarat.

Information : Copies of last ten years' transfer policies i.e. related circular dated 19.02.2011, 03.03.2011 and 29.06.2012, pertaining to the subordinate judicial officers of the Hon'ble High Court of

Gujarat, are annexed herewith.

Point - 9 **Certified copy of representations for transfer submitted by the judicial officers of my batch (1) Ms.B.R.Rajput & (2) Mr.M.D.Nandani.**

Information The information sought for is personal
: information in nature and it would not serve larger public interest. Hence, the question to furnish the certified copy thereof does not arise.

Point - 10 **Decisions of Hon'ble High Court of Gujarat on the representations for transfer submitted by the judicial officers of my batch (1) Ms.B.R.Rajput & (2) Mr.M.D.Nandani.**

Information In view of information at point-9, the
: information cannot be furnished.

Point - 11 **Certified copy of the Statement of a witness cited in the Charge Sheet.**

Information It is stated that on perusal of the papers
: relating to the Departmental Inquiry initiated against you (Mr. P.C Godigajbar), it appears that no statement of witness cited in the Charge-Sheet dated 01/10/2013 has been recorded, prior to the initiation of Departmental Inquiry against you (Mr. P.C Godigajbar). The name of Registrar, District Court, Dahod is mentioned as a Witness to prove the correspondence made between

High Court and the District Court, Dahod. Therefore, question does not arise to supply the copy of the Statement.

Point - 12 **Material, record, information, etc relied on by the Hon'ble High Court for initiating Departmental Inquiry against him.**

Information : The Copies of the Representation dated 17/06/2013 addressed to the Hon'ble Registrar General, High Court of Gujarat and Explanation dated 14/08/2013 are annexed herewith.

Point - 13 **Certified copies of remarks, opinions, orders, minutes of meetings etc of Hon'ble High Court of Gujarat for making decision to initiate departmental inquiry against him.**

Information : The decision taken at the Standing Committee Meeting held on 29.07.2013, while considering the representation dated 17.06.2013 of Mr.Godigajbar, is annexed herewith.

Point - 14 **Certified copies of complaints, representations, resolutions etc.. addressed to the Honourable High Court of Gujarat against Mr.B.H.Kapadia - (At present - Additional Senior Civil Judge, Vadodara) by the bar associations, advocates & others for Mr. Kapadia's tenure of service as Principal Civil Judge at Dediapada during year - 2007 to 2010.**

A n d

Point - 15 **Certified copies of actions taken by the Honourable High Court of Gujarat against Mr. B.H.Kapadia - (Additional Senior Civil Judge, Vadodara) for the allegations levelled against him by the the bar associations, advocates & others during his tenure of service as Principal Civil Judge at Dediapada Court from year -2007 to 2010.**

Information : It is stated as per the Judgement of the Supreme Court while passing order in Special Leave Petition (Civil) No. 27734 in the case of Girishchandra Ramchandra Deshpande Vs. Central Information Commissioner & Ors.of, the information sought for is personal information in nature and it would not serve larger public interest. Hence, the question to furnish the certified copy thereof does not arise.

IN view of above,the information sought by you, relates to third party's personal information, hence, the same cannot be furnished to the applicant.

Point - 16 **Details of Home town, place of practice, personal data form, relation with any Judicial Officer/Advocate, representations for transfer (if submitted), option forms of Annual General Transfer of the following Judicial Officers subordinate to the Hon'ble High Court of Gujarat.1. Ms.Sitaben Ttarani, 2. Ms.Mita Seta, 3. Ms.Nirali Munshi, 4. Ms.Purvi Dave, 5.**

Ms.Vaishali Joshi, 6. Ms.Zankhna Trivedi, 7. Ms.T.C.Patel, 8. Ms.J.R.Dodiya, 9. Ms.Manju Pande, 10. Ms.A.R.Tapiawala, 11.Ms.B.R.Rajput, 12. Mr.M.D.Nandani, 13. Mr.I.M.Sardar, 14. Mr.B.H.Kapadia, 15.Mr.R.S.Purani, 16.Mr.Chirayu Adhyaru, 17. Mr.C.H.Shah, 18. Mr.H.H.Gandhi, 19.Mr.S.C.Gandhi, 20. Mr.Zafar Sindhi, 21. Mr.Piyush M. Unadkat, 22. Mr.R.G.Barot, 23. Mr.M.K.Kher, 24. Mr.P.B.Patel, 25. Mr. P.J.Tamakuwala.

Information : The information sought for is personal information in nature and it would not serve larger public interest. Hence, the question to furnish the certified copy thereof does not arise.

Point-17 Information regarding appointment of Liason Officer & set up of Special Reservation Cell in the High Court of Gujarat for redressal of grievances of the Judicial Officers belonging to Schedule Caste.(Hon'ble Government of India vide O.M. No.43011/153/2010 - Estt. (Res.) has issued instructions for nomination of Liason officers, their roles, duties & responsibilities & to set up a Special Reservation Cell within the Ministry/Department under the direct control of the Liason Officer to assist the Liason Officer in discharging his duties effectively. As per the O.M., the Liason Officer has to provide necessary assistance to the National Commission for Scheduled Castes in the investigation

of complaints received by the Commission, in regard to service matters etc.)

Information No information in this regard is on record.

Point - 18 **Information regarding the reason for termination of former Principal Civil Judge of Garbada Court - Mr.R.L.Trivedi and the directions of Hon'ble High Court to regularise the disputed matters at Garbada Court after the termination of Mr.R.L.Trivedi.**

Information : The information sought for is personal information in nature and it would not serve larger public interest. Hence, the question to furnish the certified copy thereof does not arise.

Point - 19 **Information regarding the actions taken for the security of Court building and the Judicial Officers of Garbada Court from May-2013 to February-2013.**

Information : Not available with High Court.

Point - 20 **Copies of last 7 years' inspection notes of District Court, Dahod for the inspection of Garbada Court.**

Information : The Information as asked by you is not clear. Therefore, clarify about inspection done by the High Court or District Court. In absence

of specific details, the same can not be decided whether it is in High Court record or not.

Point - 21 **Details regarding issuance of show cause notice and subsequent actions taken by the High Court during last five years for use of intemperate language.**

Information In absence of specific details, the same can
: not be supplied to you.

8. What is evident from reading the order of the First Appellate Authority is that information with regard to points 1 to 5, 7, 8, 12 and 13 were provided to the petitioner. As far as point nos.9, 10, 16 and 18, the request was rejected on the ground that the information sought by the petitioner was personal in nature and could not be provided. On point no.15, it was the case of the Appellate Officer and the Public Information Officer that the information sought was with regard to third party and it could not be provided. What is evident from reading the

information which was sought for was with regard to the decisions of the High Court on the option forms of general transfers and communications connected with it and representations and communications to him. Point no.9 dealt with the certified copy of the representations of transfer submitted by the batch-mate of the petitioner and the decisions of High Court on such representation. Relying on Section 8(1)(j) of the Right to Information Act, the authority in the opinion of this Court rightly rejected such information.

9. It will be in the fitness of things to reproduce the contents of the order of the First Appellate Authority of the High Court while rejecting the request of certain information so provided. Paras 3 to 7 of the order of the First Appellate Authority read as under:

“3. It is true that, original application of appellant which was of dated 17.02.2014 it was received by PIO office on dated 18.01.2014, but, along with this application no any money order as mentioned in his application was received by department. Hence, necessary endorsement was made below this application, thenafter, on 19.02.2014 the money order was received and necessary receipt was issued by ‘Nazir’ department thenafter concerned PIO has initiated the correspondence to concerned department for collecting the information as prayed for by the appellant. Appellant has prayed for total 22 informations. Hence, it consumed reasonable time to collect the same from various departments. At this juncture, it is required to note that, from 12.05.2014 to 08.06.2014 it was vacation in the Honourable High Court of Gujarat and concerned PIO was also entitled to get some period of vacation.

4. Present appellant in his appeal memo has also mentioned that as he has not received information within prescribed time limit, hence, in his written submission appellant has mentioned that, appeal should be allowed and necessary order be passed to provide the information and to impose necessary penalty on concerned PIO for not providing information within stipulated time. But perusing the

original application, present appellant has prayed for various information under 22 points which requires some time and keeping in mind the vacation period also and perusing the circumstances the request to impose penalty on the respondent cannot be accepted.

5. Now, perusing the application for information pertaining to point nos' 1,2,3,4,5,7,8,12 & 13 are concerned, that information is already provided to the present appellant along with necessary copies. Even as per information prayed for vide point no.6 is also provided to the appellant.

6. Now for remaining information pertaining to point nos'9,10,14,15,16 & 18 are concerned PIO has replied the same that, "that information are personal in nature and hence such information cannot be provided". As per the judgement of Honourable Apex Court in Special Leave Petition (Civil) 27734/2013, Girish Ramchandra Deshpande Vs. Central Information Commissioner and also as per the judgment of Honourable High Court of Punjab & Haryana in the case of K.K.Sharma Vs. State of Haryana reported in AIR, 2013 Punjab & Haryana, 198, "any information which is between the employee and employer which are governed by the Service Rules which falls under the expression

*'Personal Information' the disclosure of which has no relationship to public activity or public interest on the other hand the disclosure of which would cause unwarranted invasion of privacy of the individual and if such information are not in the larger public interest to disclose in such a circumstances the applicant cannot claim those details as a matter of right and in such a case petitioner has to make out his case that this information is necessary to bonafide public interest. Even the information which is prayed for under point no 2 are not related to discharge of his duties in official capacity and thus no public interest involve justifying disclosure of information as that information are protected as a privacy of individual concerned. Thus, this information are exempted. Hence, concerned PIO has rightly denied to provide this information. So far as, rightly denied to provide this information. So far as, information vide point no 17 & 19 are concerned, PIO has replied that, such information are not available on the record of High Court and as per the judgment of Honourable Apex Court in Civil Appeal No.6454 of 2011, Central Board of Secondary Education Vs. Aditya Bandopadhyay & Ors. Honourable Apex Court has held that, **"As per the definition of information in section 2(f) of RTI Act is concerned, it only refers to such material available on record of***

public authority” and when such information is not available with them, they are not compelled to provide such information.

7. Now, so far as point no 11 is concerned, necessary information in detail is provided to the present appellant in the reply given by PIO. So far as point no 20 is concerned, appellant is seeking the information that copy of last 7 years of Inspection Note of District Court, Dahod, for the inspection of Garbada Court. But, this information is not clear whether appellant is seeking information about the inspection done by the Honourable High Court or District Court. Thus, in absence of specific details pertaining to inspection of Garbada Court carried out by High Court or District Court, Dahod, whether that details are available on the record of High Court of Gujarat or District Court at Dahod cannot be ascertained. So far as point no.21 is concerned, present appellant has prayed for the information that details regarding issuance of Show Cause Notice and subsequent action taken by the High Court during last 5 years for use of intemperate language. PIO has replied vide point no.21 that appellant is not seeking specific information as to whether it is pertaining to judicial officers or litigant person or any staff. Thus, in absence of any specific details, it cannot be decided that, whether on

administrative side it was dealt with by the High Court or on the judicial side. Thus, concerned PIO has replied the same at length and most of the information are provided to the appellant and PIO has given specific reply for not providing information on some points. Keeping in mind the above two judgments of Honourable Apex Court and Honourable High Court, this appeal has no any merit. Hence, I pass the following order:

ORDER

The appeal is rejected. The appellant be informed accordingly by RPAD as per rules 4(4) and 5(2) of the Gujarat High Court (Right to Information) Rules, 2005.

If you are aggrieved or dissatisfied with the information / reply supplied by the Appellate Authority, Gujarat High Court, you may file an appeal before the Gujarat State Information Commission.

...“

10. No fault can be found with the order of the First Appellate Authority in refusing to part with certain information as is evident from the decisions cited by the learned counsel for the

petitioner. Paras 7 to 16 in the case of **Girish Ramchandra Deshpande** (supra) read as under:

“7. Shri A.P. Wachasunder, learned counsel appearing for the petitioner submitted that the documents sought for vide Sl. Nos.1, 2 and 3 were pertaining to appointment and promotion and Sl. No.4 and 12 to 15 were related to disciplinary action and documents at Sl. Nos.6 to 9 pertained to assets and liabilities and gifts received by the third respondent and the disclosure of those details, according to the learned counsel, would not cause unwarranted invasion of privacy.

8. Learned counsel also submitted that the privacy appended to [Section 8\(1\)\(j\)](#) of the RTI Act widens the scope of documents warranting disclosure and if those provisions are properly interpreted, it could not be said that documents pertaining to employment of a person holding the post of enforcement officer could be treated as documents having no relationship to any public activity or interest.

9. Learned counsel also pointed out that in view of [Section 6\(2\)](#) of the RTI Act, the applicant making request for information is not obliged to give any reason for the

requisition and the CIC was not justified in dismissing his appeal.

10. This Court in *Central Board of Secondary Education and another v. Aditya Bandopadhyay and others* (2011) 8 SCC 497 while dealing with the right of examinees to inspect evaluated answer books in connection with the examination conducted by the CBSE Board had an occasion to consider in detail the aims and object of the *RTI Act* as well as the reasons for the introduction of the exemption clause in the *RTI Act*, hence, it is unnecessary, for the purpose of this case to further examine the meaning and contents of *Section 8* as a whole.

11. We are, however, in this case primarily concerned with the scope and interpretation to clauses (e), (g) and (j) of *Section 8(1)* of the *RTI Act* which are extracted herein below:

“8. Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(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;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(j) information which relates to personal information the disclosure of which has no 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."

12. The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the above-mentioned information sought for qualifies

to be “personal information” as defined in clause (j) of [Section 8\(1\)](#) of the RTI Act.

13. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of [Section 8\(1\)](#) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression “personal information”, the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

14. The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause

(j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

15. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.

16. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.”

The aforesaid judgement indicates that certain information which is “personal information” as defined under Clause j of Section 8(1) of the Act, cannot be provided. A coordinate bench of this Court in the case of **A.M.Chauhan** (supra) in paras 6, 7, 11 to 13 and 15 to 17 held as under:

“6. The petitioner submitted that the respondents were required to provide information sought for by the petitioner with regard to the notings on the file on which orders were passed with regard to retirement of the petitioner. It was submitted that the respondents could not have denied the information as notings contained details of information with regard to other officers also.

6.1) The petitioner referred to provisions of section 8(1)(j) of the Act read with section 11 of the Act and submitted that the notings containing information with regard to other officers cannot be said to be a third party information. It was therefore, incumbent upon the respondents to provide the information as sought for by the petitioner. The petitioner relied upon the decision in case of A.M. Kalra v. Ministry of Human Resource rendered on 14th February, 2017 by Central Information Commission to submit that in similar facts, the decision of the Apex Court in case of Girish Ramchandra Deshpande v. Cen. Information Commr. and ors reported in (2013) 1 SCC 212 is distinguished and the order of the Supreme Court is not a binding precedent in the facts of the case. It was submitted that the public record as defined in the Public Records Act is any record held by any Government office. Therefore, issuance of memos, initiating disciplinary action on imposing penalty does not fall in any of these category of private information matters and therefore, it cannot

be said to be personal or private information of the employee. It was submitted that as per section 8(1)(j) of the Act, information which is related to public activity is not a private information. It was submitted that decision of Supreme Court in case of Girish Ramchandra Deshpande (supra) cannot be used by the public authority to deny the information sought for by the petitioner by invoking section 8(1)(j) of the Act. It was therefore, submitted that if such information is denied, then information relating to any public servant in respect of his conduct or illegal activities, especially corruption could be withheld as secret and such an approach would defeat very purpose of the Act. It was submitted that respondents are required to be directed to provide the information sought for by the petitioner.

7. On the other hand, learned advocate Mr. Shivang Shah appearing for respondent no.3 relied upon the decision of Supreme Court in case of Girish Ramchandra Deshpande (supra) as well as decision in case of R.K. Jain v. Union of India (UOI) and ors. reported in (2013) 4 SCC 794 and submitted that the details sought for by the petitioner i.e. copies of notings on the file of the order of retirement and such other information cannot be provided as it includes the information with regard to other officers which would qualify to be personal information as defined in clause(j) of section 8(1) of the Act. He submitted that the Apex Court has held that performance of

an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, disclosure of such information would cause unwarranted invasion of privacy of that individual. It was further submitted that in case of R.K. Jain (supra), the Apex Court in facts of that case after considering the various other pronouncements on this issue held that disclosure of Annual Confidential Report of an officer of the State is not in public interest and there is no obligation on part of the authorities to give the information which relates to personal information, the disclosure of which has no relation to any public activity or interest or which would cause unwarranted invasion of the privacy of an individual

...

...

11. Section 8 of the Act pertains to exemption from disclosure of information and clause (j) of section 8(1) provides that there shall be no obligation on part of the authority to give any citizen information which relates to personal information, disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the

privacy of an individual unless the authority is satisfied that larger public interest justifies the disclosure of such information. Sub-clause(j)of Section 8(1) reads as under :

“8. Exemption from disclosure of information (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, - xxx (j) information which relates to personal information the disclosure of which has no 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.”

12. From the above provision, it is clear that if the authority comes to the conclusion that information sought for includes the personal information of other persons, which has no relationship to any public activity or interest, the authorities would be justified in denying providing of such information.

13. In view of the aforesaid provisions of section 8(1)(j) of the Act, it would be fruitful to refer to section 11 of the Act which provides for third party information and

reads 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 subsection (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 subsection (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."

...

15. The Supreme Court in case of Girish Ramchandra Deshpande (supra) has held as under :

"11. We are, however, in this case primarily concerned with the scope and interpretation to clauses (e), (g) and (j) of Section 8(1) of the RTI Act which are extracted herein below:

“8. Exemption from disclosure of information.-

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,- (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; (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(j) information which relates to personal information the disclosure of which has no 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.”

12. The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and

also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the above-mentioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act.

13. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted

invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

14. The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.”

15. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act. “

16. With regard to decision in case of A.M. Kalra (supra), is concerned, same pertains to information relating to reasons for revocation of punishment and was held to be directly connected to the

public activity of public authority as it also deals with misuse of public money and therefore, competent authority was directed to provide such information. However, in facts of the present case, as the information sought for by the petitioner includes the information pertaining to other officers, the same would be hit by the provisions of section 8(1)(j) of the Act and therefore, the authorities have rightly denied the information sought for by the petitioner.

17. In view of the discussions made above and decision in case of Girish Ramchandra Deshpande (supra) as well as decision of Apex Court in case of R.K. Jain (supra), as the petitioner sought information with regard to notings on the file which includes personal information of other officers also, I find no reason to interfere in exercise of powers under Articles 226 and 227 of the Constitution of India, with the impugned orders passed by respondents no. 2 and 3 whereby order passed by respondent no.1 was affirmed.”

11. So also the Supreme Court in case of **R.K.Jain** (supra) in context of the information to be provided under Section 8 held as under:

“11. We have heard the learned counsel for the parties, perused the records, the judgements as referred above and the

relevant provisions of the *Right to Information Act, 2005*.

12. *Section 8* deals with exemption from disclosure of information. Under clause (j) of *Section 8(1)*, there shall be no obligation to give any citizen information which relates to personal information the disclosure of which has no 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 is satisfied that the larger public interest justifies the disclosure of such information. The said clause reads as follows:-

“Section 8 - Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,--

xxx xxx xxx xxx xxx xxx

(j) information which relates to personal information the disclosure of which has no 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.”

13. On the other hand [Section 11](#) deals with third party information and the circumstances when such information can be disclosed and the manner in which it is to be disclosed, if so decided by the Competent Authority. Under [Section 11\(1\)](#), if the information relates to or has been supplied by a third party and has been treated as confidential by the third party, and if the Central Public Information Officer or a State Public Information Officer intends to disclose any such information or record on a request made under the Act, in such case after written notice to the third party of the request, the Officer may disclose the information, if the third party agrees to such request or if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.[Section 11\(1\)](#) is quoted hereunder:

“[Section 11](#) - Third party information.- (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the

request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

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

14. In *Center for Earth Sciences Studies vs. Anson Sebastian* reported in 2010(2) KLT 233 the Kerala High Court considered the question whether the information sought relates to personal information of other employees, the disclosure of which is prohibited under [Section 8\(1\) \(j\) of the RTI Act](#). In that case the Kerala High Court noticed that the information sought for by the first respondent pertains to copies of documents furnished in a domestic enquiry against one of the employees of the appellant-organization. Particulars of confidential reports maintained in respect of co-employees in the above said case (all of whom were Scientists) were sought from the appellant-organization. The Division Bench of Kerala High Court after noticing the relevant provisions of [RTI Act](#) held that

documents produced in a domestic enquiry cannot be treated as documents relating to personal information of a person, disclosure of which will cause unwarranted invasion of privacy of such person. The Court further held that the confidential reports of the employees maintained by the employer cannot be treated as records pertaining to personal information of an employee and publication of the same is not prohibited under [Section 8\(1\) \(j\)](#) of the [RTI Act](#).

15. The Delhi High Court in [Arvind Kejriwal vs. Central Public Information Officer](#) reported in AIR 2010 Delhi 216 considered [Section 11](#) of the RTI Act. The Court held that once the information seeker is provided information relating to a third party, it is no longer in the private domain. Such information seeker can then disclose in turn such information to the whole World. Therefore, for providing the information the procedure outlined under [Section 11\(1\)](#) cannot be dispensed with. The following was the observation made by the Delhi High Court in [Arvind Kejriwal \(supra\)](#):

“22. Turning to the case on hand, the documents of which copies are sought are in the personal files of officers working at the levels of Deputy Secretary, Joint Secretary, Director, Additional Secretary and Secretary in the Government of India. Appointments to these posts are made on a comparative assessment of the relative

merits of various officers by a departmental promotion committee or a selection committee, as the case may be. The evaluation of the past performance of these officers is contained in the ACRs. On the basis of the comparative assessment a grading is given. Such information cannot but be viewed as personal to such officers. Vis-à-vis a person who is not an employee of the Government of India and is seeking such information as a member of the public, such information has to be viewed as Constituting 'third party information'. This can be contrasted with a situation where a government employee is seeking information concerning his own grading, ACR etc. That obviously does not involve 'third party' information.

23. What is, however, important to note is that it is not as if such information is totally exempt from disclosure. When an application is made seeking such information, notice would be issued by the CIC or the CPIOs or the State Commission, as the case may be, to such 'third party' and after hearing such third party, a decision will be taken by the CIC or the CPIOs or the State Commission whether or not to order disclosure of such information. The third party may plead a 'privacy' defence. But such defence may, for good reasons, be overruled. In other words, after following the procedure

outlined in Section 11(1) of the RTI Act, the CIC may still decide that information should be disclosed in public interest overruling any objection that the third party may have to the disclosure of such information.

24. Given the above procedure, it is not possible to agree with the submission of Mr. Bhushan that the word 'or' occurring in Section 11(1) in the phrase information "which relates to or has been supplied by a third party" should be read as 'and'. Clearly, information relating to a third party would also be third party information within the meaning of Section 11(1) of the RTI Act. Information provided by such third party would of course also be third party information. These two distinct categories of third party information have been recognized under Section 11(1) of the Act. It is not possible for this Court in the circumstances to read the word 'or' as 'and'. The mere fact that inspection of such files was permitted, without following the mandatory procedure under Section 11(1) does not mean that, at the stage of furnishing copies of the documents inspected, the said procedure can be waived. In fact, the procedure should have been followed even prior to permitting inspection, but now the clock cannot be put back as far as that is concerned.

25. The logic of the [Section 11\(1\)](#) RTI Act is plain. Once the information seeker is provided information relating to a third party, it is no longer in the private domain. Such information seeker can then disclose in turn such information to the whole world. There may be an officer who may not want the whole world to know why he or she was overlooked for promotion. The defence of privacy in such a case cannot be lightly brushed aside saying that since the officer is a public servant he or she cannot possibly fight shy of such disclosure. There may be yet another situation where the officer may have no qualms about such disclosure. And there may be a third category where the credentials of the officer appointed may be thought of as being in public interest to be disclosed. The importance of the post held may also be a factor that might weigh with the information officer. This exercise of weighing the competing interests can possibly be undertaken only after hearing all interested parties. Therefore the procedure under [Section 11\(1\)](#) RTI Act.

26. This Court, therefore, holds that the CIC was not justified in overruling the objection of the UOI on the basis of [Section 11\(1\)](#) of the RTI Act and directing the UOI and the DoPT to provide copies of the documents as sought by Mr. Kejriwal. Whatever may

have been the past practice when disclosure was ordered of information contained in the files relating to appointment of officers and which information included their ACRs, grading, vigilance clearance etc., the mandatory procedure outlined under [Section 11\(1\)](#) cannot be dispensed with. The short question framed by this Court in the first paragraph of this judgment was answered in the affirmative by the CIC. This Court reverses the CIC's impugned order and answers it in the negative.

27. The impugned order dated 12th June 2008 of the CIC and the consequential order dated 19th November 2008 of the CIC are hereby set aside. The appeals by Mr. Kejriwal will be restored to the file of the CIC for compliance with the procedure outlined under [Section 11\(1\)](#) RTI Act limited to the information Mr. Kejriwal now seeks.”

16. Recently similar issue fell for consideration before this Court in [Girish Ramchandra Deshpande v. Central Information Commissioner and others](#) reported in (2013) 1 SCC 212. That was a case in which Central Information Commissioner denied the information pertaining to the service career of the third party to the said case and also denied the details relating to assets, liabilities, movable

and immovable properties of the third party on the ground that the information sought for was qualified to be personal information as defined in clause (j) of [Section 8\(1\)](#) of the RTI Act. In that case this Court also considered the question whether the orders of censure/punishment, etc. are personal information and the performance of an employee/officer in an organization, commonly known as Annual Confidential Report can be disclosed or not. This Court after hearing the parties and noticing the provisions of [RTI Act](#) held:

“11. The petitioner herein sought for copies of all memos, show-cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from banks and other financial institutions. Further, he has also sought for the details of gifts stated to have been accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is: whether the abovementioned information sought for qualifies to be “personal information” as defined in clause (j) of [Section 8\(1\)](#) of the RTI Act.

12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show-cause notices and orders of censure/punishment, etc. are qualified to be personal information as defined in clause (j) of [Section 8\(1\)](#) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

13. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of [Section 8\(1\)](#) of the RTI Act, unless involves a larger public interest and the

Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.

14. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under [Section 8\(1\)\(j\)](#) of the RTI Act.

15. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.”

17. In view of the discussion made above and the decision in this Court in Girish Ramchandra Deshpande(supra), as the appellant sought for inspection of documents relating to the ACR of the Member, CESTAT, inter alia, relating to adverse entries in the ACR and the ‘follow up action’ taken therein on the question of integrity, we find no reason to interfere with the impugned judgment passed by the Division Bench whereby the order passed by the learned Single Judge was affirmed. In absence of any merit, the appeal is dismissed but there shall be no order as to costs.”

12. In light of the aforesaid provisions, the directions issued by the Second Appellate Authority i.e. the respondent no.1 directing the petitioner to supply all the information available is contrary to law and therefore deserves to be quashed and set aside.

13. Accordingly the petition is allowed. The order of the First Appellate Authority i.e. Gujarat Information Commission dated 23.06.2016 in Appeal No.7691 of 2014 is quashed and set aside. No costs.

ANKIT SHAH

(BIREN VAISHNAV, J)