IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9476 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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GUJARAT UNIVERSITY

Versus

M SRIDHAR ACHARYULU (MADABHUSHI SRIDHAR) & 3 other(s)

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Appearance:
MR. TUSHAR MEHTA, LD. SOLICITOR GENERAL WITH MR. RAJAT NAIR, ADVOCATE WITH MR. KANU AGARWAL, ADVOCATE WITH MS DHARMISHTA RAVAL(707) for the petitioner(s) No. 1
MR DEVANG VYAS(2794) for the Respondent(s) No. 3
MR SHIVANG M SHAH(5916) for the Respondent(s) No. 4
MR. PERCY KAVINA, SENIOR COUNSEL WITH MR. AUM M KOTWAL(7320) for the Respondent(s) No. 2
MR.P P CHANDARANA(7119) for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 31/03/2023

CAV JUDGMENT

1 Rule returnable forthwith. Learned counsels appearing for the respective respondents waive service of notice of rule on behalf of the respective respondents.

1.1 The present writ petition has been filed by the petitioner-Gujarat University seeking appropriate writ and order for quashing of the order dated 29.04.2016 passed by the Central Information Commission (CIC) in proceeding No. *No.CIC/SA/C/2015/000275*. The following prayers have been made in the writ petition:

> *"(A) YOUR LORDSHIPS may be pleased to admit and allow the present petition;*
> *(B) YOUR LORDSHIPS may be pleased to issue a writ of certiorari or any other writ in the nature of certiorari, order or direction in the nature of certiorari quashing and setting aside the order dated 29.04.2016 passed in Proceeding No. CIS/SA/C/2015/000275 by respondent No.1 (Annexure-A);*
> *(C) Pending the admission and final hearing of the present petition, YOUR LORDSHIPS may be pleased to stay order dated 29.04.2016 passed in Proceeding No. CIC/SA/C/2015/000275 by respondent No. 1 (Annexure-A).*
> *(D) Any other and further reliefs as deemed fit in the interest of justice may kindly be granted."*

2 The case of the petitioner, briefly stated is that Information Commissioner [IC] of the Central Information Commission [CIC] while hearing the Second Appeal No. CIC/SA/C/2015/000275/2015 filed by a third party [Neeraj Saxena] for supply of information about transportation request of Electoral Photo Identity Card of Respondent No.2, has passed the impugned 'adjunct order', whereby, it has *suo moto,* taken up an oral request of Respondent No.2; converted the same into an RTI application and allowed the said application by directing disclosure of the educational degree of the Prime Minister. The letter written by the Respondent No.2 reads as under:

1674

ARVIND KEJRIWAL
CHIEF MINISTER

I.C.(SA)

13/296
28/4/16

सत्यमेव जयते

GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
DELHI SECRETARIAT, I.P. ESTATE, NEW DELHI-110002
PHONE : 23392020, 23392030

D.O. No. : 507/CMCO
Date : 28/4/2016.

सेवा में,
प्रो. एम. श्रीधर आचार्युलू,
माननीय केन्द्रीय सूचना आयुक्त,
केन्द्रीय सूचना आयोग,
2 अगस्त क्रान्ति भवन,
भीकाजी कामा पैलेस,
नई दिल्ली–110066

केन्द्रीय सूचना आयोग
28 APR 2016
CENTRAL INFORMATION COMMISSION

विषय– याचिका संख्या CIC/SA/C/2015/000275 के संबंध में।

महोदय,

18 मार्च 2016 को याचिका संख्या CIC/SA/C/2015/000275 पर आपके द्वारा दिये गये आदेश के संबंध में मुझे कहना है कि–

मुझसे सम्बन्धित सरकारी रिकार्ड में जितनी भी जानकारियां हैं, उनको सार्वजनिक करने में मुझे कोई आपत्ति नहीं है।

लेकिन मुझे पता चला है कि आपने प्रधानमंत्री श्री नरेन्द्र मोदी जी की डिग्री से जुड़ी जानकारी सार्वजनिक करने पर रोक लगा दी है। (इस सम्बन्ध में एक न्यूज रिपोर्ट संलग्न है) आरोप लग रहे हैं कि श्री नरेंद्र मादी जी के पास कोई डिग्री नहीं है। ऐसे में पूरे देश की जनता सच्चाई जानना चाहती है। फिर भी आपने उनकी डिग्री से संबंधित जानकारी सार्वजनिक करने से मना कर दिया। आपने ऐसा क्यों किया? यह तो गलत है।

आप मेरी तो सारी जानकारी सार्वजनिक करना चाहते हैं, जिसमें मुझे कोई आपत्ति नहीं है। लेकिन प्रधानमंत्री श्री नरेन्द्र मोदी जी की डिग्री से जुड़ी जानकारी भी छुपाना चाहते हैं, इस पर मुझे आश्चर्य है।

ऐसा करने से जनता के मन में शंका पैदा होती है कि क्या कमीशन वाकई ही निष्पक्ष है? मेरा आपसे निवेदन है कि मुझ से सम्बन्धित सारी जानकारी सार्वजनिक करने के साथ–साथ आप प्रधानमंत्री श्री नरेन्द्र मोदी जी की डिग्री से जुड़ी जानकारी सार्वजनिक करने की हिम्मत दिखाएं।

भवदीय

अरविंद केजरीवाल
6, फ्लैगस्टाफ रोड़,
सिविल लाइन्स
दिल्ली– 110054

3 The grievance of the petitioner is that the information which is directed to be given could not have been ordered in view of the exemption contained under Section 8 (1) (e) and (j) of the Right To Information Act, 2005 (hereinafter referred to as “RTI Act” for short). It is the specific case of the petitioner that RTI Act is intended to ensure transparency in “public functionaries” and is not enacted to satisfy just curiosity of strangers. This essential part becomes clear from section 8 (1) (e) and (j) of the RTI Act which mandates disclosure of information mentioned therein only on the condition stated therein and only after the applicant satisfying and the authority being satisfied about the existence of public interest in such disclosure.

4 It is further the case of the petitioner that the CIC without issuing notice to the petitioner and/or without calling its reply, in a proceeding where no application was filed by Respondent No 2 under Section 6(1) of the Right to Information Act, 2015 [RTI Act] with the PIO of

the petitioner and in a proceeding where the petitioner was not even a party has passed the impugned adjunct order directing the PMO to provide the specific number and year of the degree to the petitioner and directed the petitioner to make best possible search for the information regarding the degrees in the name of "Mr. Narendra Damodar Modi" in the year 1983 and provide it to Respondent No 2.

5 It is the case of the petitioner that CIC could not have orally considered the said request at the instance of respondent No.2 and treated it as a deemed application under the RTI Act merely on a tenuous plea that if respondent no 2, who is also a constitutional authority, has no objection in providing details of his personal information, then on the same analogy there cannot be any objection if the personal information in the form of education qualification certificates of the Prime Minister, Shri Narendra Damodardas Modi is disclosed and made

public. The tenor of the letter reproduced hereinabove indicates such a mind-set of the Respondent No.2

6 The petitioner has thus prayed before this court that the order passed by the IC of the CIC is not only in breach of exemption clause provided under Section 8(e) and (j) of the RTI Act but is also violative of principles of natural justice and is therefore liable to be quashed.

7 The orders recorded in the writ petition indicate that the petition came up before this Hon'ble Court on 20.06.2016. However, on the said date this Court only issued notice in the matter without granting any *ad interim* relief. Aggrieved by the said order, the petitioner filed LPA No.572/2016 before the Division Bench of this Court whereby *vide* order dated 01.07.2016, the Division Bench of this Court granted *ad interim* relief in terms of para 7(b) of the Civil Application No.5675/2016 till further orders.

7.1 The said LPA was finally disposed of by the Division Bench of this Court *vide* its final order dated 27.12.2016, whereby, the Division Bench stayed the execution, operation and implementation of the order dated 29.04.2016 passed in Proceeding No. CIC/SA/C/2015/000275/2015 till final disposal of the instant Special Civil Application. As recorded by the Division Bench in its order 27.12.2016, the Respondent No.2, during the disposal of the aforesaid LPA, had made a request for expeditious disposal of the Special Civil Application.

7.2 The petition could not be heard expeditiously due to repeated adjournments sought by the parties on one pretext or the other. When the matter was taken up on 02.02.2023 by this Court for final disposal, on the said date a note was placed before this Court by the learned counsel for Respondent No.2 seeking discharge. The Court passed an order accordingly. A request was made that appearance of Mr Aum Kotwal learned Advocate

shall be filed. As the said matter was of the 2016 and seven years had lapsed, this Court *vide* order dated 02.02.2023 made it explicitly clear that if the counsel appearing for Respondent No.2 does not enter appearance by next date of hearing, the Court shall proceed to hear the matter. In the meanwhile, Mr Aum Kotwal filed appearance in the matter and accordingly the matter was taken up for final hearing on 09.02.2023.

8 The matter was heard at length on 09.02.2023 wherein, detailed submissions were made by Shri Tushar Mehta, learned Solicitor General Of India (“Solicitor General of India” for short) assisted by Mr.Rajat Nair, advocate with Mr.Kanu Agarwal, advocate with Ms.Dharmishta Raval, learned advocate for the petitioner. Mr. Percy Kavina, learned Senior Counsel appeared with Mr. Aum Kotwal, learned advocate for respondent No.2 and Mr.Devang Vyas, learned ASG for respondent No.3.

9 At the outset and before making submissions on merits, Shri Mehta, learned Solicitor General of India has pointed out that the degree in question is that of the person holding the position of Prime Minster of India and, therefore, in principle, the University has / had no objection in making the degree public. He had categorically invited the attention of this Court to the following assertions made in Memo of the Letters Patent Appeal:

> *"(g) The appellant states and submits that in observance of the highest degree of fairness and transparency it has on 9th May 2016 also uploaded, on its' website, the said degree which clearly suggests that there is no intention on the part of the Appellant, to withhold any information. However despite that the Respondents 2 & 4, are arbitrarily seeking to litigate on the issue for extraneous and oblique motives. It is submitted that the appellant University has conferred lacs of degrees to lacs of students over the years. If this order is not stayed the appellant will be flooded with applications seeking such "third party information" and therefore, the impugned order deserves to be stayed till the question raised in this petition is adjudicated."*

10 It is the contention of Shri Mehta, learned Solicitor General of India that the said LPA was filed as back as on 30.06.2016, which was disposed of after hearing Respondent No.2 herein and the aforesaid fact is not disputed. Even on the date of hearing, ld. Solicitor General of India ascertained from the website of the petitioner and informed the Court that the said degree stands displayed on the website of the petitioner.

10.1 He, however, urged that the manner in which a request was made by the Respondent No.2 and the manner in which the CIC passed the order, is a matter of serious concern. He has emphatically submitted that because of such irresponsible requests and mechanical exercise of statutory powers thereafter that the very heart and soul of Right to Information Act is destroyed and there are individuals who abuse the provisions of the Act either out of curiosity or at times even for some oblique purpose and for achieving some collateral objects. Shri Mehta, learned Solicitor General of India,

thus, submits that he is arguing the matter on merits as this question needs to be decided on behalf of all the students of the country, even though for the case in hand, the petitioner has displayed the degree of the Prime Minster on its website and it has nothing to hide.

11 On merits of the matter Shri Mehta, learned Solicitor General of India, appearing for the petitioner made the following submissions:-

(i) That the information which is directed to be given could not have been ordered in view of the exemption contained under section 8 (e) and (j) of the RTI Act as explained in detail hereunder. It is the specific case of the petitioner that RTI Act is intended to ensure transparency in “public functionaries” and is not enacted to satisfy just curiosity of strangers. This essential part becomes clear from section 8 (e) and (j) of the RTI Act which mandates disclosure of information mentioned therein only on the condition stated therein and only after

the applicant satisfying and the authority being satisfied about the existence of public interest in such disclosure.

(ii) That the CIC has passed the order dated 29.04.2016 in a complete arbitrary manner;

(iii) That the impugned order passed by the CIC is in teeth of the exemption clause contemplated under section 8(e) and (j) of the RTI Act, and is thus, unsustainable in the eyes of law;

(iv) That the information sought by Respondent No.2 and the direction passed by the CIC are in complete contravention of the provisions of Right to Information Act, as the information sought to be disclosed, squarely fall within the exemption clause provided under Section 8 (e) and (j) of the RTI Act.

(v) Shri Mehta, learned Solicitor General of India further submitted that personal record including

educational qualification etc. has been held to be personal information and hence was exempted from disclosure under section 8(j) of the RTI Act. He further submitted that disclosure of such educational qualification to Respondent No.2 had no relation or even a remote nexus to any public activity or interest discharged by the Prime Minister and as such disclosure of it would cause unwarranted invasion of privacy.

(vi) Mr. Mehta, learned Solicitor General of India has extensively referred to the recent judgment of the Constitution Bench of the Hon'ble Supreme Court of India rendered in the case of ***Supreme Court of India s. Subash Chandra Agrawal reported in (2020) 5 SCC 481*** and relied upon the three concurring and supplementing opinions of their lordships of the Hon'ble Supreme Court, whereby, the terms “personal information” and “information available in fiduciary capacity” and the interplay of exemptions provided under section 8 (e) and (j) vis-a-vis overwhelming public interest

and the issue of transparency and accountability were authoritatively settled by the Hon'ble Supreme Court.

(vii) In addition to ***Subash Chandra Agrawal*** judgment (supra) heavy reliance was placed by Shri Mehta, learned Solicitor General of India on para 26 of the judgment rendered by the Hon'ble Supreme Court in ***R. Rajgopal vs. State of Tamil Nadu [(1994) 6 SC 652]*** and para 479 of the 9-Bench judgment rendered by the Hon'ble Supreme Court in ***K.S. Putuswamy vs. Union of India reported in (2017) 10 SCC 1*** to support his submission that educational qualification and personal records including degrees were part of personal information and as such exempted under Section 8(j) of the RTI Act.

(viii) Mr. Mehta, learned Solicitor General of India, further extensively referred to the judgment of the Hon'ble Supreme Court rendered in ***Kerala Public Service Commission vs. State Information Commission reported in (2016) 3 SCC 417*** and the

judgment by the Hon'ble Supreme Court in the case of ***Central Board of Secondary Education vs. Aditya Bandhopadhya*** reported in ***(2011) 8 SCC 497*** and ***ICAI Vs. Shaunak H. Satya*** reported in (***2011) 8 SCC 781*** to buttress his contention that:-

(a) educational qualification of a citizen of the country – be it marks, degrees or other qualification is personal information of that citizen, dissemination/disclosure of which to such third party stranger is constitutionally protected under the head 'Right of Privacy';

(b) Such information is held by universities, examining board etc. whether public body or not in fiduciary capacity; and

(c) Since such personal information is held by petitioner- University in fiduciary capacity,

as such, there is a specific embargo under the provisions of the RTI Act in respect of disclosure of the same to a third party stranger for the reason that said information is neither relatable to transparency and accountability in public administration nor there exists any other facet of overwhelming public interest for disclosure of such information to a third party stranger. In this regard, Mr. Mehta has also pointed out the decision in respect of position prevailing in other jurisdictions also and has submitted that the educational information of an individual is exempted from disclosure in United States of America and United Kindgom.

(ix) Mr. Mehta, learned Solicitor General of India has further submitted before this court that the educational

degree of the Prime Minister was available to the petitioner-Gujarat University in a fiduciary capacity and there was no larger public interest either pleaded or proved by the Respondent No.2 warranting disclosure of the said information. Mr. Mehta learned Solicitor General of India submitted that the term 'overwhelming public interest' is not a matter of supposition or conjecture. The said term is a 'matter of fact' which has to be pleaded, proved and a finding has to be recorded containing convincing reasons.

(x) On the point of locus Shri Mehta, learned Solicitor General of India has submitted that being the custodian of the educational certificates and documents of its student, the provisions of RTI Act mandates the petitioner university to keep the said documents in confidence in its fiduciary capacity. Refering to the judgment rendered by the Hon'ble Supreme Court in ***Aditya Bandhopadhya*** *and* ***Shaunak H. Satya (supra)****,* Mr Mehta submitted that not only the statute but the judgment of the Hon'ble

Supreme Court entrusted a solemn duty upon the petitioner university to keep the said information in confidence and prevent the same from unwarranted disclosure to any third party. Shri Mehta, learned Solicitor General of India submitted that the said contention was not being urged because of peculiar facts of this case but was urged on behalf of all the students of the country whose educational documents are necessarily required to be kept in confidence by universities across the nation.

(xi) Shri Mehta, learned Solicitor General of India further submitted that the information pertaining to the educational qualification of the Prime Minister and the copies of the degree were already available in public domain. He submitted that the digitised version of the said degrees of the Prime Minister was not only available on social media websites and news portals but the same was also officially webhosted by the petitioner University on its own official website. As such, the argument made

by Respondent No.2 that the certificates or educational qualification of the voter were not available for public perusal, was incorrect.

(xii) On the tone and tenor of the impugned order passed by CIC Mr. Mehta learned Solicitor General of India has vehemently submitted that it was impermissible for the CIC to *suo moto* take oral request of Respondent No.2 as a representation/application before itself and pass an 'adjunct order' in a proceeding filed by a third person seeking information pertaining to Respondent No.2.

(xiii) Shri Mehta, learned Solicitor General of India also submitted that the present proceedings was nothing but an abuse of salutary provisions of RTI Act. He submitted that merely because Respondent No.2 happened to be the Chief Minister of a Union Territory, it was impermissible for the CIC to entertain his oral request in a second appeal where he was arrayed as a Respondent, to pass an adjunct order directing the PMO to provide the serial

number and exact year of the issuance of degree to the Hon'ble Prime Minister and to the petitioner-University to search out the same and hand it over to the Respondent.

(xiv) Shri Mehta, learned Solicitor General of India further submits that authorities created under the Act have only limited jurisdiction which is conferred upon them by the Act under which authorities are constituted. The CIC, while exercising statutory second appellate powers, had no jurisdiction to take up the issues *suo motu* as, such powers can be exercised only by constitutional courts having the power of judicial review. He submitted that the CIC which is the creature of a statute is conferred with the jurisdiction to entertain any such application only when an appeal by the first appellate authority is rejected for erroneous reason. He thus submitted that it was completely impermissible for the CIC to *suo motu* entertain the oral request of Respondent No.2 and pass an order in a second appeal, without there being any RTI application under Section

6(1) of the RTI Act to the PIO of petitioner-University, and pass an order without hearing or even issuing notice to the petitioner University

(xv) Mr Mehta Learned Solicitor General of India has further submitted that under RTI Act, comprehensive and detailed rules are provided which prescribes the format in which the pleadings are to be made before the original authority, the appellate authority and the second appellate authority. He submitted that the said rules and format are mandatory in nature to entertain any appeal, application or complaint. He submitted that at either of the stages the said rules of procedure cannot be given a complete go bye just because of certain notions, inhibitions and perception harboured by Information Commissioner. He submitted that any order passed by the Information Commissioner in wanton disregard of the said rules of procedure would make it arbitrary and non-est.

(xvi) Shri Mehta further submitted that the impugned order was riddled with contradiction and there was no legal basis available with the Commission to pass the direction as done in para 13 of the CIC's order. He submitted that though at one point [para 8] the Commission records that the educational degrees of Prime Minister are already in public domain and further at para 10 records that curiosity could not be equated with public interest for the purpose of RTI Act as because merely the "public is interested", does not mean that disclosure of such information is in 'public interest'. He further pointed out that the Commission had itself recorded in the said para that no educational qualification was prescribed for contesting election for any electoral post under law or for election to the post of Prime Minister or to Lok Sabha and the holding of such post cannot be questioned on the point of educational qualification. However, despite expressly recording the same the Commission has proceeded to direct disclosure of information on the ground that educational

qualification related information about public authorities, public servants or political leaders occupying the constitutional positions is not hit by exception under Section 8 of the RTI Act. Mr Mehta has therefore submitted that the decision of the Commission is sans any legal reasoning but is based on theatrics and childish curiosity.

(xvii) Mr Mehta, learned Solicitor General of India has further vehemently submitted that merely because a citizen holding the post of Chief Minister wants to know the degree related information on Prime Minister is no ground under RTI to supply personal information of Prime Minister to the said Chief Minister. He however, submitted that unfortunately the said ground is the only ground which has prevailed upon the Commission while passing directions to the PMO and the Gujarat University to disclose the said information. Mr. Mehta therefore submitted that the order thus passed by the CIC was passed due to extraneous considerations and not as per

the position of law expounded and settled by authoritative pronouncement of the Hon'ble Apex Court.

(xviii) Mr. Mehta has also drawn attention of this court on para 10 & 11 of the order dated 29.04.2016 whereby reference has been made by the Information Commissioner to the comments of his late father and has submitted that instead of adhering to the legal parameters, certain extraneous considerations have gone into a decision making process of the learned CIC. He submitted that the learned CIC ought to have differentiated between discharge of statutory jurisdiction with overzealous attempt made by Respondent No.2 to satiate his curiosity. Mr. Mehta has submitted that the Commission ought not to have fallen prey to and/or ought not have ventured into political thicket but ought to have restricted itself to the limited jurisdiction which has been conferred on the Commission under the provisions of RTI Act. Mr. Mehta thus submitted that the decision of the CIC which is premised on the extraneous factors i.e. the

comments of his father and assembly debates regarding illiteracy in the country and the danger it presents coupled with the fact that the only reason provided by it for disclosure of the information being that the same is required by a citizen holding the post of Chief Minister is unsustainable and liable to be dismissed. Mr Mehta has thus submitted that the jurisdiction exercised by the CIC in the present case by passing the impugned order was *ex-facie* exercised in a most arbitrary, callous and cavalier fashion and for extraneous reasons, for which the order dated 29.04.2016 was liable to be set aside with costs and strictures.

(xix) In the end Mr Mehta has vehemently submitted before this court that recently a sordid phenomenon has emerged in administration of the RTI Act, wherein, a genre of vested interest groups have emerged who claim themselves to be RTI activists. They flood the public authorities across the spectrum with RTI applications, claiming themselves to be the crusaders of transparency.

Such vested interest groups and persons have created a new public post for themselves and have anointed themselves with the title of 'RTI Activists' as if it is a profession by itself. They have visiting cards and display boards hung outside their houses and offices naming them as 'RTI Activists' and 'Public Interest Litigator' through which they try to exert control in an attempt to have dominance over the matters of public administration and on public at large. RTI Applications are used as an arm twisting weapon and for oblique purposes. He submitted that this genre of people have polluted the salutary spirit of RTI Act and have maligned the laudable object which the RTI Act had sought to achieve. Shri Mehta Ld. Solicitor General of India has categorised such applicants in the following categories:

(a) RTI Applicants who file RTI petitions on multiple occasions in order to seek redress for a perceived wrong that had been done to them. Their

major purpose is to obtain restitution for their own wrongs.

(b) RTI Applicants who use the Right to Information Act as an arm twisting weapon to exert unethical pressure and extract illicit benefits therefrom and others;

(C) RTI Applicants who use RTI Act to harass public figures in order to create unnecessary controversy to obtain publicity and garner news headlines from that.

(xx) Referring to the above, Mr Mehta has submitted that the present case manifestly falls under the last category, wherein, unwarranted controversy was sought to be created by the Respondent No 2 to generate media hype and to derive publicity from the same at the cost of someone else's reputation. He submitted that time has come where such manoeuvres and motivated attempts

ought to be called out and deprecated by constitutional courts of the country, by preventing salutary provision of RTI Act from being abused by such vested interest groups or persons for their own hidden intrigues. He submitted that a regime of costs in such situation would, to an extent, remedy such a situation.

(xxi) In the aforesaid context, learned Solicitor General of India submits that the provision of the RTI Act must be strictly construed in case of categories mentioned in clause (b) and (c) earmarked by him which is reproduced hereinabove. It is only in cases which fall under category (a) that a liberal construction to the RTI Act should be given so that its avowed object of bringing transparency and ensuring justice is achieved.

12 For the respondent No.2, Mr. Percy Kavina, learned Senior Counsel made the following submissions:

(i) that the present petition was not maintainable at the instance of petitioner-Gujarat University as there is no

order against the petitioner which is a statutory body and principally the order is only against the PMO. Shri Kavina, Senior Advocate has submitted that the petitioner being a statutory body cannot file a petition on behalf of Central Information Commission of PMO against whom directions have been issued. He submitted that petitioner being a public authority is merely tasked to do certain compliances and as such is not and cannot be held to be an aggrieved party clothing it with locus to challenge the order of the CIC.

(ii) Shri Kavina, learned Senior Counsel, submitted that all information about the candidate contesting elections must be available in public domain for it to be scrutinized by public. He submitted that every voter has a fundamental right to know the educational qualification of a candidate which is clear from the provisions of Representation of Peoples Act,1951 and Rules made therein, more particularly Rule 4A and Form 26 of Conduct of Elections (Rule) 1961. He submitted that thus

every candidate has a duty to disclose the educational qualification to subserve the right of information of the voter and as such the application of Respondent No.2 was maintainable under Right to Information Act.

(iii) Shri Kavina, learned Senior Counsel, further submitted that once a student passes examination and qualifies to secure a degree then such degree cannot be treated as private or third party information. The said degree certificate thus has to be considered as public document generated by a public body and discharging its duties as public and statutory authority. He submitted that though mark-sheets or answer sheets can be held to be private information, however, degree certificate of final result would be a matter which ought to be published in public domain.

(iv) Mr. Kavina, learned Senior Counsel, submitted that a degree related information as available in the permanent register of the University is accessible as a

public document, the same would fall within the statutory provision of Sections 74 & 76 of the Evidence Act,1872 where under list of public documents and right to inspect and obtain certified copy is provided. He thus submitted that as per Sections 74 & 76 of Evidence Act, a degree issued by a University would come within the four corners of public information withheld by a public officer.

(v) Mr. Kavina, learned Senior Counsel, further submitted that the relationship between University and student is primarily of contractual nature and thus is fiduciary in nature. He submitted that the degrees are thus not protected under the exception provided under Section 8 (e) of the RTI Act.

ANALYSIS

Having considered the submissions made by the Learned Counsels for the Respective parties, this Court deems it appropriate to reproduce the relevant extracts of the Order of the C.I.C under challenge. The same is as

under:

> *"6. Meanwhile, in the response, Mr Kejriwal raised a demand for information about Prime Minister Narendra Modi's educational qualifications referring to Hans Raj Jain case, in which complaint about Information of Mr Modi's graduation was a subject matter. He stated that while CIC wanted Mr Kejriwal's Information to be given, CIC was obstructing the Information about degrees of Mr. Mod, the Prime Minister. He expressed surprise over this and also doubted objectivity of the Commission*
>
> *7. Hence, the Commission considers the response of Mr Kejriwal, the Chief Minister of Delhi, as application under RT in his capacity as a citizen.*
>
> *8. The educational qualifications related Information about public authority or public servant or political leader occupying constitutional position is not hit by any exception under Section 8 of RTI Act. It cannot be stated as personal or private information also. In fact, the information about educational degrees of Prime Minister is already in public domain. It is a matter of profuse reporting in print, electronic and social media. In an Interview to a senior journalist, Mr Rajiv Shukla, Mr Narendra Modi explained that he completed High School and on the advice of an elderly personality he obtained degree and PG through external examinations without stepping into the colleges. (Clip relating to education, https://www.youtube.com/watch?y=yaDp8UPieVU (full interview*

https://www.youtube.com/watch?v=shyXSvQW4w).

9. This generated lot of curiosity among the people, who expressed their feelings in various social media and newspaper websites in the form of comments. The curiosity cannot be equated with public Interest. Just because the public is interested in it, it does not mean that it is in public interest. There Is no educational qualification prescribed for contesting any electoral position under law. The election to Lok sabha, or Prime Ministership cannot be questioned on the point of educational qualification. Where there is a prescribed educational qualification for a position, and its existence was doubted, its disclosure will be in public interest. That is not the point in this case.

10. Here I would like to recall the comment of my father, Freedom Fighter, Late M. S. Acharya, when Telugu University wanted his educational qualifications as part of bio-data to draft a citation to present Telugu Pratibha Purskaram to him for being an eminent Telugu Journalist. When asked what did you study? he took pride in saying: "I studied "Raghu Vamsha' and 'Megha Dootha', 'Kumara Sambhava' of Maha Kavi Kalidas". I said 'they are not degrees offered by universities'. "So what, they give better education than many degrees awarded by Universities". His citation had finally referred to those Mahakavyas as his qualifications.

11. During Constituent Assembly Debates, Mr. H.V. Kamath noted the extent of illiteracy in the country and the dangers it presented, and expressed regret that the franchise itself had not been restricted on grounds of literacy.

Alladi Krishnaswamy Ayyar noted: "More than any other provision in the Constitution. I should think the boldest step taken by this Assembly is in the matter of universal adult suffrage with a belief in the common man and in his power to shape the future of the country." Subsequently, during the final debates on 23rd November 1949, he observed that "in spite of the ignorance and liliteracy of the large mass of the Indian people, the Assembly has adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule and in the full belief that the introduction of democratic government on the basis of adult suffrage will bring enlightenment and promote the well-being, the standard of life, the comfort and the decent living of the common man. The principle of adult suffrage was adopted in no lighthearted mood but with the full realisation of its implications. If democracy is to be broad based and the system of governments that is to function is to have the ultimate sanction of the people as a whole, in a country where the large mass of the people are illiterate and the people owning property are so few, the introduction of any property or educational qualifications for the exercise of the franchise would be of the principles of democracy.. This Assembly deserveds on adopting the principle of adult suffrage and be stated that never before in the history of the world has such experiment been so boldly undertaken."

Not prescribing the educational (degree based) qualification for contesting electoral offices is one of the great features of Indian Democracy. What needed is education not degree.

> *12. However, when a citizen holding. the position of chief Ministership wants to know the degree related information of the Prime Minister, it will be proper to disclose.*
>
> *13. Hence, the, Commission requires the PMO to provide specific number and year of the degree and PG degree to the Delhi University and the Gujrat University offices so that It will be easy for them to search and provide any documents relating to it. The Commission directs the PIOs of Delhi University and Gujarat University Ahmadabad to make best possible search for the information regarding degrees in the name of "Mr Narendra Damodar Modi" in the year 1978 (Graduation in DU) and 1983 (Post Graduation in GU) and provide it to the appellant Mr Kejriwal, as soon as possible. (The time limit is not prescribed keeping in view the difficulty, in searching without specific number.)"*

13 This court finds that the question of whether education qualifications are personal information or not is no more res-integra and already stands authoritatively settled by the Constitution Bench of the Hon'ble Supreme Court in the case of ***Subhash Chandra Agarwal*** **(Supra).** In the said judgment the Constitution Bench of the apex court has unequivocally held that personal professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information and

such personal information is entitled to protection from unwarranted invasion of privacy. Para 70 of the said judgment which is relevant for the present purpose reads as under:-

> *"70. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive."*

14 The aforesaid judgments of the hon'ble Apex Court clearly lay down that the education documents, including degrees of an individual are personal information disclosure of which would require an overwhelming public interest. The said information would thus *ipso*

facto be covered by the exception clause provided under section 8(j) of the RTI Act.

15 The meaning, purport and import of the exemptions provided under section 8 of the RTI Act has been laid down in the judgment of ***Subhash Chandra Agarwal* (Supra),** in the following terms:-

> ***"33**. Sub-section (1) of Section 8 begins with a non obstante clause giving primacy and overriding legal effect to different clauses under the sub-section in case of any conflict with other provisions of the RTI Act. Section 8(1) without modifying or amending the term "information", carves out exceptions when access to "information", as defined in Section 2(f) of the RTI Act would be denied. Consequently, the right to information is available when information is accessible under the RTI Act, that is, when the exceptions listed in Section 8(1) of the RTI Act are not attracted. In terms of Section 3 of the RTI Act, all citizens have right to information, subject to the provisions of the RTI Act, that is, information "held by or under the control of any public authority", except when such information is exempt or excluded.*
>
> ***34**. Clauses in sub-section (1) to Section 8 can be divided into two categories : clauses (a), (b), (c), (f), (g), (h) and (i), and clauses (d), (e) and (j). The latter clauses state that the*

prohibition specified would not apply or operate when the competent authority in clauses (d) and (e) and the PIO in clause (j) is satisfied that larger public interest warrants disclosure of such information. [For the purpose of the present decision, we do not consider it appropriate to decide who would be the "competent authority" in the case of other public authorities, if sub-clauses (i) to (v) to clause (e) of Section 2 are inapplicable. This "anomaly" or question is not required to be decided in the present case as the Chief Justice of India is a competent authority in the case of the Supreme Court of India.] Therefore, clauses (d), (e) and (j) of Section 8(1) of the RTI Act incorporate qualified prohibitions and are conditional and not absolute exemptions. Clauses (a), (b), (c), (f), (g), (h) and (i) do not have any such stipulation. Prohibitory stipulations in these clauses do not permit disclosure of information on satisfaction of the larger public interest rule. These clauses, therefore, incorporate absolute exclusions."

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"133. *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."*

16 Reference may also be made to concurring opinion of Hon'ble The Chief Justice Dr. D Y Chandrachud, wherein, the term “personal information” as appearing in section 8 (e) of the RTI Act was interpreted and elaborated. The relevant portion of the said judgment reads as under: -

> **“G. *Fiduciary relationship***
>
> ***236.*** *In order to determine whether the Chief Justice of India holds information with respect to asset declarations of Judges of the Supreme Court in a fiduciary capacity, it is necessary to assess the nature of the relationship and the power dynamics between the parties. Frankfurter, J. of the United States Supreme Court in Securities & Exchange Commission v. Chenery Corpn., while determining the question whether officers and Directors who manage a holding company in the process of reorganisation occupy positions of trust, stated :*
>
> > *“… But to say that a man is a fiduciary only begins analysis; it gives direction to further inquiry. To whom is he a fiduciary? What obligations does he owe as a fiduciary? In what respect has he failed to discharge these obligations? And what are the consequences of his deviation from duty?”*
>
> ***237.****Black's Law Dictionary, defines “fiduciary relationship” thus:*
>
> > *“A relationship in which one person is*

under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships — such as trustee-beneficiary, guardian-ward, principal-agent, and attorney-client — require an unusually high degree of care. Fiduciary relationships usually arise in one of four situations : (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognised as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer."

(emphasis supplied)

238. *In Words and Phrases the term "fiduciary" is defined:*

"Generally, the term 'fiduciary' applies to any person who occupies a position of peculiar confidence towards another... It refers to integrity and fidelity... It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction... The term includes those informal relations which exist whenever one party trusts and relies upon another, as well as technical fiduciary relations."

(emphasis supplied)

239. *In Corpus Juris Secundum "fiduciary" is defined thus:*

> *"A general definition of the word which is sufficiently comprehensive to embrace all cases cannot well be given. The term is derived from the civil, or Roman law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the transaction, refers to the integrity, the fidelity, of the party trusted, rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others, and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations.*
>
> *The word 'fiduciary', as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee, with respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires; a person having the duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person, trust or estate. Some examples of*

what, in particular connections, the term has been held to include and not to include are set out in the note."

240. *In CBSE v. Aditya Bandopadhyay, a two-Judge Bench of this Court while discussing the nature of fiduciary relationships relied upon several decisions and explained the terms "fiduciary" and "fiduciary relationship" thus : (SCC pp. 524-25, para 39)*

"39. The term "fiduciary" refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term "fiduciary relationship" is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third

party."

(emphasis supplied)

241. *In RBI v. Jayantilal N. Mistry, a two-Judge Bench of this Court reiterated the observations made in CBSE v. Aditya Bandopadhyay and held that RBI did not place itself in a fiduciary relationship with other financial institutions by virtue of collecting their reports of inspections, statements of the banks and information related to the business. It was held that the information collected by the RBI was required under law and not under the pretext of confidence or trust: (Jayantilal N. Mistry case [RBI v. Jayantilal N. Mistry, (2016) 3 SCC 525: (2016) 2 SCC (Civ) 382], SCC p. 563, para 64)*

> *"64. The exemption contained in Section 8(1)(e) applies to exceptional cases and only with regard to certain pieces of information, for which disclosure is unwarranted or undesirable. If information is available with a regulatory agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship. As in the instant case, the financial institutions have an obligation to provide all the information to RBI and such information shared under an obligation/duty cannot be considered to come under the purview of being*

shared in fiduciary relationship."
(emphasis supplied)

242. *The Canadian Supreme Court in Robert L. Hodgkinson v. David L. Simms, discussed the term "fiduciary" thus:*

> *" A party becomes a fiduciary where it, acting pursuant to statute, agreement or unilateral undertaking, has an obligation to act for the benefit of another and that obligation carries with it a discretionary power. Several indicia are of assistance in recognizing the existence of fiduciary relationships : (1) scope for the exercise of some discretion or power; (2) that power or discretion can be exercised unilaterally so as to effect the beneficiary's legal or practical interests; and, (3) a peculiar vulnerability to the exercise of that discretion or power.*
>
> *The term fiduciary is properly used in two ways. The first describes certain relationships having as their essence discretion, influence over interests, and an inherent vulnerability. A rebuttable presumption arises out of the inherent purpose of the relationship that one party has a duty to act in the best interests of the other party. The second, slightly different use of fiduciary exists where fiduciary obligations, though not innate to a given relationship, arise as a matter of fact out of the specific circumstances of that particular relationship. In such a case the question to ask is whether,*

given all the surrounding circumstances, one party could reasonably have expected that the other party would act in the former's best interests with respect to the subject-matter at issue. Discretion, influence, vulnerability and trust are non-exhaustive examples of evidentiary factors to be considered in making this determination. Outside the established categories of fiduciary relationships, what is required is evidence of a mutual understanding that one party has relinquished its own self-interest and agreed to act solely on behalf of the other party. In relation to the advisory context, then, there must be something more than a simple undertaking by one party to provide information and execute orders for the other for a relationship to be enforced as fiduciary."

243. *Dr Paul Finn in his comprehensive work on Fiduciary Obligations, describes a fiduciary as someone who has an obligation to act "in the interests of" or "for the benefit of" their beneficiaries in some particular matter. For a person to act as a fiduciary they must first have bound themselves in some way to protect and further the interests of another. Where such a position has been assumed by one party then that party's position is potentially of a fiduciary. The Federal Court of Australia in Australian Securities & Investments Commission v. Citigroup Global Markets Australia Pty. Ltd. (No. 4) [Australian Securities & Investments Commission v. Citigroup Global Markets*

Australia Pty. Ltd. (No. 4), has held:

> *"The question of whether a fiduciary relationship exists, and the scope of any duty, will depend upon the factual circumstances and an examination of the contractual terms between the parties... Apart from the established categories, perhaps the most that can be said is that a fiduciary relationship exists where a person has undertaken to act in the interests of another and not in his or her own interests but all of the facts and circumstances must be carefully examined to see whether the relationship is, in substance, fiduciary... The critical matter in the end is the role that the alleged fiduciary has, or should be taken to have, in the relationship. It must so implicate that party in the other's affairs or so align him with the protection or advancement of that other's interests that foundation exists for the fiduciary expectation."*
>
> *(emphasis supplied)*

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245. *Other structural properties of the fiduciary relationship are dependence and vulnerability, where the beneficiary is dependent upon the fiduciary to exercise power and impact the practical interests. Once a fiduciary relationship is established, fiduciary duties include the duty of loyalty and duty of care towards the interests of the beneficiaries.*

> ***246.*** *From the discussion above, it can be seen that a fiduciary is someone who acts for and on behalf of another in a particular matter giving rise to a relationship of trust and confidence. A fiduciary relationship implies a condition of superiority of one of the parties over the other, where special confidence has been reposed in an individual to act in the best interests of another."*

17 The term personal information in the context of Section 8(e) has been interpreted in the opinion of Hon'ble Mr Justice Sanjeev Khanna in the following terms: -

> *"Point 3 (B) : Right to privacy under Section 8(1) (j) and confidentiality under Section 11 of the RTI Act*
>
> ***47.*** *If one's right to know is absolute, then the same may invade another's right to privacy and breach confidentiality, and, therefore, the former right has to be harmonised with the need for personal privacy, confidentiality of information and effective governance. The RTI Act captures this interplay of the competing rights under clause (j) to Section 8(1) and Section 11. While clause (j) to Section 8(1) refers to personal information as distinct from information relating to public activity or interest and seeks to exempt disclosure of such information, as well as such*

information which, if disclosed, would cause unwarranted invasion of privacy of an individual, unless public interest warrants its disclosure, Section 11 exempts the disclosure of "information or record ... which relates to or has been supplied by a third party and has been treated as confidential by that third party". By differently wording and inditing the challenge that privacy and confidentiality throw to information rights, the RTI Act also recognises the interconnectedness, yet distinctiveness between the breach of confidentiality and invasion of privacy, as the former is broader than the latter, as will be noticed below.

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58. *Clause (j) to sub-section (1) of Section 8 of the RTI Act specifically refers to invasion of the right to privacy of an individual and excludes from disclosure information that would cause unwarranted invasion of privacy of such individual, unless the disclosure would satisfy the larger public interest test. This clause also draws a distinction in its treatment of personal information, whereby disclosure of such information is exempted if such information has no relation to public activity or interest. We would like to, however, clarify that in their treatment of this exemption, this Court has treated the word "information" which if disclosed would lead to invasion of privacy to mean personal information, as distinct from public information. This aspect has been dealt with in the succeeding paragraphs.*

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64. While clause (j) exempts disclosure of two kinds of information, as noted in para 58 above, that is, "personal information" with no relation to public activity or interest and "information" that is exempt from disclosure to prevent unwarranted invasion of privacy, this Court has not underscored, as will be seen below, such distinctiveness and treated personal information to be exempt from disclosure if such disclosure invades on balance the privacy rights, thereby linking the former kind of information with the latter kind. This means that information, which if disclosed could lead to an unwarranted invasion of privacy rights, would mean personal information, that is, which is not having co-relation with public information.

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***69.** Reference can also be made to Aditya Bandopadhyay, as discussed earlier in paras 42 and 43, where this Court has held that while a fiduciary could not withhold information from the beneficiary in whose benefit he holds such information, he/she owed a duty to the beneficiary to not disclose the same to anyone else. This exposition of the Court equally reconciles the right to know with the rights to privacy under clause (j) to Section 8(1) of the RTI Act.*

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***70.** Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name,*

> *address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive."*

18 In the same opinion of Hon'ble Mr Justice Sanjeev Khanna, his Lordship has interpreted the word "public interest" in the context of RTI Act in the following terms:-

> "88. *The RTI Act is no exception. Section 8(1)(j) of the RTI Act prescribes the requirement of satisfaction of "larger public interest" for access to information when the information relates to personal information having no relationship with any public activity or interest, or would cause unwarranted invasion of privacy of the individual. Proviso to Section 11(1) states that*

except in 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 interest of the third party. The words "possible harm or injury" to the interest of the third party are preceded by the word "importance" for the purpose of comparison. "Possible" in the context of the proviso does not mean something remote, far-fetched or hypothetical, but a calculable, foreseeable and substantial possibility of harm and injury to the third party.

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91. Public interest in access to information refers to something that is in the interest of the public welfare to know. Public welfare is widely different from what is of interest to the public. "Something which is of interest to the public" and "something which is in the public interest" are two separate and different parameters. For example, the public may be interested in private matters with which the public may have no concern and pressing need to know. However, such interest of the public in private matters would repudiate and directly traverse the protection of privacy. The object and purpose behind the specific exemption vide clause (j) to Section 8(1) is to protect and shield oneself from unwarranted access to personal information and to protect facets like reputation, honour, etc. associated with the right to privacy. Similarly, there is a public interest in the maintenance of confidentiality in the case of private individuals and even Government, an aspect we have already discussed.

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> *95. The last aspect in the context of public interest test would be in the form of clarification as to the effect of sub-section (2) to Section 6 of the RTI Act which does not require the information seeker to give any reason for making a request for the information. Clearly, "motive" and "purpose" for making the request for information is irrelevant, and being extraneous cannot be a ground for refusing the information. However, this is not to state that "motive" and "purpose" may not be relevant factor while applying the public interest test in case of qualified exemptions governed by the public interest test. It is in this context that this Court in Aditya Bandopadhyay [CBSE v. Aditya Bandopadhyay, (2011) 8 SCC 497: 6 SCEC 25] has held that beneficiary cannot be denied personal information relating to him. Similarly, in other cases, public interest may weigh in favour of the disclosure when the information sought may be of special interest or special significance to the applicant. It could equally be a negative factor when the "motive" and "purpose" is vexatious or it is a case of clear abuse of law."*
>
> ***[****Emphasis Supplied****]***

19 Mr Mehta, learned Solicitor General of India has also relied on the statutes and judgements passed by the courts of United Kingdom and United States of America to buttress his submission that the educational qualification of an individual is a personal information falling within the ambit of right of privacy and hence is

exempted from disclosure. In view of the authoritative pronouncement on the said issue by the Apex Court of this country, there is no need for this court to refer to and place reliance on the judgement and statutes prevailing in other jurisdictions. The limited scope of controversy raised in the present petition is already covered by the judgements rendered by Indian court and as such this court finds no reason to rely on the judgments rendered by the courts of foreign jurisdiction.

20 In so far as the issue of Universities/Boards etc. holding and possessing the educational documents such as mark-sheets and certificates of a student/citizen is concerned, as per the law laid down by the Hon'ble Supreme Court in ***Aditya Bandopadhyay, case*** **(Supra)** and ***ICAI v. Shaunak H. Satya case*** **(Supra)**, the apex court has unequivocally held that the documents related to educational qualifications are held in fiduciary capacity, and therefore, would be exempted from disclosure under Section 8(1)(e) of the RTI Act. The said

judgments have been quoted with approval in ***Subhash Chandra Agarwal*** **(Supra).**

21 In the aforesaid judgements rendered by the Hon'ble Apex Court in ***Subhash Chandra Agarwal*** **case,** ***Kerala Public Service Commission, Aditya Bandopadhyay case*** **and** ***ICAI v. Shaunak H. Satya case (Supra)***, it has been unequivocally held that educational qualification related documents are nothing but personal information of the student. In the aforesaid judgments it has also been held that there is a fiduciary relationship between the examining body and the examinee and the exemption contemplated under section 8(1)(e) of the RTI Act, would operate in regard to giving access to the information held in fiduciary relationship, to third parties**.** Once the examination process is over, the University steps into the shoes of examining body and answer sheets etc. becomes a degree. This stage is one stage posterior to what was considered by the Hon'ble Supreme Court in the aforesaid judgments and as such, on the same analogy

and by applying the necessary implication doctrine, it is held that the degrees of a student is kept by the university in confidence and in fiduciary capacity.

22 In light of the aforesaid legal position laid down by the Hon'ble Apex Court, this court holds that the educational documents including degrees fall within ambit of personal information of a citizen, disclosure of which is exempted under Section 8(1)(j) of the RTI Act. Further, the said information is held by the Universities and Boards in fiduciary capacity on behalf of their students which is again exempted under Section 8(1)(e) of the RTI Act. That being so, the first contention of Shri Kavina that once a student passes examination and qualifies to secure a degree then such degree cannot be treated as private or third party information and the said degree certificate has to be considered as public document generated by a public authority stands rejected.

23 Once it is held that the educational degrees of the student attract the exemption contemplated under section 8(1) (e) and (j), the next question which fall for the consideration of this court is whether there is any public purpose in disclosure of such information under the provisions of RTI.

24 A perusal of the impugned order shows that the CIC expressly noted that the information about educational degrees of Shri Narendra Modi is already in public domain and the same is merely a matter of curiosity in public domain which cannot be equated with 'public interest' because only if public is interested in perusing certain information the same would not *ipso facto* fall within the legal ambit of 'public interest' as contemplated under section 8(e) and (j) of the RTI Act. The Commission has also recorded that the said qualification or degrees have no nexus on the constitutional post occupied by Shri Narendra Modi. Further, the Commission has also recorded that it was also not a case where there was a

prescription of minimum educational qualification for holding the position of Prime Minister and where holding of such minimum educational qualification by the Prime Minister was in doubt. The Commission has also recorded the fact that the information sought had no remote nexus either with accountability or transparency in discharge of function as the Prime Minister of the country.

25 Thus the Commission in the impugned order has itself come to the conclusion that the information sought for was neither in public interest nor the same was relatable to accountability or transparency in discharge of public functions performed by Sh. Narendra Damodardas Modi as Prime Minister of India.

26 However, despite expressly noting the aforesaid factual aspects of the matter, the impugned order has nowhere adjudicated the said facts in the context of provisions of RTI Act. The Commission has merely given

a cryptic finding that educational qualification related information to public authorities, public servants or political leaders occupying constitutional position is not hit by any exception under Section 8 of the RTI Act. No reasons have been assigned by the Commission to come to such a conclusion. Instead the only reason which this Court strangely finds as the basis of the direction issued by the Commission, is the assumption of the Commission that when a citizen holding the post of Chief Minister wants to know the degree related information of the Prime Minister, it will be proper to disclose. The said reasoning in the opinion of this Court is completely unsustainable and outside the scope of jurisdiction vested in the CIC under the provisions of RTI Act.

27 In the opinion of this court, once the Commission came to the finding that the information sought for was neither relatable to accountability and transparency in public functions discharged by Shri Narendra Damodardas Modi nor there was any larger public

interest in disclosure of the said information, as in, the disclosure sought for was merely something which was of ‘interest to the public’ and a matter of political curiosity and not something which was in the public interest, then the Commission ought to have strictly applied the exemptions contemplated under section 8(e) and (j) and ought to have refused disclosure of the said information. Instead the Commission has rendered an omnibus finding that educational qualification related information about public authorities, public servants or political leaders occupying the constitutional positions is not hit by exception under Section 8 of the RTI Act. This Court fails to comprehend the justification or the legal foundation on the basis of which the Commission has arrived at the said finding. The said decision of the CIC, in the opinion of the court is contrary to the legal position and is therefore set aside. This court holds that in absence of any larger public interest, which is neither pleaded nor raised, the educational degrees of Sh Narendra Damodardas Modi

are exempted from disclosure under the provisions of section 8(1)(e) and (j) of the RTI Act.

28 During the course of the hearing full opportunity was once again given by this court to Respondent No. 2 to place his justification, as to what larger public purpose would be served in disclosing the educational degrees of Shri Narendra Damodardas Modi to him through the RTI route when the same was already available in public domain. However, in response, the only justification which came forward before this court was that all information about the candidate contesting elections must be available in public domain for it to be scrutinized by public. This court can only record its disagreement with the aforesaid justification placed by Respondent No. 2 when the degree is already in public domain. The said reasoning is outside the ambit of concept of public interest which has elaborately been pronounced in the case of ***Subhash Chandra Agarwal*** **(supra)** as quoted above. To borrow the words of their Lordships of the

Hon'ble Apex Court, this court finds that the respondent has merely set up a case of *"Something which is of interest to the public"* rather than setting up a legal case of "something which is in the public interest". Further this court agrees with the submission of Shri Mehta, learned Solicitor General of India that the insistence of the Respondent No. 2 to get the educational degree of Prime Minister, Shri Narendra Damodardas Modi through RTI route, when the same is already available in public domain, also creates doubt on the bonafide and motive of the Respondent No 2. In the opinion of the court, the manner in which the request was made and considered by the CIC, squarely falls within the observation made by the Hon'ble Apex Court in para 95 of ***Subash Chandra Agarwal,*** (Supra) whereby the honourable Supreme Court has observed that in given cases "motive" and "purpose" may be negative factor while applying the public interest test in case of qualified exemptions governed by the public interest test "*when the "motive" and "purpose" is vexatious or it is a case of clear abuse of*

law". In absence of any valid ground of public interest, this court finds that the application made by respondent no 2 also fails to qualify the public interest test contemplated in ***Subash Chandra Agarwal,*** (Supra) due to ostensible motive and purpose which appears to this court to be more politically vexatious and motivated, instead of, being based on sound public interest considerations.

29 Having held so, this court is of the opinion that information i.e. educational degree of any individual can be sought using RTI Act only when there is a pleading, which is proved by the Applicant and thereafter satisfaction is reached by the authority under the Act that "public interest" requires disclosure of such information. Such "public interest" as used in Section 8(1)(e) and (j) would mean manifest public interest and not just curiosity of the RTI Applicant. As explained in the judgment of the Supreme Court, the term "public interest" would not mean matters where "public is interested". There can be

certain matter where public may develop interest out of curiosity. Such interest has nothing to do with “public interest” which is the test required to be applied under Section 8(1)(e) and (j). The present case neither pleads nor establishes existence of any public interest. While the Respondent No.2 was responding as to whether he wants to declare his electoral photo identity card, he very causally gave a conditional consent substantially saying that if Chief Minister is called upon to disclose his electoral photo identity card, Prime Minister should also be asked to declare his degree.

29.1 The Respondent No.2 could have either agreed to divulge such information or could have resorted to Section 8(1)(e) and (j). The petitioner has made a submission that such a course of action would be very childish way of dealing with statutory proceedings governed by statutory provisions, however, this court for the moment is not going into the same.

30 Coming to the next ground urged, this Court also finds that there is no provision under the RTI Act whereby the Commission is empowered to take *suo motu* cognizance of any oral request made before it at an appellate stage. This court is of the view that Commission which is a mere creature of statute could have exercised only such powers and functions which have been expressly entrusted to it by the Statute. In absence of any inherent or *suo moto* powers being vested in the commission by the RTI Act, the Commission could not have entertained an oral request and suo moto converted it into an RTI application; that too at an appellate stage. The Commission, in the opinion of this court, has, in a very callous and cavalier manner entertained the oral request of Respondent No.2 and has passed statutory directions/orders completely trivialising the statutory jurisdiction vested in it. Furthermore, reference made by the Information Commissioner presiding the Bench of CIC to his father's ideology and comment and the constituent debate whereby a critique has been made for not

restricting adult franchise on the ground of illiteracy are completely extraneous reasonings going into the root of the decision making process adopted by the commission.

31 The above referred facts and law lead to inevitable conclusion that the way and manner in which the CIC has proceeded to give example of his father is more shocking than surprising. It is unbelievable that an authority exercising quasi-judicial powers at Second Appellate stage would exercise the powers in such manner. With a view to emphasise the anguish of the Court about the manner of exercise of power by the CIC, it is relevant to reproduce a part of the order impugned here:

> *“10. Here I would like to recall the comment of my father, Freedom Fighter, Late M. S. Acharya, when Telugu University wanted his educational qualifications as part of bio-data to draft a citation to present Telugu Pratibha Purskaram to him for being an eminent Telugu Journalist. When asked what did you study? he took pride in saying: "I studied "Raghu Vamsha' and 'Megha Dootha', 'Kumara Sambhava' of Maha Kavi Kalidas". I said 'they are not degrees offered by universities'. "So what, they give better education than many degrees awarded by*

Universities". *His citation had finally referred to those Mahakavyas as his qualifications."*

32 Having held so this court also finds that while treating the oral request of Respondent No.2 on an application at the appellate stage, the Commission transgressed its jurisdiction and embarked into an arena of political thicket and ventured into judicial activism on being overwhelmed by the fact that the information is sought by a citizen occupying the post of Chief Minister and thus is liable to be disclosed. This, in the opinion of the Court, it is clear transgression of the jurisdiction vested upon the Commission under the provisions of RTI Act making the impugned order dated 29.04.2016 completely unsustainable in the eyes of law. In the opinion of this court, it appears that the Information Commissioner has lost sight of the distinction between judicial commission and public forum. The observation and the reasoning made by the information commission compels this court to hold that such observations were beyond the remit of judicial considerations which the

commission is required to adhere to while adjudicating statutory second appeal under the provisions of RTI Act.

33 A lot of stress has been placed by Shri Kavina that the right to vote of a citizen would inhere in itself, the right to know about the educational qualifications of the candidate. He has submitted before this court that the provisions of Representation of Peoples Act, 1951 and the Rules made thereunder, more particularly, Rule 4A read with Form 26 of the Conduct of Elections (Rules) 1961 cast an obligation on the candidate to give information about his educational qualification to the public at large and hence when one statute i.e the Representation of Peoples Act imposes such an obligation upon the candidate to disclose his educational qualification, surely, then deeming fiction such information would assume the character of public information and would be available to any citizen under RTI Act. The said contention in the opinion of the court is only stated to be rejected. Firstly, it is clear that Respondent No.2 is neither a voter nor a

candidate. No case in this regard has been set up by the Respondent No.2. Secondly, the disclosure contemplated under Form 26 of the Conduct of Election (Rules) 1961 only relates to mentioning of the details of candidate's educational qualification in the affidavit. It nowhere prescribes that the candidate is under a statutory duty to firstly annex the said documents with Form 26 affidavit and thereafter make it public for perusal of public at large. A reading of the said form shows that the candidate is also under an obligation to his or her criminal antecedents, financial and other details. If the argument of Respondent No 2 is accepted and taken to its logical conclusion then it would mean that not only a candidate is under statutory compulsion to make public his educational certificates but also the documents pertaining to his criminal antecedents such as charge sheets, statements of witness etc. and documents pertaining to his financial assets i.e. income tax returns, certificates of fixed deposits etc. On that analogy it can also be argued that if a candidate has mentioned the

details of assets held by him in Form 26 then he would have to make public the title deeds of the said assets. This in the opinion of the court is not the purport of Form 26 of the Conduct of Election (Rules) 1961. No such analogy of the Representation of Peoples Act and the rules framed thereunder is required to be imported while interpreting the provisions of RTI Act, as it would mean that the RTI Act is required to be interpreted differently for those who are contesting elections and those who are not. The submission of Shri Kavina in this regard is therefore rejected.

34 Under the Constitution of India, Article 75 thereof provides for “Other provisions as to Ministers”. It says that the Prime Minister shall be appointed by the President and the Minister shall be appointed by the President on the advice of the Prime Minister. No educational qualifications have been provided for leaders in order to be eligible for election. It is a well-known fact that barring a few exceptions, most of the candidates

elected to the Parliament or the State Legislatures are fairly educated even if they are not graduates or post graduates. To think of illiterate candidates is based on a factually incorrect assumption. The experience and events in public life and the legislatures have demonstrated that the dividing line between the well-educated and less educated is rather thin. Much depends on the character of the individual, in the sense of devotion to the duty and the concern of the welfare of the people. These characteristics are not the monopoly of the well-educated persons.

34.1 The Supreme Court in the decision in the case of ***P.U.C.L (supra),*** echoed such sentiments through the words of Justice P.Venkatarama Reddi, J while negating the constitutional validity of Sec.33 (B) of the Representation of the Peoples Act. In para 122 of the decision, the Court speaking through him held as under:

> *"122 The last item left for discussion is about educational qualifications. In my view, the disclosure of information regarding educational qualifications of a candidate is not an essential component of the*

right to information flowing from Article 19(1)(a). By not providing for disclosure of educational qualifications, it cannot be said that Parliament violated the guarantee of Article 19(1)(a). Consistent with the principle of adult suffrage, the Constitution has not prescribed any educational qualification for being Member of the House of the People or Legislative Assembly. That apart, I am inclined to think that the information relating to educational qualifications of contesting candidates does not serve any useful purpose in the present context and scenario. It is a well-known fact that barring a few exceptions, most of the candidates elected to Parliament or the State Legislatures are fairly educated even if they are not graduates or postgraduates. To think of illiterate candidates is based on a factually incorrect assumption. To say that well-educated persons such as those having graduate and postgraduate qualifications will be able to serve the people better and conduct themselves in a better way inside and outside the House is nothing but overlooking the stark realities. The experience and events in pubic life and the legislatures have demonstrated that the dividing line between the well educated and less educated from the point of view of his/her calibre and culture is rather thin. Much depends on the character of the individual, the sense of devotion to duty and the sense of concern to the welfare of the people. These characteristics are not the monopoly of well-educated persons. I do not think that it is necessary to supply information to the voter to facilitate him to indulge in an infructuous exercise of comparing the educational qualifications of the candidates. It may be that certain candidates having exceptionally high qualifications in specialized field may prove useful to the society, but it is natural to expect that such candidates would voluntarily come forward with an account of their own academic and other talents as a part of their election programme. Viewed from any

> *angle, the information regarding educational qualifications is not a vital and useful piece of information to the voter, in ultimate analysis. At any rate, two views are reasonably possible. Therefore, it is not possible to hold that Parliament should have necessarily made the provision for disclosure of information regarding the educational qualifications of the candidates."*

35 Shri Kavina, learned Senior Advocate has also argued before this court that since the petitioner was not heard, the matter can be remanded back to CIC for considering the objections of the petitioner university and also for complying with the provisions of section 11, if required for the purpose of arriving at a decision as to whether the said information pertaining to the educational qualification in question is required to be disclosed in larger public interest or not. This court is not persuaded by the said submission of Shri Kavina. The present matter is of 2016 and seven years have already lapsed. An objection of such a nature was required to be taken right at the inception. However, from the perusal of the order passed by the division bench of this court in the LPA proceedings as well as failure of respondent no 1 as

well as respondent no 2 to file any response to the petition till date, compels this court to observe that such a stand is taken by the Respondent No. 2 only to keep the matter alive.

35.1 The petition involves a neat legal question, therefore and is argued fully by both sides and decided by this court on merits as the question raised is only a question of law. It will not be a sound exercise of discretion, while exercising jurisdiction under Article 226 of the Constitution of India to remand the matter after seven years as such question of law can only be settled by a constitutional court. The question of application of exemption 8(1) (e) and (j) raised in the present Special Civil Application has already been answered by this court in favour of the petitioner. There are no other factual controversies which are required to be gone into in the present matter. Further detailed submission on law have already been made by all the parties concerned. As such, this courts finds no reason except the prayer of the

Respondent No. 2 to remand the application back to the commission. The said submission is therefore rejected.

36 At this juncture, reference is also required to be made to the observations of the Apex Court in ***Aditya Bandhopadhya (Supra)*** wherein the Apex Court in para 67 held:-

> *"Indiscriminate and impractical demands or directions under the RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of public authorities*

prioritising "information furnishing", at the cost of their normal and regular duties."

37 This court finds that the CIC while passing the impugned order was well aware that what it was directing was not a specific and certain but a fishing and roving enquiry. The same is evident from the fact that commission provided no time limit being fully cognizant of the difficulty which would have been faced by the petitioner in searching the information in question. The Commission being a statutory authority ought to have kept the aforesaid principles in mind while dealing with the oral request of Respondent No 2 and ought not to have made an exception in the present case by not even refering to the same, when ordinarily, in every matter the said principle is considered and kept in mind by the commission while passing suitable directions. Treating the present case an exception completely justifies the submission of the petitioner that extraneous considerations have gone into the decision making process of the Commission.

38 The above referred discussion leads to an inevitable conclusion that there has been an indiscriminate misuse of the salutary provisions of the RTI Act in the present case for the purposes not contemplated by the legislature while enacting the said Act. In the present case, the manner in which a request came from Respondent No.2 who was neither an Applicant nor an appellant and was merely a respondent before the CIC leaves much to be desired. Such requests cannot be made so casually making mockery of the very intent and purpose of the RTI Act.

39 The Respondent No.2, doubtlessly used an appeal against him to kick start and trigger a controversy not falling within the purview of the RTI Act for the objects and purpose this court need not go into. Having found both the requests by Respondent No.2 and the order by the CIC being absolutely causal and having found that neither such request was competent nor such an order could have been passed and keeping in view the salutary object of the RTI Act, this court thinks it fit to allow the

present petition with a direction to Respondent No.2 to pay costs.

40 Further despite the degree in question being put on the website of the petitioner University for all to see and despite this fact being made expressly clear with precision in the pleadings before this Court and despite the respondent never ever disputing the degree in question either during the pendency of these proceedings or even during final hearing, the respondent No.2 has persisted with the matter. This is one more reason to impose costs while allowing this petition.

41 Accordingly, petition is allowed. The impugned order dated 29.04.2016 passed in proceeding No. CIS/SA/C/2015/000275 is quashed and set aside. Respondent No.2 is directed to pay costs of Rs. 25,000/- to be deposited with Gujarat State Legal Services Authority within a period of 4 weeks from the date of this judgment. Rule is made absolute accordingly.

(BIREN VAISHNAV, J)

BIMAL

FURTHER ORDER

After pronouncement of the judgement / order, learned Senior Counsel Mr.Percy Kavina appearing for the respondent No.2 requests that respondent No.2 be heard on cost as the same not having been done at the time of argument. Such request is rejected.

Learned Senior Counsel Mr.Percy Kavina appearing for the respondent No.2 has further requested for stay of the order. Such request is also rejected.

(BIREN VAISHNAV, J)

BIMAL