

CENTRAL INFORMATION COMMISSION

2nd Floor, C-Wing, August Kranti Bhawan,
Bhikaji Cama Place, New Delhi -110066.

Tel: 011 – 26182597, 26182598

Email: kl.das@nic.in

Complaint No.:-CIC/DOREV/C/2016/294561-BJ

Complainant : Mr. Venkatesh Nayak,

Respondent : 1. CPIO & DCIT (OSD), (Inv.1),
Ministry of Finance, Department of Revenue,
Central Board of Direct Taxes,
New Delhi

2. CPIO,
C/o. Member Secretary,
Special Investigation Team on Black Money,
Department of Revenue, Ministry of Finance,
New Delhi

Date of Hearing : 06.10.2017
Date of Decision : 10.10.2017

Date of filing of RTI applications	04.11.2015
CPIO's response	09.12.2015
Date of filing the First appeal	13.01.2016
First Appellate Authority's response	12.02.2016
Date of diarised receipt of complaint by the Commission	25.07.2016

ORDER

FACTS:

The Complainant vide his RTI application sought information on 07 points regarding photocopy of letter reportedly written by Mr. Herve' Falcini, Former Employee of the Geneva Branch of HSBC Bank to the Hon'ble Chairman, Special Investigation Team (SIT) constituted pursuant to Order dated 04.07.2011 passed by the Hon'ble Supreme Court of India in WP (Civil) No. 176 of 2009, responses sent by the Hon'ble Chairman or any member of or employee serving the said SIT to Mr. Herve' Falcini till date, file notings held by the said SIT in relation to the said letter of Mr. Herve' Falcini and issues related thereto.

The CPIO and DCIT (OSD) (Inv.I) vide its letter dated 09.12.2015, provided a point wise response to the Complainant denying information on points 01 to 04 u/s 8(1)(e) & 8(1)(h) of the RTI Act, 2005. As regards points 05 to 07, it was stated that the information was likely to be available with the O/o the

JS (Revenue) and Member Secretary to SIT, Department of Revenue. Thus the RTI application was transferred to the concerned department u/s 6 (3) of the RTI Act, 2005. Dissatisfied by the response of the CPIO, the Complainant approached the FAA. The FAA, vide its order dated 12.02.2016, while upholding the reply of the CPIO, directed the CPIO to transfer points 01 to 04 of the RTI application to the CPIO O/o the Joint Secretary (Revenue) and Member Secretary of the SIT for appropriate action under the RTI Act. It was further stated that the CPIO should have been more careful and diligent in use of the language/ words while transferring the RTI application to the other CPIO which prima facie indicates to suggest requirement of action on the part of the Appellant. The CPIO was also directed to strictly adhere to the time limit prescribed under Section 6 (3) of the RTI Act for transferring the RTI applications to other CPIO, in future.

In the Complaint filed by the Complainant before the Commission, it was submitted that the Complainant was fully aware of the ratio decidendi contained in the judgment of Hon'ble Supreme Court of India in the matter of CIC & Anr. Vs. State of Manipur & Anr. (AIR 2012 SC 864). In this matter Hon'ble Supreme Court was pleased to recognize the supervisory jurisdiction of the Commission under Section 18 of the RTI Act, 2005. Therefore, the Complaint was not about seeking direction to the Respondent Authority for disclosure of information in the RTI application instead the Complaint was being submitted for a direction to the Respondent Authority to comply with the applicable provisions of the RTI Act and make a decision on the information requested in the RTI application. It had been argued that the provisions relating to Appeals under Section 19 of the RTI Act do not provide for any suitable remedy in this regard.

HEARING:

Facts emerging during the hearing:

The following were present:

Complainant: Mr. Venkatesh Nayak along with Mr. John Mascrinaus;

Respondent: Mr. Santosh Kumar, Under Secretary; Shri Pranabh Kumar, Assistant Section Officer and Mr. Gaurav Pundir, Under Secretary;

The Complainant submitted that in the present matter he was not seeking direction for information but was essentially praying to the Commission for issue of appropriate orders recognising the Special Investigation Team (SIT), Department of Revenue, Ministry of Finance on Black Money (*hereafter referred as SIT on Black Money*) as a "Public Authority" within the terms of Section 2(h) of the RTI Act, 2005 and a direction to the Respondent Authority to appoint a CPIO u/s 5 (1) and a FAA u/s 19 (1) of the RTI Act for the purpose of receiving and disposing RTI application and First Appeal

respectively. A reference was also made to the contents of Para 4 and 5 of the Prayers/ Relief Sought to submit that he was also seeking a direction to the Respondent Authority to require the CPIO so appointed to make a decision regarding disclosure of all the information sought in the RTI application and a general direction to the Department of Personnel and Training, Government of India requiring them to ensure compliance with all the provisions of the RTI Act by any Public Authority that is established or constituted after the commencement of the RTI Act, such as appointment of CPIOs and FAAs undertaking suo motu disclosure of information u/s 4 (1) of the RTI Act and voluntary disclosure of information as per Section 26 (1) (c) of the RTI Act. In his complaint dated 11.07.2016 (diarised by the Commission on 25.07.2016), the Complainant in his grounds for recognising the SIT as a “Public Authority” referred to section 2 (h) (d) of the RTI Act, 2005 which read as follows:

“public authority” means any authority or body or institution of self government established or constituted-

XXX

XXX

XXX

(d) by notification or order made by the appropriate Government”

It was submitted that clause (h) made it crystal clear that any body or authority constituted by a notification issued by the appropriate government would be a “Public Authority” for the purpose of implementing the RTI Act. It was submitted that the SIT was constituted by a notification of the Government of India vide number F. No. 11/2/2009- Ad. E.D. dated 29.05.2014 published in the Gazette of India Extraordinary, the same day. Being a multi member body comprising of a Chairman, a Vice Chairman and 10 other members, the SIT clearly met both the criteria u/s 2 (h) (d) of the RTI Act, 2005 namely that it is a “body” for the purpose of the Section and that it had been constituted by the Central Government vide a notification. Further the terms of reference indicated that it was tasked with responsibilities and duties of investigation, initiation of proceedings and prosecution whether in the context of appropriate criminal or civil proceedings against certain individuals named in the said notification. A reference was also made to paras 2 (iii) and (iv) of the said notification. The Complainant also referred to para 4 of the said notification wherein it was mentioned that “All organ, agencies, departments and agents of the State, whether at the level of the Union of India or the State Government including but not limited to all the statutorily formed Individual bodies and other constitutional bodies, extend all co-operation necessary for the functioning of the Special Investigation Team”. The Complainant further referred to the

contents of Para 06 of the notification to submit that the extracts from the said notification made it amply clear that the SIT was also an “authority” tasked with public function wielding immense powers and performing onerous responsibilities and that it unequivocally satisfied the criteria laid down in section 2 (h) of the RTI Act, 2005. The Complainant also submitted that the SIT was both a “body” and an “authority” constituted vide a notification of the Central Government. The Complainant submitted that despite meeting the criteria laid down in Section 2 (h) of the RTI Act, 2005 the RTI application was not replied to despite being transferred on 16.02.2016. It was submitted that Section 18 (1) (f) of the RTI Act, 2005 provides a ground for a person to submit complaint to the Commission in respect of requesting or obtaining access to records under the Act and that it was a fit case for the Commission to inquire into. It was also submitted that he was fully aware of the ratio-decidenti contained in the judgment of the Hon’ble Supreme Court of India in the matter of Chief Information Commissioner & Anr. vs. State of Manipur & Anr. [AIR 2012 SC 864] wherein the Supreme Court was pleased to recognise the supervisory jurisdiction of the Commission under Section 18 of the RTI Act. Therefore, the Complaint was not about seeking a direction for disclosure of information but was submitted to move the Commission for a direction to SIT to comply with the provisions of the RTI Act and make a decision on the information requested in the RTI Application. A reference was also made to Section 2 (a) of the RTI Act as per which the Central Government was the ‘appropriate government’ for all public authorities established, constituted, owned, controlled or substantially financed by it. It was also stated that no information was available in the public domain about the CPIO or the FAA of the SIT and being an authority established to investigate non-compliance with the rule of law by individuals who stashed away Black Money, the SIT must set an example by complying with all the provisions of law as are applicable to it. Further, given the complexities of governance, it was highly likely that newer and newer Public Authorities would be established or constituted under the Central Government for various purposes. The RTI Act is silent about the timelines that such new public authorities must observe to become fully compliant with the provisions of the RTI Act. Hence, there was a grey area in the RTI Act as regards the manner in which compliance by new established or constituted public authorities must be ensured.

In its written submission dated 04.10.2017, the CPIO and Under Secretary Ad ED stated that no information was available with the CPIO, Ad ED. However, a reply dated 11.8.2016 have been given to the Complainant with the approval of Joint Secretary (Revenue), Member Secretary, SIT, Black Money. It was stated that the SIT on Black Money had been constituted vide

notification dated 29.5.2014 which, inter alia, contained the terms of the reference of the SIT and other details. It was informed that the SIT had been submitting its report from time to time to the Hon'ble Supreme Court and it contains inputs from various investigation agencies. Keeping view of the nature of the information contained in the reports it was submitted that the information sought could not be provided since it was exempted from disclosure under Section 8 (1) (h) of the RTI Act. During the hearing, it was also conveyed that all RTI applications pertaining to the SIT were dealt with by their section by collating inputs from the concerned departments/divisions.

In its written submission dated 27.09.2017, Mr. Gaurav Pundir, US (Inv. I), referred to para 11.2.2. of the Complaint wherein it was mentioned that the SIT was constituted by a notification of Government of India vide notification no. F. No. 11/2/2009-Ad. E.D. dated 29.05.2014. It was apparent that the 1st Respondent Public Authority as referred in the Complaint was CPIO, O/o Member Secretary, Special investigation Team on Black Money, Dept. of Revenue, Room No. 77A, North Block, New Delhi. Moreover, the Second Respondent as mentioned in Para 6 (page 3) of the Complaint was Secretary, Department of Personnel and Training, North Block, New Delhi. It was also stated that para 10 of the Complaint contained a prayer or relief by the Complainant that suitable directions could be issued to 1st Respondent Public Authority and 2nd Respondent Public Authority. Thus their office had not been made a Respondent before the Commission in the said Complaint. Further, in the Complaint, their office had been referred as merely the CPIO replying to the RTI application filed by the complainant and subsequently forwarding the RTI to 1st Respondent Public Authority *de novo*, as per the directions received from the FAA. It was therefore requested to omit their office as no cause of action had arisen on the part of their office. During the hearing, the Respondent further submitted that in compliance with the order of the FAA, points 1 to 4 of the RTI application were also transferred to the CPIO, Office of the Joint Secretary (Revenue) and Member Secretary to SIT, Department of Revenue, New Delhi vide letter dated 16.2.2016.

On a query from the Commission whether the RTI applications pertaining to the SIT were responded to or not, the Respondent (US. Ad. ED) replied in the affirmative but submitted that no designated CPIO or FAA was appointed by the SIT. It was further submitted that in the terms of references of the SIT as per the order dated 04.07.2011 of Hon'ble Supreme Court, para 5, 6, 7 inter alia provided for clauses relating to extending all necessary financial, material, legal, diplomatic assistance, remuneration allowances facilities for the Chairman and Vice-Chairman. The said notification also enjoined the responsibility upon the D/o Revenue, M/o Finance, GOI for creating appropriate infrastructure and other facilities for proper and effective

functioning of the SIT. The Commission at the outset referred to the provision of Section 2 (h) of the RTI Act, 2005 which defines the term “Public Authority” as under:

"public authority" means any authority or body or institution of self-government established or constituted—

(a) by or under the Constitution;

(b) by any other law made by Parliament;

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

(d) by notification issued or order made by the appropriate Government, and includes any—

(i) body owned, controlled or substantially financed;

(ii) Non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government”

The Hon'ble Supreme Court of India in the decision of Thalappalam Ser. Coop. Bank Ltd. and others vs. State of Kerala and Ors. CIVIL APPEAL NO. 9017 OF 2013 (Arising out of SLP (C) No.24290 of 2012) dated 07.10.2013 while dealing with the issue of whether cooperative societies registered or deemed to be registered under the Co-operative Societies Act could be considered to be Public Authority under Section 2 (h) of the RTI Act, 2005 had held that Section 2 (h) exhausts the categories mentioned therein and that it was divided into two parts, the former part dealing with body or institution of self-government, established or constituted under the Constitution, by law made by the Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate government and the later part dealing with body owned, controlled or substantially financed directly or indirectly by funds provided by the appropriate government or a non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate government. The relevant extracts of the decision are as under:

*“28. Section 2(h) exhausts the categories mentioned therein. **The former part of 2(h) deals with:***

(1) an authority or body or institution of self-government established by or under the Constitution,

(2) an authority or body or institution of self government established or constituted by any other law made by the Parliament,

(3) an authority or body or institution of self-government established or constituted by any other law made by the State legislature, and

(4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate government.

29. Societies, with which we are concerned, admittedly, do not fall in the above mentioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by the Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate government. **Let us now examine whether they fall in the later part of Section 2(h) of the Act, which embraces within its fold**

- (5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government,
- (6) non- governmental organizations substantially financed directly or indirectly by funds provided by the appropriate government.”

Similarly the High Court of Delhi in the case of *National Stock Exchange v. CIC - W.P(C) .No.4748 of 2007* decided on 15-4-2010 had also observed that clause (i) and (ii) of Section 2 (h) (d) were distinct from clause (a) to (d) of Section 2 (h). The relevant extract of the decision is as under:

“The three conditions, i.e., owned, controlled, substantially financed are distinct in alternative and not cumulative. The nature and type of activity and functions undertaken by the organisation are inconsequential and immaterial. If a body satisfies requirements of Clause(i) or (ii), conditions (a) to (d) need not be satisfied. Thus, when second part of Section 2(h) applies, satisfaction of conditions mentioned in (a) to (d) need not be examined.”

Therefore, based on the findings of the Hon’ble Supreme Court and the High Court of Delhi it is clear that the definition of “Public Authority” u/s 2 (h) of the RTI Act, 2005 is divided into two parts and that in the present instance, the Commission is required to ascertain whether the SIT qualifies as a Public Authority as per the first part of Section 2 (h) (d) of the RTI Act, 2005 i.e. it is a authority or body or institution of self government established or constituted by notification or order made by the appropriate Government.

The Commission agrees with the contention of the Complainant that Clause (d) of Section 2 (h) was applicable to the facts of the present case. As per the records available, it is clear that the SIT was “constituted” by way of a Central Government Notification in F. No. 11/2/2009- Ad. E.D. dated 29.05.2014 which notified the constitution of the SIT and prescribed the terms of reference as per the order dated 04.07.2011 of the Hon’ble Supreme Court. The Notification also clearly stipulates that the Ministry of Finance, Department of Revenue constituted the SIT as a multi member body comprising of a Chairman, Vice Chairman and 10 other members.

Thus, there is no scope of ambiguity in considering the SIT as a “body” as envisaged within the definition of “Public Authority” u/s 2 (h) of the RTI Act, 2005 and the Department of Revenue, M/o Finance, Government of India being the “Appropriate Government” as per the definition u/s 2 (a) constituting it as a Public Authority.

Furthermore, the Hon’ble Supreme Court of India while passing the direction for constituting the SIT in the decision of Ram Jethmalani & Ors Vs Union of India & Ors Writ Petition (Civil) No.176 of 2009 dated 04.07.2011 had in all its wisdom and awareness also envisioned the SIT as a “body” that coordinates, directs, and where necessary orders timely and urgent action by various institutions of the State

*“44. We are of the firm opinion that in these matters fragmentation of government, and expertise and knowledge, across many departments, agencies and across various jurisdictions, both within the country, and across the globe, is a serious impediment to the conduct of a proper investigation. **We hold that it is in fact necessary to create a body that coordinates, directs, and where necessary orders timely and urgent action by various institutions of the State.** We also hold that the continued involvement of this Court in these matters, in a broad oversight capacity, is necessary for upholding the rule of law, and achievement of constitutional values. However, it would be impossible for this Court to be involved in day to day investigations, or to constantly monitor each and every aspect of the investigation”*

The Division Bench of the Hon’ble High Court of Bombay in the matter of The Board of Management of the Bombay Properties of the Indian Institute of Science, through its Secretary vs. CIC and Others in W.P. No. 1887 of 2010 had while upholding the order of the CIC declaring The Board of Management of the Bombay Properties of the Indian Institute of Science as a Public Authority u/s 2 (h) held as under:

“8. The CIC has noted the arguments advanced by both the parties, i.e., the petitioner and respondent no. 03 and has stated that the Vesting Order dated 27th May 1909 had been replaced by a new scheme published by the Notification dated 22nd May 1967 by the Union of India and the said notifications stipulated that the revised scheme came into effect from 22nd May 1967 under Section 5 of the Endowments Act. Respondent No. 2 further noted that in para 2.1 of the said scheme, the Board of Management has been constituted and two out of the 4 members of the Board owe their position on the Board by the nomination of the Government of India. It is also noted that the Scheme

notified on 22nd May, 1967 has established the petitioner Board and therefore it is a public authority under Section 2 (h) (d) of the RTI Act i.e., the Board has been established/constituted by a Notification issued by the Government of India. In our opinion, this reasoning of the CIC cannot be faulted with regard to the Scheme notified on 22nd May, 1967, which has substituted the original vesting order dated 27th May, 1909

9..... We, therefore, agree with the view taken by respondent No.2 that the Petitioner Board has been established/created by the Scheme framed under the Notification dated 22nd May, 1967 by the Government of India and it is a Public Authority as defined under Section 2 (h) (d) of the Act and thus the first part of the impugned order deserves to be confirmed.”

The Commission also referred to various paragraphs of the terms of reference contained in the notification dated 29.05.2014 which establish that all financial, material, legal, diplomatic and intelligence resources, to the SIT whether such investigation or portion of investigation occurred inside the country or abroad were facilitated by the Union of India and where needed the State Government (para 5). Furthermore, para 6 also stipulates that the SIT was empowered to further investigate even where charge sheets were previously filed and that the SIT may register further case and conduct appropriate investigations and initiate proceedings for the purpose of bringing back unaccounted monies unlawfully kept in bank accounts abroad. Also, as per para 7, the Chairman and Vice- Chairman were entitled to remuneration, allowances, facilities etc as that of the judges of the Supreme Court of India. Moreover, the D/o Revenue, Ministry of Finance was responsible for creating the appropriate infrastructure and other facilities for proper and effective functioning of the Special Investigation Team. The aforementioned discussion also elucidates that the SIT was wholly financed by government funds and was also provided with all material, legal, diplomatic and intelligence resources.

On perusal of the initial reply to the RTI application by the DCIT (OSD) (Inv.I) and CPIO dated 09.12.2015, it was observed that points 5,6 and 7 of the application relating to photocopy of all documents containing details of action taken till date by the SIT pursuant to the letter of Mr. Herve' Falcini, list containing titles of reports submitted by the SIT to the Government of India and the Hon'ble Supreme Court of India, etc was transferred to the O/o the Jt. Secretary (Revenue) and Member Secretary, SIT, Department of Revenue u/s 6 (3) of the RTI Act, 2005 which meant that the O/o DCIT (OSD) (Inv. I), D/o Revenue, M/o Finance recognised the Member Secretary,

SIT as a distinct and separate authority being the custodian of information. The Dy. Secretary (Inv. I) CBDT and Appellate Authority before whom the First Appeal was preferred by the Complainant, vide its order dated 12.02.2016, went a step ahead and directed the CPIO to transfer the remaining points i.e. points 01 to 04 as well to the O/o the Jt. Secretary (Revenue) and Member Secretary, SIT, Department of Revenue for appropriate action under the RTI Act. The CPIO was also “directed to strictly adhere to the time limit prescribed u/s 6 (3) of the RTI Act for transferring the RTI Application to other CPIO, in future”. This order was complied with by the CPIO and DCIT (OSD) (Inv. I) who vide its letter dated 16.02.2016 transferred the RTI application to the CPIO and Jt. Secretary (Revenue) and Member Secretary, SIT, Department of Revenue afresh, for reply to all the points of the RTI Application as deemed appropriate. The afore-mentioned details clearly suggest that both the CPIO and FAA, (Inv-I), CBDT, New Delhi considered SIT to be a separate Public Authority and hence transferred the application u/s 6 (3) of the RTI Act, 2005. At this juncture, a discussion on Section 6 (3) of the RTI Act, 2005 would be germane to the subject under consideration. Section 6 (3) of the RTI Act, 2005 reads as under:

“Where an application is made to a public authority requesting for an information,—

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application”

The afore-mentioned provision provides for transfer of application within 05 days by a “Public Authority” to “another Public Authority”. Since the CPIO and FAA, (Inv. I), CBDT recognised the SIT to be a separate Public Authority, it was justified on their part to transfer the RTI application. However, the CPIO, (Inv-I) transferred that application much after the period prescribed under the Act which also prompted the FAA to direct the CPIO to strictly adhere to the time limit prescribed u/s 6 (3). Subsequently no reply was provided to the Complainant for more than 140 days which prompted him to file the present Complaint before the Commission. The RTI Act, 2005

stipulates time limits in its various provisions relating to responding to RTI Applications, transfer of applications, filing and disposing of first appeal to ensure that a culture of information dissemination is strengthened so that a robust functioning of the democracy gets established. This was recognised by the Hon'ble High Court of Delhi in Mujibur Rehman vs Central Information Commission (W.P. (C) 3845/2007)(Dated 28 April, 2009) wherein it was held as under:

*“14.....The court cannot be unmindful of the circumstances under which the Act was framed, and brought into force. It seeks to foster an "openness culture" among state agencies, and a wider section of "public authorities" whose actions have a significant or lasting impact on the people and their lives. **Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. It is to ensure these ends that time limits have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy.**”*

Thus timely response is the essence of RTI mechanism which was created to ensure transparency and accountability in the functioning of a Public Authority. Considering that the information sought was held and available with the SIT itself, the Commission felt that it was necessary to declare it as a separate Public Authority to ensure that the other departments within the Department of Revenue were not reduced as mere Post Offices forwarding the RTI applications to the SIT. The High Court of Delhi in the matter of J P Aggarwal v. Union of India (WP (C) no. 7232/2009 had upheld the penalty imposed by the CIC on the Petitioner while rejecting the argument of the Petitioner that he as PIO was merely required to forward the application for information to the officer concerned and/or in possession of the said information and upon receipt of such information from the concerned officer furnish the same to the information seeker on the ground that the argument of PIO would reduce the office of PIO to that of a Post Office. The Court thus held that:

“8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO. As has been noticed above, penalty has been imposed on the petitioner not for the reason of delay which the petitioner is attributing to respondent no.4 but for the reason of the petitioner having acted merely as a Post Office, pushing the application for information received, to the

respondent no.4 and forwarding the reply received from the respondent no.4 to the information seeker, without himself "dealing" with the application and/or "rendering any assistance" to the information seeker. The CIC has found that the information furnished by the respondent no.4 and/or his department and/or his administrative unit was not what was sought and that the petitioner as PIO, without applying his mind merely forwarded the same to the information seeker. Again, as aforesaid the petitioner has not been able to urge any ground on this aspect. The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates. The PIO has to apply his own mind independently and take the appropriate decision and cannot blindly approve / forward what his subordinates have done."

Furthermore, to a query from the Commission during the hearing on whether the D/o Revenue, M/o Finance had any objection if the SIT was declared as a Public Authority, the Respondent [CPIO and US Ad. Ed] replied in the negative. The Commission noted that in the written submission dated 04.10.2017, the CPIO and US (Ad.ED) referred to a letter dated 11.08.2016 issued by him with the approval of the Jt. Secretary (Revenue) and Member Secretary, SIT, Black Money wherein the information sought by the Complainant was denied u/s 8 (1) (h) of the RTI Act, 2005 further indicating that the SIT for Black Money was indeed a Public Authority subjected to the provisions of the RTI Act, 2005. Thus at no stage in the matter i.e. from the stage of replying to the RTI application to the stage of appearing before the Commission, any express or implied objections were raised by the Respondent regarding the SIT for Black Money being not covered within the definition of Public Authority u/s 2 (h) of the RTI Act, 2005.

The RTI Act is an Act enacted to provide for citizens to secure, access to information under the control of public authorities and to promote transparency and accountability in the working of every public authority. The preamble of the Act reads as follows:

"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS 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;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.”

Much before the legislative enactment of the RTI Act, 2005, our Judiciary, in a progressive interpretation of the Constitutional provisions, had paved the way towards delineating the Right to Information. In 1975, in *State of UP vs. Raj Narain* (1975 AIR 865, 1975 SCR (3) 333), Justice Mathew had ruled:

“In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries.”

The Hon'ble Supreme Court of India in the decision of *R.B.I. and Ors. V. Jayantilal N. Mistry and Ors*, Transferred Case (Civil) No. 91 of 2015 (Arising out of Transfer Petition (Civil) No. 707 of 2012 decided on 16.12.2015 observed as under:

“The ideal of ‘Government by the people’ makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for ‘open governance’ which is a foundation of democracy.”

The High Court of Delhi in *General Manager Finance Air India Ltd & Anr v. Virender Singh*, LPA No. 205/2012, Decided On: 16.07.2012 regarding the disclosure of information for public interest, held:

“8. The RTI Act, as per its preamble was enacted to enable the citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. An informed citizenry and transparency of information have been spelled out as vital to democracy and to contain corruption and to hold Governments and their instrumentalities accountable to the governed. The said legislation is undoubtedly one of the most significant enactments of independent India and a landmark in governance.”

The High Court of Bombay in *Shonkh Technology International Ltd. v. State Information Commission Maharashtra Konkan Region, Appellate Authority and United Telecom Limited v. State Information Commission Maharashtra Konkan Region and Ors.*, W.P. Nos. 2912 and 3137 of 2011 decided on 01.07.2011 held as under

“The RTI Act is an Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. The preamble of the RTI Act itself refers to this aspect and the constitutional principles enshrined in several articles of the Constitution. It is very clearly postulated that democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold the Governments and their instrumentalities accountable to the governed. The revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. Therefore, the RTI Act seeks to harmonize these conflicting interests while preserving the paramount nature of democratic ideals.”

The Commission felt that the Supreme objective/ motive with which the Central/ State Information Commission were constituted were to set out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. In the light of the preamble of the RTI Act, 2005 there are several exemptions carved out under Section 8 of the RTI Act, 2005 which can be used by a Public Authority to deny information depending on the facts and circumstances of each case.

The purpose of the RTI Act, 2005 is transparency and accountability in the functioning of entities which impact citizens’ daily lives. Recognising the significance of the RTI Act, 2005 in empowering people with the means to

scrutinize government action, the Hon'ble Delhi High Court in its judgment delivered by Justice Ravindra Bhat in Indian Olympic Association –Vs- Veerish Malik and others(WP)(C) No. 876/2007 had held as below:-

“The Act marks a legislative milestone in the post independence era to further democracy. It empowers citizens and information applicants to demand and be supplied with information about public records. Parliamentary endeavor is to extend it also to public authorities which impact citizens daily lives. The Act mandates disclosure of all manner of information and abolishes the concept of locus standi of the information applicant; no justification for applying (for information) is necessary; decisions and decision making processes, which affect lives of individuals and groups of citizens are now open to examination. Parliamentary intention apparently was to empower people with the means to scrutinize government and public processes, and ensure transparency. At the same time, the need of society at large, and Governments as well as individuals in particular, to ensure that sensitive information is kept out of bounds have also been accommodated under the Act.”

Thus, considering the spirit of the RTI Act, 2005 and in light of conditions laid down under Section 2 (h) of the RTI Act, 2005 it would be just and appropriate to declare the SIT, a Public Authority more so for the reason that it was performing a pious public duty bestowed upon it by the Hon'ble Supreme Court of India of bringing back the unaccounted money in foreign bank accounts by Indians or other entities operating in India.

The Commission finds that every action of the government must be actuated in public interest and for larger public good. When a Public Authority is largely funded by the Government and performs the duty of bringing back unaccounted money unlawfully kept in bank accounts abroad, it was essentially performing a Public Duty and thus every citizen has every right to know about certain information within the framework of the RTI Act, 2005. Even though the definition of Public Authority u/s 2 (h) of the RTI Act, 2005 does not prescribe “performance of Public Duty” as one of the criteria, the High Court of Orissa in the matter of W.P.(C) No.9042 of 2006 (NESCO Vs. State of Orissa & Ors.), reported in 109(2010) CLT 473 held North Eastern Electricity Company of Orissa as a Public Authority u/s 2 (h) of the RTI Act, 2005 *inter alia* for the reason that the Company was performing essential public duty. The relevant extract of the decision are as under:

“12.....Moreover the 4 distribution companies, including the Petitioner company were discharging governmental functions of distribution and supply of electricity to the people of the State, which is an essential public duty. All these go to show that the State Government

has a deep and pervasive control over all the 4 distribution companies including the Petitioner and such control is not mere regulatory.

13. In view of the above, we are of the considered opinion that the Petitioner company is a “public authority”..... holding that the Petitioner company falls within the definition of “public authority” as defined in the RTI Act...”

The Commission is fully aware that the definition of “Public Authority” u/s 2 (h) of the RTI Act, 2005 does not prescribe “performance of Public Duty” as one of the criteria for determining if an Authority is “Public Authority” or not, yet performance of such duty by the authority, (in the present instance the duty of bringing back unaccounted money unlawfully kept in bank accounts abroad) cannot be undermined to not be considered as an important Public Duty by the SIT which qualifies as a Public Authority as per the tests laid down in the first part to Section 2 (h) (d) of the RTI Act, 2005.

The Hon’ble Supreme Court of India in the decision of Ram Jethmalani & Ors Vs Union of India & Ors Writ Petition (Civil) No.176 of 2009 dated 04.07.2011 had also recognised that large amounts of unaccounted monies would also lead to a natural suspicion that they have been transferred out of the country in order to evade payment of taxes, thereby depleting the capacity of the nation to undertake many tasks that are in public interest. The relevant extracts of the decision are as under:

“5. Large amounts of unaccounted monies, stashed away in banks located in jurisdictions that thrive on strong privacy laws protecting bearers of those accounts to avoid scrutiny, raise each and every worry delineated above. First and foremost, such large monies stashed abroad, and unaccounted for by individuals and entities of a country, would suggest the necessity of suspecting that they have been generated in activities that have been deemed to be unlawful. In addition, such large amounts of unaccounted monies would also lead to a natural suspicion that they have been transferred out of the country in order to evade payment of taxes, thereby depleting the capacity of the nation to undertake many tasks that are in public interest.”

Moreover, the Hon’ble Supreme Court of India vide its important and significant decision passed by way of resolution dated 03.10.2017 declared that decisions regarding uploading of collegium’s resolutions should be uploaded on website for ensuring transparency of collegium system.

“THAT the decisions henceforth taken by the Collegium indicating the reasons shall be put on the website of the Supreme Court, when the recommendation(s) is/are sent to the Government of India, with regard to the cases relating to initial elevation to the High Court Bench, confirmation as permanent Judge(s) of the High Court, elevation to the post of Chief Justice of High Court, transfer of High Court Chief Justices / Judges and elevation to the Supreme Court, because on each occasion the mater...

The Resolution is passed to ensure transparency and yet maintain confidentiality in the Collegium system.”

In *Mardia Chemical Limited v. Union of India* (2004) 4 SCC 311, the Hon'ble Supreme Court of India while considering the validity of SARFAESI Act and recovery of non-performing assets by banks and financial institutions in India, recognised the significance of Public Interest and had held as under :

“.....Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact in the socio-economic drive of the country.....”

The Hon'ble Supreme Court in the matter of *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*: (2012) 13 SCC 61 while explaining the term “Public Interest” held:

“22. The expression "public interest" has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression "public interest" must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression "public interest", like "public purpose", is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs (State of Bihar v. Kameshwar Singh([AIR 1952 SC 252])). It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake [Black's Law Dictionary (8th Edn.).”

DECISION

Keeping in view the facts of the case and the submissions made by both the parties, the Commission decides that the SIT is a Public Authority as per Section 2 (h) of the RTI Act, 2005. The Commission therefore directs the Competent Authority in the SIT to appoint a CPIO/ FAA in compliance with the provisions of the RTI Act, 2005.

The Complaint stands disposed with the above direction.

(Bimal Julka)
Information Commissioner

Authenticated True Copy:

(K.L.Das)
Deputy Registrar

Copy to:

- 1- The Secretary, Department of Revenue, M/o Finance, North Block, New Delhi – 110001
- 2- The Secretary, DoP&T, North Block, New Delhi - 110001
- 3- The Chairman, CBDT, Department of Revenue, M/o Finance, North Block, New Delhi – 110001;