

A copy of Judgment dated 15.02.2019 in WP(C) 436/2018 is annexed hereto as **Annexure P1** (_____)

2. The petitioners are constrained to prefer the present application as the respondents have failed to comply with the directions issued by this Hon'ble Court in Judgement dated 15.02.2019 because contrary to directions issued and observations made:
 - (a) Timely appointments to CIC and SICs against existing vacancies have not been made;
 - (b) The rational and objective 'shortlisting criteria' to be followed by the Search Committee has not been made public;
 - (c) Particulars of applicants who applied for the advertised posts have not been made public;
 - (d) The details of the members of the 'Search Committee' and 'Selection Committee' have not been made public.

THE CASE IN BRIEF

RIGHT TO INFORMATION - A FUNDAMENTAL RIGHT:

3. In successive judgments, the Supreme Court of India has held that the Right to Information is a fundamental right and flows from article 19(1)(a) and article 21 of the Constitution of India. The Courts of the country have declared in a plethora of cases that the RTI Act is key for freedom of speech, good governance, and that transparency is a prerequisite for the functioning of a healthy democracy. The judgement dated 15.02.2019 of this Hon'ble Court relied on *State of UP v. Raj Narain* **AIR 1975 SC 865**, *S.P. Gupta v. President of India and Ors* **AIR 1982 SC 149**, *Reliance Petrochemicals Ltd vs Proprietors Of Indian Express* **1989 AIR 190**, *Union of India v. Association for Democratic Reforms* **AIR 2002 SC 2002**, *Reserve Bank of India Versus Jayantilal N. Mistry Transferred Case (Civil) No. 91 Of 2015*, to again emphasise people's

Right to Information as a facet of Article 19(1)(a) and Article 21 (Paras 10 to 15).

4. The judgement dated 15.02.2019 expanded on the importance of the RTI Act to achieve good governance and observed:

18) There is a definite link between Right to Information and good governance. In fact, the RTI Act itself lays emphasis on good governance and recognises that it is one of the objective which the said Act seeks to achieve. The RTI Act would reveal that four major elements/objectives required to ensure good governance are:

(i) greater transparency in functioning of public authorities;

(ii) informed citizenry for promotion of partnership between citizens and the Government in decision making process;

(iii) improvement in accountability and performance of the Government; and

(iv) reduction in corruption in the Government departments.

19) The right to information, therefore, is not only a constitutional right of the citizens but there is now a legislation in the form of RTI Act which provides a legal regime for people to exercise their fundamental right to information and to access information from public authorities. The very preamble of the Act captures the importance of this democratic right which reads as under:

.....democracy requires an informed citizenry and transparency of information which are vital to its

functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.

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68) We would like to place on record that aforesaid directions are given keeping in view the salient purpose which RTI Act is supposed to serve. This Act is enacted not only to sub-serve and ensure freedom of speech. On proper implementation, it has the potential to bring about good governance which is an integral part of any vibrant democracy. Attaining good governance is also one of the visions of the Constitution. It also has vital connection with the development.

IMPORTANCE OF PROPERLY CONSTITUTED INFORMATION COMMISSIONS WITH ADEQUATE STRENGTH

5. The RTI Act is a self-contained legislation and provides a comprehensive framework for people to exercise their Right to Information. Under the RTI Act, Information Commissions have been set up at the Centre (CIC) and in all the States (SICs) to adjudicate on appeals and complaints of persons who have been unable to secure information in accordance with the RTI Act or are aggrieved by violations of the Act.

Chapter III titled, 'The Central Information Commission', containing Sections 12 to 14 of the RTI Act, lays down the provisions related to the constitution of CIC, the term of office and conditions of service of the Chief and the Central Information Commissioners and the procedure and grounds for removal of Chief Information Commissioner or Information Commissioners.

Similarly, Chapter IV titled, 'The State Information Commission', containing Sections 15 to 17, lays down the provisions related to the constitution of SICs, the term of office and conditions of

service of the Chief and the State Information Commissioners and the procedure and grounds of removal of Chief Information Commissioner or State Information Commissioners.

As per the RTI Act, the commissions consist of the Chief Information Commissioner and up to 10 Information Commissioners, appointed by the President of India at the Central level and by the governor in the States, on the recommendation of a committee.

For appointing the Chief and the Information Commissioners of the CIC, the selection committee consists of the Prime Minister (Chairperson of the committee), the Leader of Opposition in the Lok Sabha and a Union Cabinet Minister to be nominated by the Prime Minister.

For appointing the Chief and the Information Commissioners of the SICs, the selection committee consists of the Chief Minister (Chairperson of the committee), the Leader of Opposition in the Legislative Assembly and a Cabinet Minister to be nominated by the Chief Minister. The relevant provisions are reproduced as under:

Relevant Sections

12. (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Central Information Commission shall consist of—

(a) the Chief Information Commissioner; and

(b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of—

(i) the Prime Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Lok Sabha; and

(iii) a Union Cabinet Minister to be nominated by the Prime Minister.

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15. (1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consist of—

(a) the State Chief Information Commissioner, and

(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of—

(i) the Chief Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Legislative Assembly; and

(iii) a Cabinet Minister to be nominated by the Chief Minister

Section 12(5) of the RTI Act defines the criteria for selection of Information Commissioners of the CIC, while Section 15(5), which is in *pari materia* with Section 12(5), similarly defines the criteria for selection of Information Commissioners of the SICs. It states:

12(5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

6. The Hon'ble Supreme Court in its judgement dated 15.02.2019, held that the proper functioning of information commissions with adequate number of commissioners was vital for the implementation of the RTI Act. The court held that as the RTI Act provided that information commissions should consist of a Chief and upto ten commissioners 'as may be deemed necessary', the number of commissioners required should be determined on the basis of the workload. In fact, the court underlined that if commissions do not function with adequate number of commissioners, it may negate the purpose of the RTI Act, 2005. The relevant extracts of the Judgement are reproduced below:

21) As per the RTI Act, the Commissions consist of the Chief Information Commissioner and upto 10 Information Commissioners, appointed by the President of India at the Central level and by the Governor in the States, on the recommendation of a Committee. In respect of CIC, such a provision is contained in Section 12 which stipulates that CIC shall consist of the Chief Information Commissioner and 'such number of Central Information Commissioners not exceeding as may be deemed necessary'. Similar, provision for SIC is contained in Section 15(2) of the RTI Act. No doubt, there is a cap/upper limit of 10 Central Information Commissioners and State Information Commissioners in respect of each State respectively. Such number of CICs/SICs would depend upon the workload as the

expression used is 'as may be deemed necessary'. The required number of CIC/SICs, therefore, would depend upon the workload in each of these Commissions."

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24) If the information is not provided and the request is rejected, appeal can be filed before the CIC or SICs as the case may be under Section 19 of the Act. Apart from hearing the appeals, some more powers are also given to CIC or SICs and it is for this reason, in the entire scheme provided under the RTI Act, existence of these institutions becomes imperative and they are vital for the smooth working of the RTI Act. Of course, no specific period within which CIC or SICs are required to dispose of the appeals and complaints is fixed. However, going by the spirit of the provisions, giving outer limit of 30 days to the CPIOs/SPIOs to provide information or reject application with reasons, it is expected that CIC or SICs shall decide the appeals/complaints within shortest time possible, which should normally be few months from the date of service of complaint or appeal to the opposite side. In order to achieve this target, it is essential to have CIC/SCIC as well as adequate number of Information Commissioners. It necessarily follows therefrom that in case CIC does not have Chief Information Commissioner or other Commissioners with required strength, it may badly affect the functioning of the Act which may even amount to negating the very purpose for which this Act came into force. Same applies to SICs as well.

7. The fundamental right of citizens to access information from public authorities is being hindered by the non-appointment of commissioners in the CIC and various SICs across the country. The commission wise status follows.

Central Information Commission

8. At present, four posts of Information Commissioners are lying vacant in the CIC. As of September 4, 2019, nearly 32,500 appeals and complaints were pending before the commission. Out of the four vacancies, three arose out of routine and scheduled retirement of Information Commissioners upon the expiry of their five year tenure or upon them attaining the age of sixty five years. These vacancies arose more than 9 months ago. The final vacancy occurred when one of the existing Information Commissioners was appointed as the Chief of the CIC with effect from January 1, 2019. The Hon'ble Supreme Court by order dated 13.12.2018, directed the Central Government to initiate the process of filling up these posts by issuing an advertisement at the earliest. Following these directions, the Central Government issued a notification dated January 4, 2019 inviting applications for filling up these four vacant posts and the last date for receiving applications was January 25, 2019. Even though more than 8 months have passed since the advertisement was issued, the Central Government has till date failed to appoint Information Commissioners to the vacant posts. A copy of order dated 13.12.2018, is annexed and marked as **Annexure P2** (_____). A copy of notification dated 04.01.2019 issued by the Central Government inviting applications for filling up four vacant posts in CIC is annexed and marked as **Annexure P3** (_____).
9. Till December 2016, the CIC was functioning at full strength of eleven commissioners (1 Chief and 10 Information Commissioners). Shri M.A. Khan Yusufi finished his term on 31/12/2016, Shri Basant Seth on 15/2/2017, Shri Sharat Sabharwal on 22/09/2017 and Ms. Manjula Prasher on 15/01/2018, resulting in four vacancies arising. Upon failure of

Central Government to fill these vacancies, the petitioners filed the present petition in May, 2018, in which by order dated 15.02.2019, the Hon'ble Supreme Court gave various directions regarding appointment of the Chief and Information Commissioners to the Central Information Commission. At the time of filing the petition in May 2018, four posts of Information Commissioners were vacant, even as more than 23,500 appeals/complaints were pending. During the course of the petition, four other Information Commissioners retired, including the Chief Information Commissioner. Shri Yashovardhan Azad & Shri Sridhar Acharyulu, finished their term on 21/11/2018, Chief Information Commissioner Shri R. K. Mathur retired on 24/11/2018 and Shri Amitava Bhattacharya on 1/12/2018 leading to eight out of eleven posts in the CIC being vacant, including that of the Chief. On the directions of the Supreme Court, posts of four Information Commissioners in the CIC were filled with effect from January 1, 2019. The post of the Chief Information Commissioner was also filled on the directions of the Hon'ble Court, by appointing one of the existing Information Commissioners as the Chief with effect from January 1, 2019. However, four vacancies have persisted and the Central Government has failed to fill these vacancies and as a result a large number of appeals and complaints are pending before the commission.

10. The backlog of appeals and complaints in the CIC has been steadily rising. The data in the table below shows the pendency of appeals/complaints on the first of every month since November 1, 2018:

Date	Total number of appeals/complaints pending before CIC
November 1, 2018	25,492

December 1, 2018	26,300
January 1, 2019	27,364
February 1, 2019	28,840
March 1, 2019	29,472
April 1, 2019	29,981
May 1, 2019	30,510
June 1, 2019	30,877
July 1, 2019	31,330
August 1, 2019	31,862
September 1, 2019	32,099

SOURCE: CIC Website, accessed on 04.09.2019

11. The data extracted from the CIC website on the pendency of appeals/complaints clearly shows that the current strength of 7 Information Commissioners is inadequate to deal with the workload and as a result, the pendency is increasing month on month. The CIC website shows that even appeals and complaints filed in 2017 are currently pending for disposal by the commission. The failure of the Central Government to fill the vacancies is leading to long delays in the disposal of appeals and complaints by the CIC which is defeating the very purpose of the RTI Act i.e. to ensure access to information in a time-bound manner. In fact in it's judgement dated 15.02.2019, Hon'ble Supreme Court held that Commissions should dispose cases in a timely manner as that is in keeping with the overall objective of the RTI Act. The relevant extract is given below:

24) Of course, no specific period within which CIC or SICs are required to dispose of the appeals and complaints is fixed. However, going by the spirit of the provisions, giving outer limit of 30 days to the

CPIOs/SPIOs to provide information or reject application with reasons, it is expected that CIC or SICs shall decide the appeals/complaints within shortest time possible, which should normally be few months from the date of service of complaint or appeal to the opposite side.

12. The failure of the Central Government to fill vacancies in the CIC in a time-bound manner is also a violation of the directions of the Hon'ble Supreme Court which had directed that vacancies in information commissions should be filled without delay by initiating the process one to two months prior to the date on which the vacancy is occurring to minimize the time lag between the occurrence of a vacancy and filling up of the vacancy. The current vacancies in the CIC arose out of routine and scheduled retirement of Information Commissioners starting from the month of November 2018. Despite the passage of more than 9 months, since the vacancies arose, the Government has not made appointments. In fact, it has been more than 8 months, since the vacancies were advertised on January 4, 2019 on the directions of the Hon'ble Supreme Court, yet the appointments have not been made. The relevant extract is as under:

67(v) We would also like to impress upon the respondents to fill up vacancies, in future, without any delay. For this purpose, it would be apposite that the process for filling up of a particular vacancy is initiated 1 to 2 months before the date on which the vacancy is likely to occur so that there is not much time lag between the occurrence of vacancy and filling up of the said vacancy.

Andhra Pradesh State Information Commission

13. The Andhra Pradesh State Information Commission (henceforth referred to as AP SIC) has been functioning without

a Chief Information Commissioner ever since the AP SIC was constituted in August 2017. In fact, no Information Commissioner was even appointed for nearly two years. Upon failure of State Government to appoint the Chief and Information Commissioners, the petitioners filed the present petition in which the Hon'ble Supreme Court gave various directions regarding appointment of the Chief and Information Commissioners to the AP SIC. On the directions of the Supreme Court in the afore-mentioned case, posts of three Information Commissioners in the AP SIC were filled around December 2018.

14. In its order dated December 13, 2018 in the afore-mentioned case, the Supreme Court gave the following directions to the Government of Andhra Pradesh regarding the appointment of the State Chief Information Commissioner:

“STATE OF ANDHRA PRADESH:

Insofar as SCIC is concerned, he has mentioned that advertisement was issued on 24.08.2018 and the last date for receiving the applications was extended up to 10.10.2018. Thirty one applications have been received and it is proposed to hold Selection Committee's meeting soon. We expect that such meeting shall take place as soon as possible and within one month the SCIC shall also be appointed.”

15. However, the State Chief Information Commissioner was not appointed pursuant to these directions. In its judgment dated February 15, 2019 in the afore-mentioned petition, the Supreme Court took note of the lackadaisical approach of the Government and gave directions for appointments of the Chief and other Information Commissioners in a time-bound manner. The relevant extract is given below:

50) The affidavit further states that another notification was issued calling upon applications for filling up of the post of SCIC and remaining Information Commissioners. It is, however, not mentioned as to when this notification inviting applications for SCIC and Information Commissioners was issued. It is also not understood as to why steps were not taken for filling up of the post of SCIC as the Chief, who is the head of the Commission, performs crucial role insofar as functions of the SIC is concerned. As per Section 15(4) of the Act, the general superintendence, direction and management of the affairs of the SIC vests in the SCIC. We, therefore, get an impression that a very lackadaisical approach is adopted in filling up of this post and the AP SIC is virtually non functional since May 2017. May be, with three Information Commissioners who have recently been appointed, AP SIC shall get activated, but to limited extent. However, that hardly serves the purpose and does not make the SIC fully functional.

51) We, therefore, impress upon the State of Andhra Pradesh to fill up the post of SCIC and also the remaining posts of Information Commissioners at the earliest and in any case within three months from the date of this judgment.

16. However, despite these directions, the Government of Andhra Pradesh has failed to appoint the Chief Information Commissioner, even though more than seven months have elapsed since the judgment of the Hon'ble Supreme Court. Petitioners number 1 and 3 were signatories to a letter dated February 25, 2019 addressed to the Chief Minister and Chief Secretary of Andhra Pradesh drawing their attention to the judgment of this Hon'ble Court in the aforementioned case. A copy of letter dated 25.02.2019 written by Petitioners to Government of Andhra Pradesh is annexed as **Annexure P4**

(_____)

In the interim, one of the Information Commissioners has taken on the additional charge as Chief, although there is no such explicit provision under the RTI Act, 2005. In May 2019, the Government of Andhra Pradesh appointed one more Information Commissioner but again failed to appoint the Chief Information Commissioner.

Maharashtra State Information Commission

17. The Maharashtra State Information Commission is currently functioning with only five Information Commissioners, even though more than 48,000 appeals and complaints were pending for disposal as of July 31, 2019 before the Commission as per information available on the website. A copy of table showing number of pending appeals and complaints before the Maharashtra SIC as of 31.07.2019, as available on its website is annexed and marked as **Annexure P5** (_____).

18. That in May, 2018, when this petition was filed, the Maharashtra SIC was functioning with seven Information Commissioners, though it was without a State Chief Information Commissioner. During the course of the case, the Chief had been appointed. However, taking note of the alarming backlog of appeals and complaints, the court in its judgment dated February 15, 2019 in the afore-mentioned case, directed that the Government fill all the vacancies of the sanctioned posts (the State Government had till then sanctioned 8 posts for the SIC) and also take a decision regarding sanctioning additional posts so that the SIC can function at full strength as provided under the RTI Act (Chief and upto 10 Information Commissioners) to ensure disposal in a time-bound manner. The relevant extract is reproduced below:

57) Pertinently, the respondent State has not denied

pendency of 40,000 appeals and complaints as on February 2018. It has also not given any figures about the disposal of cases by the SIC. Though it is mentioned that the sanctioned strength is only 8 (and not 11 as contended by the petitioners), as of today, 2 Information Commissioner posts are to be filled. No doubt, these posts became vacant only in November 2018. We expect that steps be taken in advance so that such posts are filled up immediately after they became vacant and they do not remain unfilled for long period. In this behalf, general directions are given at the end. Further, going by the pendency, which is huge, it would be appropriate if at this juncture the SIC has a total strength of 1 SCIC and 10 Information Commissioners. This suggestion may be considered and decision in this behalf shall be taken by the State Government within one month and the newly created posts shall be filled up within six months from the date of this judgment.

However, despite these directions, the Government of Maharashtra has failed to fill vacancies in a time-bound manner resulting in an alarming rise in the backlog of appeals and complaints and the concomitant delays in the disposal of these. Petitioners number 1 and 3 were signatories to a letter dated February 25, 2019 addressed to the Chief Minister and Chief Secretary of Maharashtra drawing their attention to the judgment of this Hon'ble Court in the aforementioned case. A copy of letter dated 25.02.2019 to Maharashtra Government is annexed hereto as **Annexure P6** (_____)

Odisha State Information Commission

19. The Odisha State Information Commission is functioning with only the Chief Information Commissioner and two Information Commissioners. Information obtained under the RTI Act shows that as of March 31, 2019, more than 11,000 appeals and complaints were pending before the SIC. Copy of

RTI application dated _____ is annexed as **Annexure P7** (_____) and the reply received to the said application dated _____ is annexed as **Annexure P8** (_____)

20. That when this petition was filed in May, 2018, the Odisha SIC was functioning with three Information Commissioners (including the Chief). The Hon'ble Supreme Court in its judgment dated February 15, 2019 in the afore-mentioned case, while taking note of the rising backlog of cases due to inadequate number of commissioners, directed that the Government fill all the vacancies of the sanctioned posts within two months (Government of Odisha had till then sanctioned four posts, including that of the Chief) and also take a decision regarding sanctioning three additional posts. The relevant extract from the judgment is given below:

64)... One post of Information Commissioner is lying vacant since 27th May, 2015. It is further stated that advertisement for filling up of these posts is issued and the last date for receipt of the application was 31st January, 2019. Selection Committee is also constituted to fill up the posts. We expect the said posts to be filled up within two months.

65) Insofar as pendency of cases is concerned, the respondent accepted that as on the date of filing of the affidavit, i.e., 18th January, 2019, 1998 complaint cases and 9764 appeals were pending before the Commission. The respondents have also filed the chart containing receipt and disposal of the complaint cases as well as appeals. In the year 2018, only 522 complaints were disposed of. Likewise 2500 appeals were disposed of. It shows that there is a necessity for more Information

Commissioners and to begin with, at least, three more posts of Information Commissioners should be created. We are, therefore, of the opinion that the State Government should immediately considering creating more posts of Information Commissioners. Decision in this behalf shall be taken by the State Government within one month and the newly created posts shall be filled up within four months from the date of this judgment.”

The Government has failed to comply with the orders of the Court. In May 2019, one of the information commissioners retired and the commission was functioning with 2 commissioners (including the Chief) till August 2019, when one commissioner was appointed. The failure of the Government to fill vacancies in a time-bound manner, as directed by the Supreme Court, is resulting in frustrating peoples' fundamental right to know as exercised using the RTI Act, 2005. Petitioners number 1 and 3 were signatories to a letter dated February 25, 2019 addressed to the Chief Minister and Chief Secretary of Odisha drawing their attention to the judgment of this Hon'ble Court in the aforementioned case. A copy of letter dated 25.02.2019 to Odisha Government is annexed hereto as **Annexure P9 (_____)**

Lack of Transparency in Appointment Procedure

21. That the Hon'ble Supreme Court had given specific directions to ensure transparency in the appointment of commissioners and to regulate the process. In its order dated December 13, 2018 the Supreme Court gave the following directions to the Union of India to ensure transparency in the appointment process:

“The respondents shall put on the website the names of the Search Committee, the names of the candidates who have been shortlisted as well as the criteria which is

followed for selection.”

Pursuant to these directions, the Central Government placed information in the public domain. Further, in the judgment dated February 15, 2019 in the afore-mentioned case, the Supreme Court gave the following directions to ensure transparency in the appointment of Information Commissioners in the CIC and SICs:

GENERAL DIRECTIONS FOR CIC & SCICs

67 (i) Insofar as transparency in appointment of Information Commissioners is concerned, pursuant to the directions given by this Court, the Central Government is now placing all necessary information including issuance of the advertisement, receipt and applications, particulars of the applicants, composition of Selection Committee etc. on the website. All States shall also follow this system.

(ii) Insofar as terms and conditions of appointment are concerned, no doubt, Section 13(5) of RTI Act states that the CIC and Information Commissioners shall be appointed on the same terms and conditions as applicable to the Chief Election Commissioner/Election Commissioner. At the same time, it would also be appropriate if the said terms and conditions on which such appointments are to be made are specifically stipulated in the advertisement and put on website as well.

(iii) Likewise, it would also be appropriate for the Search Committee to make the criteria for shortlisting the candidates, public, so that it is ensured that shortlisting is done on the basis of objective and rational criteria.

22. However, despite these clear directives, the Central Government has not put in the public domain the requisite

information in terms of the appointment of Information Commissioners to the four vacant posts in the CIC. On the website of the Department of Personnel and Training (DoPT) which can be accessed at dopt.gov.in, only the notification dated January 4, 2019 is available. It is pertinent to note that neither the notification, nor the website stipulate the specific terms and conditions on which the appointments are to be made, despite the directions of the Supreme Court. Paragraph 5 of notification F. No. 4/16/2018-IR dated 4th January 2019 simply states that:

The salary, allowances and other terms and conditions of service of the Information Commissioners shall be as may be specified at the time of appointment of the selected candidate.

A copy of notification dated 04.01.2019 is at Annexure P2

23. It is further submitted that no details of the names of search committee, the names of the members of the Selection Committee (in terms of the nominated minister), details of shortlisting criteria or particulars of applicants, names of short-listed applicants have been made available on the website of the DOPT. This information has also been denied by the DOPT under the RTI Act. The DOPT vide its reply dated 4.4.2019 in response to an application under the RTI Act filed by petitioner No. 1, denied information on the names of the members of the search committee, short-listing criteria and names of applicants/ short-listed applicants with respect to the advertisement issued in January 2019. The DOPT in its response stated:

The judgment of the Honourable Supreme Court given in WP No. 436 of 2018 is under consideration of the Department. The information relating is exempted under section 8(1)(i) of RTI Act, 2005. It would not be conducive to give such information in the manner it is sought since

the process of selection is yet to be completed. No such practice is followed in any other equivalent high Level appointments of Government.

It is pertinent to note that the exemption cited by the DOPT i.e. Section 8(1)(i) relates to the issue of disclosure of cabinet papers and is in no way related to the process of on-going appointments. In fact, the Central Information Commission in a decision dated July 2, 2019, on a complaint filed by petitioner no. 2 on denial of information on appointment of Information Commissioners, had observed that citing section 8(1)(i) of the RTI Act to deny such information was completely inappropriate and the Commission went on to admonish the Public Information Officer. The relevant extract of the decision is reproduced below:

Decision

Commission based on the perusal of facts on record, concedes with the averments of the Complainant that the denial of information under Section 8(1)(i) of RTI Act was completely inappropriate. The then CPIO has invoked the said exemption clause on the mere premise that the process of appointment is 'under process', while the present CPIO has endorsed the reason cited by the then CPIO, further submissions of the CPIO reproduced verbatim above appear incoherent and does not convey any substantial justification for invoking Section 8(1)(i) of RTI Act.

The conduct of the then CPIO as well as the present CPIO reflects on their sheer evasiveness and non-application of mind in dealing with the instant RTI Application. Complainant has rightly pointed out that such mindless application of exemptions of RTI Act to deny information by the CPIO(s) of DoPT casts serious aspersions on the commitment of the nodal agency of RTI

to the tenets of probity and transparency. It is ironic even further that the information that has been denied in the instant case pertained to the appointment of Information Commissioners under the RTI Act, who are ordained with the statutory authority of securing the regime of transparency. Although, the strength of material on record does not warrant ascribing a malafide intention on the part of the then CPIO for having denied the information but the allegation of the Complainant that this kind of conduct amounts to stonewalling RTI Applications and stifling the very letter and spirit of RTI Act weighs in. By resorting to such unwarranted opacity, DoPT is setting a bad example for other public authorities and at the same time is discrediting its own footing as the nodal agency for implementation of RTI Act.

Commission admonishes the then CPIO for invoking Section 8(1)(i) of the RTI Act without assessing its applicability and the present CPIO is also warned against mindlessly endorsing the reply of the then CPIO. The present CPIO is directed to serve a copy of this order to the then CPIO.

A copy of RTI application dated _____ and reply thereto dated 4.4.2019 is annexed hereto as **Annexure P10** (_____). A copy of the order of CIC dated 2.7.2019 is annexed hereto as **Annexure P11** (_____). A table summarising the directions issued by the Hon'ble Court and the present status vis-a-vis the directions is annexed hereto as **Annexure P12**

Prayer

In light of the facts and circumstances aforementioned, it is humbly prayed that this Hon'ble Court may be pleased to issue

appropriate writ, order or direction to:

1. Direct the Union of India to take immediate steps to fill the vacancies in the CIC by making appointment of 4 Information Commissioners in a transparent and time bound manner.
2. Direct the State Governments of Maharashtra, Andhra Pradesh, and Odisha to take immediate steps to appoint Chief State Information Commissioner and Information Commissioners of the respective SICs, as necessary, in a transparent and time bound manner.
3. Direct State Governments to assess the number of Information Commissioners required on the basis of the workload in the respective information commissions.
4. Direct the respondents to place in the public domain details regarding the appointment process as per the directions of the Hon'ble Supreme Court in WPC 436 of 2018 especially as regards:
 - a. Names of members of 'Search Committee' and 'Selection Committee'
 - b. Particulars of applicants
 - c. Criteria followed by the Search Committee to shortlist candidates
 - d. names of candidates who have been shortlisted
5. Issue such other writ, direction or order, which this Hon'ble court may deem fit under the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY

PETITIONERS THROUGH:

PRASHANT BHUSHAN

Dated: .09. 2019

Counsel for the Petitioners

New Delhi

Annexure P12

Information Commission	Directions of the Supreme Court in WPC 436 of 2018	Status as on 5-9-2019
Central Information Commission (CIC)	<p>Directions in judgment dated 15-2-2019:</p> <p><i>67(v) We would also like to impress upon the respondents to fill up vacancies, in future, without any delay. For this purpose, it would be apposite that the process for filling up of a particular vacancy is initiated 1 to 2 months before the date on which the vacancy is likely to occur so that there is not much time lag between the occurrence of vacancy and filling up of the said vacancy.</i></p>	<ul style="list-style-type: none"> - Currently 4 posts of information commissioners are lying vacant. Commission functioning with 7 commissioners, including the Chief. - Pursuant to the directions of the Supreme Court in WPC 436 of 2018 (order dated 13-12-2018), the central government advertised 4 posts of information commissioners which were vacant. The last date for receiving applications was January 25, 2019. - No appointments have been made till date even though 256 applications were received - Pendency of appeals/complaints as of 4-9-2019 is 32,405. Pendency has been rising every month.
Andhra Pradesh State Information Commission	<p>Directions in judgment dated 15-2-2019:</p> <p><i>"50) The affidavit further states that another notification was issued calling upon applications for filling up of the post of SCIC and remaining Information Commissioners. It is, however, not mentioned as to when this notification inviting applications for SCIC and Information Commissioners was issued. It is also not understood as to why steps were not taken for filling up of the post of SCIC as the Chief, who is the head of the Commission, performs crucial role insofar as functions of the SIC is concerned. As per Section 15(4) of the Act, the general</i></p>	<ul style="list-style-type: none"> - No State Chief Information Commissioner appointed till date. AP SIC has been functioning without a Chief Information Commissioner ever since the AP SIC was constituted in August 2017. - One information commissioner appointed in May 2019. Commission currently functioning with 4 information commissioners

	<p><i>superintendence, direction and management of the affairs of the SIC vests in the SCIC. We, therefore, get an impression that a very lackadaisical approach is adopted in filling up of this post and the AP SIC is virtually non functional since May 2017. May be, with three Information Commissioners who have recently been appointed, AP SIC shall get activated, but to limited extent. However, that hardly serves the purpose and does not make the SIC fully functional.</i></p> <p><i>51) We, therefore, impress upon the State of Andhra Pradesh to fill up the post of SCIC and also the remaining posts of Information Commissioners at the earliest and in any case within three months from the date of this judgment.”</i></p>	
<p>Maharashtra State Information Commission</p>	<p>Directions in judgment dated 15-2-2019: <i>“57) Pertinently, the respondent State has not denied pendency of 40,000 appeals and complaints as on February 2018. It has also not given any figures about the disposal of cases by the SIC. Though it is mentioned that the sanctioned strength is only 8 (and not 11 as contended by the petitioners), as of today, 2 Information Commissioner posts are to be filled. No doubt, these posts became vacant only in November 2018. We expect that steps be taken in advance so that such posts are filled up immediately after they became vacant and they do not remain unfilled for long</i></p>	<ul style="list-style-type: none"> - Commission currently functioning with 5 commissioners. - Pendency as of 31-7-2019 is more than 48,000 appeals and complaints

	<p><i>period. In this behalf, general directions are given at the end. Further, going by the pendency, which is huge, it would be appropriate if at this juncture the SIC has a total strength of 1 SCIC and 10 Information Commissioners. This suggestion may be considered and decision in this behalf shall be taken by the State Government within one month and the newly created posts shall be filled up within six months from the date of this judgment."</i></p>	
<p>Odisha State Information Commission</p>	<p>Supreme Court in its judgment dated February 15, 2019 directed that the Government fill all the vacancies of the sanctioned posts within two months (Government of Odisha had till then sanctioned four posts, including that of the Chief) and also take a decision regarding sanctioning three additional posts. The relevant extract from the judgment is given below:</p> <p><i>"64)... One post of Information Commissioner is lying vacant since 27th May, 2015. It is further stated that advertisement for filling up of these posts is issued and the last date for receipt of the application was 31st January, 2019. Selection Committee is also constituted to fill up the posts. We expect the said posts to be filled up within two months.</i></p> <p><i>65) Insofar as pendency of cases is concerned, the respondent accepted that as on the date of filing of the affidavit, i.e., 18th January, 2019, 1998 complaint cases and 9764 appeals were</i></p>	<ul style="list-style-type: none"> - Commission currently functioning with 3 commissioners, including the chief - In May 2019, one of the information commissioners retired and the commission was functioning with 2 commissioners (including the Chief) till August 2019, when one commissioner was appointed - As of March 31, 2019, more than 11,000 appeals and complaints were pending before the commission

	<p><i>pending before the Commission. The respondents have also filed the chart containing receipt and disposal of the complaint cases as well as appeals. In the year 2018, only 522 complaints were disposed of. Likewise 2500 appeals were disposed of. It shows that there is a necessity for more Information Commissioners and to begin with, at least, three more posts of Information Commissioners should be created. We are, therefore, of the opinion that the State Government should immediately considering creating more posts of Information Commissioners. Decision in this behalf shall be taken by the State Government within one month and the newly created posts shall be filled up within four months from the date of this judgment."</i></p>	
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