

Madras High Court
Madras High Court
The Registrar General vs K.U.Rajasekar on 17 April, 2013
DATED: 17.04.2013

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.No.23448 of 2012

and

M.P.No.1 of 2012

The Registrar General,

High Court of Madras,

Chennai 600 104. ... Petitioner

Vs.

K.U.Rajasekar ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari, calling for the records in Case No.40997/Enquiry/A/2011, dated 02.07.2012 of the Tamil Nadu Information Commission, Chennai and quash the same.

For Petitioner : Mr.S.Haja Mohideen Gisthi

For Respondent : Mr.K.U.Rajasekar

Party in person.

ORDER

M.VENUGOPAL,J

The Petitioner has preferred the instant Writ of Certiorari, praying for issuance of an order in calling for the records in Case No.40997/Enquiry/A/2011, dated 02.07.2012, on the file of the Tamil Nadu Information Commission, Chennai and quash the same.

2.Earlier, the Tamil Nadu Information Commission, Chennai, while passing orders in Case No.40997/Enquiry/A/2011 on 02.07.2012 (filed by the Respondent) in Paragraphs 3 and 4, has observed as under:

.The Petitioner has preferred the first appeal under Section 19(1) to the appellate authority on 30.06.2011. The appellate authority has furnished the information on 24.08.2011 to the petitioner. Not satisfied with the information supplied, the petitioner has filed the second appeal under Section 19(3) to the Commission on 28.09.2011. On the basis of the petitioner/appellant's second appeal to the Commission, this Commission has issued a direction on 31.10.2011 directing the appellate authority to send his remarks on the comments made by the petitioner to the Commission on 31.10.2011. The petitioner again has filed a petition before the Commission on 20.04.2012. Based on the petition dt.20.04.2012 today's enquiry was conducted.

4.During the enquiry, the petitioner has stated that he has not received the required information from the Public Information Officer till now. The Asst. Public Information Officer who appeared before the Commission requested two weeks time to furnish the information. The Commission was inclined to accept the request of the Public Authority and the time requested by the APIO was granted. But, at the same time, it was noticed that there has been a delay of 56 days by the public authority in informing the petitioner about the procedure for applying for copies. The appellate authority has furnished this information only on 24.08.2011 for the appeal filed on 30.06.2011. Therefore, the information shall be supplied free of cost as per Section 7(6) of the R.T.I. Act, 2005.

and resultantly, directed the Public Information Officer (Office of the Registrar, High Court) to furnish copies of all Diary notings and hearing records of CMSA No.10 of 2007 of Madras High Court, to the Respondent (Petitioner/Appellant), free of cost, by 11.07.2012 and report compliance to the Commission.

3.Assailing the correctness of the orders dated 02.07.2012 in Case No.40997/Enquiry/A/2011, passed by the Tamil Nadu Information Commission, Chennai, the Learned Counsel for the Petitioner/Registrar General, High Court, submits that the impugned orders dated 02.07.2012 passed by the Tamil Nadu Information Commission are void ab initio, because of the fact that the said orders are in negation of the provisions of the Right to Information Act, 2005.

4.The Learned Counsel for the Petitioner urges before this Court that the impugned orders, dated 02.07.2012, have been passed by the Tamil Nadu Information Commission, Chennai, without considering the fact that the information sought for by the respondent is barred, as per the provisions of the Right to Information Act, 2005.

5.The Learned Counsel for the Petitioner projects an argument that information sought for by the Respondent is covered under the Rules of the High Court, Madras, Appellate Side, 1965.

6.The Learned Counsel for the Petitioner submits that the request of the petitioner in regard to the copy of the Mediation report in the matter of SLP (Civil) 19109 of 2009, Supreme Court Letter No.D.No.2796/XII/2009, dated 22nd April 2010 and the copy of the Mediation report in the matter of CMSA No.10 of 2007 on the file of this Court Letter No.File No.349/2007, dated 28th Nov. 2007, cannot be furnished to the Respondent/Petitioner, because of the fact that the Honourable Supreme Court in the decision Moti Ram (dead) through Lrs and another v. Ashok Kumar and another, (2011) 1 Supreme Court Cases 466, at Page 467, has clearly held that the discussions and proposals in regard to the mediation should not be disclosed. Further, it is observed that if the happenings in the mediation proceedings are disclosed, it will destroy the confidentiality of the mediation process.

7.In support of the contention that the Tamil Nadu Information Commission, which passed the impugned orders dated 02.07.2012, need not be a party to the proceedings before this Court in W.P.No.23448 of 2012, the Learned Counsel for the Petitioner/High Court relies on the order dated 12.02.2010 passed by this Court between N.Velayutham and another v. The Registrar, Tamil Nadu Information Commission, Chennai-18 and 3 others, wherein in Paragraph 10 and 11, it is observed and laid down as follows: 0.Before closing the case it must be noted that whenever a person challenges the order of the State or Central Information Commission, it is not necessary to make the Commission a party to the writ petition. The Commission is a statutory

appellate authority and is expected to function within the four corners of the RTI Act. If its orders are under challenge, the Commission is not expected to defend it. In a writ for certiorari the order will have to speak for itself. If the Commission is made as a party, it will be an unnecessary drain on the Commission to engage counsel to defend its orders. In no case a court is expected to defend its decisions. More often, the Commission's orders are challenged by the Government departments or information officers at the expense of the Government. In these cases, the applicant who sought the information will be a party and will be expected to defend his request.

11.Only for the purpose of calling for records or sending a copy of the order, the Information Commission need not be made as a party. If the persons who do not file proper records, then a notice may be sent by the Registry to call for the records if ordered by the courts. Likewise, on complicated matters if any legal assistance is required, the Court can appoint an 'amicus curiae' to help the Court. The orders of the Court on all matters involving the Right to Information Act, as a matter of routine, can be marked to the appropriate Commission. The Registry shall henceforth must ask the counsel who files writ petitions to delete the Information Commission from the array of parties. This will not only reduce the paper work and administrative difficulties faced by the Commission, besides saving them draining their meagre resources.

8.The Respondent/Petitioner (Party-in-person) submits that he filed Petition HMOP No.32 of 2002 (under Section 13(1)(ia) and (iii) of the Hindu Marriage Act, 1995 on the file of the Learned Subordinate Judge, Poonamallee) for divorce on the ground of cruelty and insanity against his wife, during March 2002 and ultimately, the petition has been dismissed on 02.09.2005. Subsequently, he preferred an Appeal before this Court and he was asked to file the same before the District Court, Chengalpattu and the said case was transferred to the Fast Track Court, Poonamallee and that the Appellate Court allowed his petition and granted the relief of divorce on 26.10.2006. However, in Second Appeal filed by his wife, this Court, on 22.12.2008, reversed the Decree of the divorce granted by the First Appellate Court. Furthermore, he was informed by the Registrar that his entire case file was missing and when his Advocate approached the Registrar about the non-listing of his case for a long time and finally, the orders were reserved in the middle of September 2008 and subsequently, the orders were pronounced. He submitted a representation to know about the present status of his case.

9.According to the Respondent/Petitioner, he requested for supply of copy of all Diary notings and hearing records of CMSA No.10 of 2007 on the file of this Court from first hearing (listing before this Court) to final hearing and Judgment during December 2008, under the Right to Information Act, 2005. The Appellant (wife) in CMSA No.10 of 2007, has figured as respondent in HMOP No.32 of 2002 and that the Respondent (Husband) has been shown as Petitioner in the original matrimonial petition and in CMSA No.10 of 2007 besides he being the Cross Objector in Cross Objection No.48 of 2007 and also that, he figured as Respondent in the Appeal.

10.The Respondent/Petitioner filed an application on 29.04.2011 {under the Right to Information Act before the Registrar (Administration), Public Information Officer (PIO), High Court, Chennai}, seeking copy of all Diary notings and hearing records of CMSA No.10 of 2007 on the file of this Court from first hearing i.e., April 2007 (listing before Honourable Court) to final hearing and Judgment during December 2008.

11.The Respondent/Petitioner filed an Appeal before the Registrar General of this Court (Appellate Authority Petitioner in W.P.No.23448 of 2012) inter alia stating that he filed RTI Application No.001/kur/rTI/2011, dated 29th April 2011 and that he approached the Deputy Registrar/RTI on 20th June 2011 in Chennai High Court, seeking information, who replied that they are waiting for the information from the concerned Sections and hence, requested the Appellate Authority (Writ Petitioner) to take appropriate action under the provisions of the Right to Information Act and solicited for an earlier reply in providing the information/documents.

12.The Registrar General of this Court (Appellate Authority under RTI Act) in R.O.C.No.1140/2011/RTI, dated 24.08.2011, has addressed a communication to the Respondent / Petitioner (with reference to Appeal

Petition dated 11.05.2011) and furnished the following informations:

=====
S. Queries Information

NO.
=====

1. In Mediation report The Number "SLA 19109/2009" has the case details have been mentioned in the Mediation been mentioned as report, since that has been S.L.A. (Civil) No.... referred to in the communication against S.L.P. (Civil) received from the Hon'ble No..... Supreme Court of India, New Delhi.

(i.e., Petition for Special

Leave to Appeal (Civil) No.19109 of 2009)
=====

2. In the same report one It is true that one of the of the mediators has Mediators has not signed the not signed. report. The Mediation was closed on 14.06.2010 and the Report was prepared and sent to the Hon'ble Supreme Court on 28.06.2010. Since one of the Mediators did not turn up till 28.06.2010, the report was sent without his signature to avoid

further delay.

=====

3. In Mediation case No opinion can be offered.

No.349/2007, the Moreover the information sought petitioner was a relates to what transpired respondent. The between the parties in the Mediation has taken Mediation process and the same place in two days and is confidential and personal in during mediation the nature, exempted from disclosure petitioner refused to under Section 8(1)(i) of the RTI taken the interim Act, 2005. the Hon'ble Supreme maintenance from the Court of India by order dated respondent stating 07.12.2010 in Civil Appeal 1095 that she was not of 2008, has held that the starving for money to Mediation proceedings are take food. In this totally confidential and way the petitioner personal. The ratio laid down only has not shown by the Hon'ble Supreme Court is willingness. Hence, the law of the land and hence it is requested to the information sought is also provide the complete exempted from disclosure u/s information/documents 8(1)(b) of the RTI Act, 2005.

of both the mediation reports.

=====

13.Also that, the Respondent was informed that with reference to his Appeal petition dated 30.06.2011 that he can obtain copies of Grounds of Appeal in CMSA No.10/2007, Cross Objection No.48/2007 and the

Judgment and Decree, dated 22.12.2008, by filing Copy Application before the Copyist Department, as per the Madras High Court Appellate Side Rules, 1965.

14. Dissatisfied with the reply of the Registrar General of this Court, dated 24.08.2011 (Petitioner in Writ Petition), the Respondent again approached the Information Commissioner, Tamil Nadu, Chennai-18, through Second Appeal inter alia stating that he requested RTI (Information) for supply of copies of all Diary notings & hearing records of CMSA No.10/2007 on the file of this Court from 1st hearing i.e., April 2007 (listed before this Court) to final hearing and Judgment during December 2008 but, in the reply, the Appellate Authority (Writ Petitioner) asked him to collect the copy of order in CMSA No.10/2007 and further, he stated that he was already having the copy of order but, his request was only for copy of all Diary notings and hearing records of CMSA No.10/2007. Moreover, he also added that vide R.O.C.No.1140/2011/RTI, dated 12th September 2011, his original Postal Order of Rs.100/-, bearing No.23H880762, along with RTI Application, dated 29th April 2011, were returned. As such, he requested the Appellate Authority (in Second Appeal viz., the Information Commissioner, Tamil Nadu Public Information Centre, Chennai) to take appropriate action under the Provisions of Right to Information Act.

15. Based on the copy of representation of the Respondent/ Petitioner, dated 28.09.2011, the Tamil Nadu Information Commission, Chennai, vide order No.40997/A/2011, dated 31.10.2011, has directed the Appellate Authority (Registrar General Writ Petitioner) to send his remarks on the comments made by the Respondent/petitioner to the Commission.

16. The Registrar General/Appellate Authority (under RTI Act Petitioner in Writ Petition before this Court), in his reply, in R.O.C.No.2539/2011/RTI, dated 01.12.2011, addressed to the Registrar, Tamil Nadu Information Commission, Chennai, has among other things stated as follows: The appellant was promptly informed on 24.08.2011 that no opinion can be offered on the mediation proceedings. Such information was given in the light of the direction of the Hon'ble Supreme Court of India, in the case of Moti Ram & another vs. Ashok Kumar & another (Civil Appeal No.1095/2008), wherein the Court has held that mediation proceedings are totally confidential proceedings, unlike other proceedings, which are conducted openly before Courts in the public gaze and if the happenings in the mediation proceedings are disclosed, it will destroy the confidentiality of the mediation process. Therefore, the appellant's request for providing the complete information/documents of the mediation was denied.

Regarding the appellant's request for supply of copies of the Grounds of Appeal in CMSA No.10/2007, Cross Objection No.48/2007 and the Judgment and Decree dated 22.12.2008, was also denied, since the same cannot be furnished under the RTI Act inasmuch as there is a separate provision under the Madras High Court Appellate Side Rules for supply of judicial records.

17. The Tamil Nadu Information Commission has issued summons, dated 13.06.2012, requiring the Public Information Officer, Office of the Registrar, High Court, Chennai, along with all original records to appear on 27.06.2012 at 10.30 A.M. in connection with the complaint lodged by the Respondent/Petitioner, with a view to provide an opportunity of being heard in person and to adduce evidence in support of his complaint/in defense of the decision and/or to cause production of the document(s) information in question.

18. Finally, the Tamil Nadu Information Commission, Chennai, in Case No.40997/Enquiry/A/2011, dated 27.06.2012, has directed the Public Information Officer, Office of the Registrar, High Court, Chennai, to furnish copies of all Diary notings and hearing records of CMSA No.10/2007 to the Petitioner/Appellant (Respondent in Writ Petition) free of cost, by 11.07.2012 and report compliance to the Commission.

19. It is not in dispute that the Respondent (husband in the Writ Petition) has filed petition namely, HMOP No.32 of 2002 on the file of the Learned Subordinate Judge, Poonamallee, seeking the relief of dissolution of marriage, dated 27.03.1986, that took place between him and his wife under Section 13(1)(ia) and (iii) of the Hindu Marriage Act, 1955. The Respondent/Wife (Appellant in CMSA No.10 of 2007 before this Court) has

filed a counter to HMOP No.32 of 2002 and orders have been passed by the trial Court, on 02.09.2005, holding that the Respondent/Husband (Petitioner in HMOP Proceedings) is not entitled to get the relief of dissolution of his marriage, dated 27.03.1986, that has taken place between him and his wife (Respondent in HMOP No.32 of 2002 and Appellant in CMSA No.10 of 2007). Further, the trial Court has proceeded to observe that there is no proper prima facie reason on the part of the Respondent/Husband (in Writ Petition) to say that his wife is not fit to lead a matrimonial life and ultimately, dismissed the Matrimonial Original Petition.

20. Being dissatisfied with the said order, dated 02.09.2005, in HMOP No.32 of 2002, passed by the Learned Subordinate Judge, Poonamallee, the Respondent (in Writ Petition husband) as an Appellant, filed CMA No.70 of 2005 on the file of the Learned Additional District and Sessions Judge (Fast Track Court No.IV), Poonamallee, as an aggrieved person.

21. The First Appellate Authority, in CMA No.70 of 2005, on 26.10.2006, has allowed the Appeal inter alia observing that 'the mental stress is proved by the Appellant. It is more than the regular wear and tear of human life. The behaviour and attitude of the respondent is born out of the psychological problem for which she has been given treatment frequently. The Appellant cannot be made to put up with the torture endlessly. Also, the Respondent/Husband has been directed to pay a monthly maintenance of Rs.5,000/- to the respondent/wife, from the date of Appeal (CMA No.70 of 2005) dated 07.12.2005, in consideration of her health and consequently, granted the Decree for divorce in his favour', by setting aside the order dated 02.09.2005, passed by the trial Court in HMOP No.32 of 2002.

22. The Respondent's wife (in HMOP No.32 of 2002) as an aggrieved person and on being dissatisfied with the Judgment dated 26.10.2006 in CMA No.70 of 2005 on the file of the Learned Additional District & Sessions Judge, Fast Track Court No.IV, Poonamallee, in reversing the Judgment in HMOP No.32 of 2002 on the file of the Learned Subordinate Judge, Poonamallee, dated 02.09.2005, has preferred the Civil Miscellaneous Second Appeal No.10 of 2007 and also, figured as Respondent in Cross Objection No.48 of 2007 and the Respondent/Husband (Petitioner in HMOP has filed Cross Objection No.48 of 2007) as Cross Objector before this Court.

23. After contest, this Court on 22.12.2008, has delivered a Common Judgment in CMSA No.10 of 2007 and Cross Objection No.48 of 2007, by allowing the Civil Miscellaneous Second Appeal (in favour of the Appellant/Wife) without costs, by setting aside the Judgment and Decree of the First Appellate Court in CMA No.70 of 2005, dated 26.10.2006 and also, allowed the Cross Objection No.48 of 2007 filed by the Respondent/Husband as against the Direction issued by the Learned Additional District and Sessions Judge, (Fast Track Court No.IV), Poonamallee, wherein he was directed to pay Rs.5,000/- per month to the Appellant/Wife.

24. The Respondent/Husband filed a petition for Special Leave to Appeal (Civil) No.19109 of 2009 before the Honourable Supreme Court and the Honourable Supreme Court, dated 23.07.2010, passed the following order:

Tamil Nadu Mediation and Conciliation Centre has reported that the parties have not been able to amicably resolve their dispute.

We have heard Shri K.U.Rajasekar, Petitioner, who has appeared in person, and learned counsel for the respondent.

and dismissed the Special Leave Petition.

25. Not content with that, the Respondent/Husband filed Review Petition (Civil) No.616/2011 in Petition for Special Leave Petition (C) No.19109 of 2009, to review the order of the Honourable Supreme Court, dated

23.07.2010 and the Review Petition, on 17.03.2011, has been dismissed.

26.It is to be noted that the information sought for must be in existence and accessible to Public Authority as per decision of the Honourable Supreme Court in Khanapuram Gandaiah v. Administrative Officer and others, (2010) 2 Supreme Court Cases 1.

27.The definition Section 2(e)(iii) of the Right to Information Act, 2005, refers to the Chief Justice of the High Court in the case of a High Court, as the Competent Authority. Further, Section 2 (f) refers to information which means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

28.Section 2(h) of the Right to Information Act, 2005, defines Public Authority which 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.

29.Likewise, Section 2(i) defines "record" which includes

- (a) any document, manuscript and file;
- (b) any microfilm, microfiche and facsimile copy of a document;
- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (d) any other material produced by a computer or any other device.

30.As a matter of fact, Section 2(j) of the Act, defines Right to Information which means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

31. Section 2(m) of the Act defines State Public Information Officer which means the State Public Information Officer designated under Sub-section (1) and includes a State Assistant Public Information Officer designated as such Under Sub-section (2) of Section 5.

32. Section 3 speaks of all citizens, who shall have the right to information subject to the provisions of the Right to Information Act.

33. As per Section 4(1)(a) of the Act, every public authority shall maintain all its records duly catalogued and indexed in a manner and form which facilitates the right to Information under the Right to Information Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network so that access to such record is facilitated etc.,

34. Section 7 of the Act deals with the procedure for disposal of the request for supply of information, according to which the Central Public Information Officer or the State Information Officer, as the case may be, shall provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in Sections 8 and 9 of the Act, within the time limit mentioned hereunder: (i) within 30 days from the date of application in ordinary cases;

(ii) within 48 hours where the information sought for concerns the life or liberty of a person;

(iii) if the notice is required to be given to the third party regarding disclosure of information under section 11 of the Act, the period of ten days shall be added to the period within which the information is to be supplied, which period shall be given to the third party to make representation i.e., the time limit in such a case would be forty days; (iv) where the application is given to the Central or the State Assistant Public Information Officer, a period of five days shall be added to the statutory period of 30 days in view of proviso to sub-section (2) of section 5 of the Act.

35. Also, Section 7(2) of the Act, speaks of failure to give decision within specified period to be deemed to be refusal. Furthermore, Section 20(1) of the Act, provides that the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, but the total amount of such penalty shall not exceed twenty five thousand rupees; if it is of the opinion that- (i) the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information; or

- (ii)has not furnished information within the time specified under sub-section (1) of section 7 of the Act; or
- (iii)malafidely denied the request for information; or
- (iv)knowingly given incorrect, incomplete or misleading information; or
- (v)has destroyed information which was the subject of the request; or
- (vi)has obstructed in any manner in furnishing the information.

36.Section 8 of the Right to Information Act specifically deals with the cases of exemption from disclosure or information when such disclosure affects prejudicially the sovereignty and security of India etc., As regards the non-disclosure of information, it is to be pointed out that Sections 8 and 11 of the Act exhibit that there is total bar on six out of ten exceptions viz., (1)(a),(b),(c),(f),(g) and (h). In regard to the matters covered by (1)9d),(e)(h) and (i) of Sections 8 of the Act, the Information Officers will have to record finding by assessing the relative merit between the public interest and the secrecy.

37.It is to be borne in mind that an Exemption from disclosure of information as per Section 8 of the Right to Information Act, 2005, is attracted under two following circumstances.

- (1)If the information is personal in nature and has no relationship to any public activity or interest and
- (2)furnishing of the same would cause unwarranted invasion of privacy of an individual,

as per decision Kunche Durga Prasad & Anr. v. Public Information Officer, Office of Chief Manager (HR) Oil and Natural Gas Corporation Ltd., Rajahmundry & Ors, AIR 2010 ANDHRA PRADESH 105.

38.Section 9 refers to Grounds for rejection to access in certain cases. Therefore, the Central Public Information Officer and the State Public Information Officer, as the case may be, may reject a request for information, if it concerns, an infringement of copyright subsisting in a person other than the State.

39.Also, Section 10 of the Act, provides that where a part of the information is exempt from disclosure, access to information may be provided to that part of the record, which does not contain any information, is exempted from disclosure under the Act.

40.In this connection, we relevantly point out that Clause 37 of the Letters Patent speaks of Regulation of proceedings which is extracted as under:

And we do further ordain that it shall be lawful for the said High Court of Judicature at Madras from time to time to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its Admiralty, Vice-Admiralty, testamentary intestate and matrimonial jurisdiction, respectively: Provided always that the said High Court shall be guided in making such rules and orders as far as possible by the provisions of the Code of Civil Procedure, being an act passed by the Governor General-in council, and being Act No.VIII of 1859 and the provisions of any law which has been made, amending or altering the same, by competent legislative for India.

41.Continuing further, Order XII Rules 1 & 2 of the High Court of Madras Appellate Side Rules, 1965, runs hereunder:

.Nothing in these rules shall entitle a person to a copy of (1) Judges' notes or minutes, (2)correspondence not strictly judicial, and (3) confidential correspondence.

2.Any party to a proceeding shall be entitled to obtain copies of judgments, decrees or orders made or of any documents filed or exhibited in such proceeding on payment of charges in the manner prescribed under these rules.

42.By virtue of powers conferred under Article 37 of the Letters Patent, and of all other powers conferred hereunto, this Court through ROC.No.4282-A/2010/F1 in No.SRO C-18/2010, has brought about the following amendments to Rules 3 & 4 of Order XII of the Rules of the High Court, Madras, Appellate Side, 1965, which proceeds thus: (i)The words Supported by an affidavit stating the purpose for which the copy is required . Occurring after the words, for grant of such copies by a duly stamped petition in Rule 3 of Order XII of Rules of the High Court, Madras, Appellate Side, 1965, shall stand deleted; and (ii)The proviso to Rule 4 of Order XII Rules of the High Court, Madras, Appellate Side, 1965, viz., Provided that, in cases of doubt whether the copy applied for should be furnished, the application shall be placed before the Registrar for his decision. If the application is refused by the Registrar, it shall be returned to the applicant with the order of the Registrar endorsed on it , shall stand deleted and, its place, the following proviso is substituted. Provided that in cases where issuance of certified copies to the third parties is restricted by any judicial order to maintain secrecy and privacy, the Registrar shall refused the application.

43.It is to be pointed out that there is no definite Article in the Constitution of India which provides for its citizens right to know. One can safely infer that from Art. 19(1)(a) of the Constitution of India which provides freedom of thought and expression which indirectly includes right to get information. Also, Art. 21 guarantees 'Right to Life and Personal liberty' to citizens. 'Right to Life' will not be a complete concept if basic Human Right namely right to know is not included in it. Art. 39(1)(b) and (c) provides for adequate means of livelihood equal distribution of material resources of community to check concentration of wealth and means of production.

44.The Right to Information Act, 2005, is not only confined to Article 19(1)(a) of the Constitution of India. It is also found in Articles 14 and 21 of the Constitution of India.

45.In fact, Section 18(3) of the Right to Information Act, 2005, confers power of the Central Information Commission or the State Information Commission with all the powers of Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters. (a)summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(b)requiring the discovery and inspection of documents;

(c)receiving evidence on affidavit;

(d)requisitioning any public record or copies thereof from any court or office;

(e)issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

46.Under the Right to Information Act, 2005, the Authority has a fundamental function to perform either to furnish information or to deny the information sought for. The State Information Commission, Chennai,

exercises judicial powers and the said Commission is amenable to certiorari jurisdiction of Honourable High Court.

47. As per Section 18 of the Right to Information Act, the State Information Commission is only required to look into as to whether the endorsement issued by the Public Information Officer is in conformity with the Right to Information Act and also, whether the information which is sought for by the Petitioner/Applicant has been deliberately withheld or is not furnished within the time stipulated under the Act. Also that, as per Section 18 of the Act, the State Information Commission can conduct enquiry etc., as per decision Ahmedabad Education Society & Anr. v. Union of India & Ors., AIR 2008 GUJARAT 42.

48. At this stage, this Court worth recalls the decision of the Honourable Supreme Court Namit Sharma v. Union of India, 2013-2-L.W.1, at Special Pages 38 to 41, wherein in Paragraphs 90 to 105, whereby and whereunder it is observed and laid down as follows: 90. As already noticed, in the United Kingdom, the Information Rights Tribunal and the Information Commissioners are to deal with the matters arising from both, the FOIA as well as the Data Protection Act, 1998. These tribunals are discharging quasi judicial functions. Appointments to them are dealt with and controlled by the TCEA. These appointments are treated as judicial appointments and are covered under Part 2 of the TCEA. Section 50 provides for the eligibility conditions for judicial appointment. Section 50(1)(b) refers to a person who satisfies the judicial-appointment eligibility condition on an N-year basis. A person satisfies that condition on N-year basis if (a) the person has a relevant qualification and (b) the total length of the person's qualifying periods is at least N years. Section 52 provides for the meaning of the expression 'gain experience in law' appearing in Section 50(3)(b). It states that a person gains experience in law during a period if the period is one during which the person is engaged in law-related activities. The essence of these statutory provisions is that the concerned person under that law is required to possess both a degree as well as experience in the legal field. Such experience inevitably relates to working in that field. Only then, the twin criteria of requisite qualification and experience can be satisfied.

91. It may be of some relevance here to note that in UK, the Director in the office of the Government Information Service, an authority created under the Freedom of Information Act, 2000 possesses a degree of law and has been a member of the Bar of the District of Columbia and North Carolina in UK. The Principal Judge of Information Rights Jurisdiction in the First-tier Tribunal, not only had a law degree but were also retired solicitors or barristers in private practice.

92. Thus, there exists a definite requirement for appointing persons to these posts with legal background and acumen so as to ensure complete faith and confidence of the public in the independent functioning of the Information Commission and for fair and expeditious performance of its functions. The Information Commissions are required to discharge their functions and duties strictly in accordance with law.

93. In India, in terms of sub-Section (5), besides being a person of eminence in public life, the necessary qualification required for appointment as Chief Information Commissioner or Information Commissioner is that the person should have wide knowledge and experience in law and other specified fields. The term 'experience in law' is an expression of wide connotation. It presupposes that a person should have the requisite qualification in law as well as experience in the field of law. However, it is worthwhile to note that having a qualification in law is not equivalent to having experience in law and vice-versa. 'Experience in law', thus, is an expression of composite content and would take within its ambit both the requisite qualification in law as well as experience in the field of law. A person may have some experience in the field of law without possessing the requisite qualification. That certainly would not serve the requirement and purpose of the Act of 2005, keeping in view the nature of the functions and duties required to be performed by the Information Commissioners. Experience in absence of basic qualification would certainly be insufficient in its content and would not satisfy the requirements of the said provision. Wide knowledge in a particular field would, by necessary implication, refer to the knowledge relatable to education in such field whereas experience would necessarily relate to the experience attained by doing work in such field. Both must be read

together in order to satisfy the requirements of Sections 12(5) of and 15(5) the Act of 2005. Similarly, wide knowledge and experience in other fields would have to be construed as experience coupled with basic educational qualification in that field.

94. Primarily it may depend upon the language of the rules which govern the service but it can safely be stated as a rule that experience in a given post or field may not necessarily satisfy the condition of prescribed qualification of a diploma or a degree in such field. Experience by working in a post or by practice in the respective field even for long time cannot be equated with the basic or the prescribed qualification. In absence of a specific language of the provision, it is not feasible for a person to have experience in the field of law without possessing a degree in law. In somewhat different circumstances, this Court in the case of State of Madhya Pradesh v. Dharam Bir [(1998) 6 SCC 165], while dealing with Rule 8(2) of the Madhya Pradesh Industrial Training (Gazetted) Service Recruitment Rules, 1985, took the view that the stated qualification for the post of Principal Class I or Principal Class II were also applicable to appointment by promotion and that the applicability of such qualification is not restricted to direct appointments. Before a person becomes eligible for being promoted to the post of Principal, Class II or Principal, Class-I, he must possess a Degree or Diploma in Engineering, as specified in the Schedule. The fact that the person had worked as a Principal for a decade would not lead to a situation of accepting that the person was qualified to hold the post. The Court held as under : 2. Experience gained by the respondent on account of his working on the post in question for over a decade cannot be equated with educational qualifications required to be possessed by a candidate as a condition of eligibility for promotion to higher posts. If the Government, in exercise of its executive power, has created certain posts, it is for it to prescribe the mode of appointment or the qualifications which have to be possessed by the candidates before they are appointed on those posts. The qualifications would naturally vary with the nature of posts or the service created by the Government.

33. The post in question is the post of Principal of the Industrial Training Institute. The Government has prescribed a Degree or Diploma in Engineering as the essential qualification for this post. No one who does not possess this qualification can be appointed on this post. The educational qualification has a direct nexus with the nature of the post. The Principal may also have an occasion to take classes and teach the students. A person who does not hold either a Degree or Diploma in Engineering cannot possibly teach the students of the Industrial Training Institute the technicalities of the subject of Engineering and its various branches.

95. Thus, in our opinion, it is clear that experience in the respective field referred to in Section 12(5) of the Act of 2005 would be an experience gained by the person upon possessing the basic qualification in that field. Of course, the matter may be somewhat different where the field itself does not prescribe any degree or appropriate course. But it would be applicable for the fields like law, engineering, science and technology, management, social service and journalism, etc.

96. This takes us to discuss the kind of duties and responsibilities that such high post is expected to perform. Their functions are adjudicatory in nature. They are required to give notice to the parties, offer them the opportunity of hearing and pass reasoned orders. The orders of the appellate authority and the Commission have to be supported by adequate reasoning as they grant relief to one party, despite opposition by the other or reject the request for information made in exercise of a statutory right.

97. It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/ constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to pass reasoned orders. In this regard, reference can be made to the judgments of this Court in the cases of Siemens Engineering & Manufacturing Co. of India

Ltd. v. Union of India & Anr. [(1976) 2 SCC 981]; and Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota v. Shukla & Brothers [(2010) 4 SCC 785].

98. The Chief Information Commissioner and members of the Commission are required to possess wide knowledge and experience in the respective fields. They are expected to be well versed with the procedure that they are to adopt while performing the adjudicatory and quasi judicial functions in accordance with the statutory provisions and the scheme of the Act of 2005. They are to examine whether the information required by an applicant falls under any of the exemptions stated under Section 8 or the Second Schedule of the Act of 2005. Some of the exemptions under Section 8, particularly, sub-sections (e), (g) and (j) have been very widely worded by the Legislature keeping in mind the need to afford due protection to privacy, national security and the larger public interest. In terms of Section 8(1)(e), (f), (g), (h) and (i), the authority is required to record a definite satisfaction whether disclosure of information would be in the larger public interest or whether it would impede the process of investigation or apprehension or prosecution of the offenders and whether it would cause unwarranted invasion of the privacy of an individual. All these functions may be performed by a legally trained mind more efficaciously. The most significant function which may often be required to be performed by these authorities is to strike a balance between the application of the freedom guaranteed under Article 19(1)(a) and the rights protected under Article 21 of the Constitution. In other words, the deciding authority ought to be conscious of the constitutional concepts which hold significance while determining the rights of the parties in accordance with the provisions of the statute and the Constitution. The legislative scheme of the Act of 2005 clearly postulates passing of a reasoned order in light of the above. A reasoned order would help the parties to question the correctness of the order effectively and within the legal requirements of the writ jurisdiction of the Supreme Court and the High Courts.

99. Persons of eminence in public life is also an expression of wide implication and ramifications. It takes in its ambit all requisites of a good citizen with values and having a public image of contribution to the society. Such person should have understanding of concepts of public interest and public good. Most importantly, such person should have contributed to the society through social or allied works. The authorities cannot lose sight of the fact that ingredients of institutional integrity would be applicable by necessary implication to the Commissions and their members. This discussion safely leads us to conclude that the functions of the Chief Information Commissioner and Information Commissioners may be better performed by a legally qualified and trained mind possessing the requisite experience. The same should also be applied to the designation of the first appellate authority, i.e., the senior officers to be designated at the Centre and State levels. However, in view of language of Section 94 5, it may not be necessary to apply this principle to the designation of Public Information Officer.

100. Moreover, as already noticed, the Information Commission, is performing quasi-judicial functions and essence of its adjudicatory powers is akin to the Court system. It also possesses the essential trappings of a Court and discharges the functions which have immense impact on the rights/obligations of the parties. Thus, it must be termed as a judicial Tribunal which requires to be manned by a person of judicial mind, expertise and experience in that field. This Court, while dealing with the cases relating to the powers of the Parliament to amend the Constitution has observed that every provision of the Constitution, can be amended provided in the result, the basic structure of the Constitution remains the same. The dignity of the individual secured by the various freedoms and basic rights contained in Part III of the Constitution and their protection itself has been treated as the basic structure of the Constitution.

101. Besides separation of powers, the independence of judiciary is of fundamental constitutional value in the structure of our Constitution. Impartiality, independence, fairness and reasonableness in judicial decision making are the hallmarks of the Judiciary. If Impartiality is the soul of Judiciary, 'Independence' is the life blood of Judiciary. Without independence, impartiality cannot thrive, as this Court stated in the case of Union of India v. R. Gandhi, President, Madras Bar Association [(2010) 11 SCC 17].

102. The independence of judiciary *stricto sensu* applies to the Court system. Thus, by necessary implication, it would also apply to the tribunals whose functioning is quasi-judicial and akin to the court system. The entire administration of justice system has to be so independent and managed by persons of legal acumen, expertise and experience that the persons demanding justice must not only receive justice, but should also have the faith that justice would be done.

103. The above detailed analysis leads to an *ad libitum* conclusion that under the provisions and scheme of the Act of 2005, the persons eligible for appointment should be of public eminence, with knowledge and experience in the specified fields and should preferably have a judicial background. They should possess judicial acumen and experience to fairly and effectively deal with the intricate questions of law that would come up for determination before the Commission, in its day-to-day working. The Commission satisfies abecedarians of a judicial tribunal which has the trappings of a court. It will serve the ends of justice better, if the Information Commission was manned by persons of legal expertise and with adequate experience in the field of adjudication. We may further clarify that such judicial members could work individually or in Benches of two, one being a judicial member while the other being a qualified person from the specified fields to be called an expert member. Thus, in order to satisfy the test of constitutionality, we will have to read into Section 12(5) of the Act that the expression knowledge and experience includes basic degree in that field and experience gained thereafter and secondly that legally qualified, trained and experienced persons would better administer justice to the people, particularly when they are expected to undertake an adjudicatory process which involves critical legal questions and niceties of law. Such appreciation and application of legal principles is a *sine qua non* to the determinative functioning of the Commission as it can tilt the balance of justice either way. Malcolm Gladwell said, the key to good decision making is not knowledge. It is understanding. We are swimming in the former. We are lacking in the latter. The requirement of a judicial mind for manning the judicial tribunal is a well accepted discipline in all the major international jurisdictions with hardly with any exceptions. Even if the intention is to not only appoint people with judicial background and expertise, then the most suitable and practical resolution would be that a judicial member and an expert member from other specified fields should constitute a Bench and perform the functions in accordance with the provisions of the Act of 2005. Such an approach would further the mandate of the statute by resolving the legal issues as well as other serious issues like an inbuilt conflict between the Right to Privacy and Right to Information while applying the balancing principle and other incidental controversies. We would clarify that participation by qualified persons from other specified fields would be a positive contribution in attainment of the proper administration of justice as well as the object of the Act of 2005. Such an approach would help to withstand the challenge to the constitutionality of Section 12(5).

104. As a natural sequel to the above, the question that comes up for consideration is as to what procedure should be adopted to make appointments to this august body. Section 12(3) states about the High-powered Committee, which has to recommend the names for appointment to the post of Chief Information Commissioner and Information Commissioners to the President. However, this Section, and any other provision for that matter, is entirely silent as to what procedure for appointment should be followed by this High Powered Committee. Once we have held that it is a judicial tribunal having the essential trappings of a court, then it must, as an irresistible corollary, follow that the appointments to this august body are made in consultation with the judiciary. In the event, the Government is of the opinion and desires to appoint not only judicial members but also experts from other fields to the Commission in terms of Section 12(5) of the Act of 2005, then it may do so, however, subject to the riders stated in this judgment. To ensure judicial independence, effective adjudicatory process and public confidence in the administration of justice by the Commission, it would be necessary that the Commission is required to work in Benches. The Bench should consist of one judicial member and the other member from the specified fields in terms of Section 12(5) of the Act of 2005. It will be incumbent and in conformity with the scheme of the Act that the appointments to the post of judicial member are made in consultation with the Chief Justice of India in case of Chief Information Commissioner and members of the Central Information Commission and the Chief Justices of the High Courts of the respective States, in case of the State Chief Information Commissioner and State Information Commissioners of that State Commission. In the case of appointment of members to the

respective Commissions from other specified fields, the DoPT in the Centre and the concerned Ministry in the States should prepare a panel, after due publicity, empanelling the names proposed at least three times the number of vacancies existing in the Commission. Such panel should be prepared on a rational basis, and should inevitably form part of the records. The names so empanelled, with the relevant record should be placed before the said High Powered Committee. In furtherance to the recommendations of the High Powered Committee, appointments to the Central and State Information Commissions should be made by the competent authority. Empanelment by the DoPT and other competent authority has to be carried on the basis of a rational criteria, which should be duly reflected by recording of appropriate reasons. The advertisement issued by such agency should not be restricted to any particular class of persons stated under Section 12(5), but must cover persons from all fields. Complete information, material and comparative data of the empanelled persons should be made available to the High Powered Committee. Needless to mention that the High Powered Committee itself has to adopt a fair and transparent process for consideration of the empanelled persons for its final recommendation. This approach, is in no way innovative but is merely derivative of the mandate and procedure stated by this Court in the case of L. Chandra Kumar (supra) wherein the Court dealt with similar issues with regard to constitution of the Central Administrative Tribunal. All concerned are expected to keep in mind that the Institution is more important than an individual. Thus, all must do what is expected to be done in the interest of the institution and enhancing the public confidence. A three Judge Bench of this Court in the case of Centre for PIL and Anr. v. Union of India & Anr. [(2011) 4 SCC 1] had also adopted a similar approach and with respect we reiterate the same.

105. Giving effect to the above scheme would not only further the cause of the Act but would attain greater efficiency, and accuracy in the decision-making process, which in turn would serve the larger public purpose. It shall also ensure greater and more effective access to information, which would result in making the invocation of right to information more objective and meaningful.

49. As per Section 19 of the Right to Information Act, 2005, the State Information Commission is a Tribunal vested with the Appeal power to decide the appeal as per decision Poornaprajna House Building Co-operative Society Ltd. v. Karnataka Information Commissioner & Ors, AIR 2007 KARNATAKA 136.

50. No wonder, the Chief of the State Information Commission is a creation of statute and his powers are restricted to the provisions of the Right to Information Act.

51. Ordinarily, as a Rule of Practice, whenever Writ is sought challenging the orders of Information Commission or of the Tribunal, the Commission/Tribunal always must be a necessary party to the Writ Petition, in our considered view. Moreover, the presence of the Commission may be necessary for a complete and comprehensive ultimate decision on the issues involved in the proceedings. However, in the present Writ proceedings before this Court, the Tamil Nadu Information Commission, Chennai, is not arrayed as a Party/Respondent by the Writ Petitioner/Registrar General, High Court of Madras, when the orders passed by the Tamil Nadu Information Commission dated 02.07.2012, are challenged before this Court. In fact, even when the orders of the Tamil Nadu Information Commission, Chennai, are challenged by the aggrieved party, in the Writ proceedings before this Court, either for the purpose of calling for the records or otherwise, we opined that the said Information Commission must necessarily be made as a proper/formal party for an effective and efficacious binding adjudication to avoid plurality/multiplicity of proceedings, in the subject matter in issue. Accordingly, we direct the Petitioner/Registrar General, High Court of Madras, in future, to implead the Tamil Nadu Information Commission, Chennai, as a party to the Writ proceedings, in the event of a challenge is made to the orders passed by the said Commission.

52. However, it is to be remembered that there is no provision in the Right to Information Act, 2005, for the Review of the orders passed by the Information Commission as per decision Capt. V.K. Sehgal, Chandigarh, Vs. Public Information Officer, O/O. The Director, Sainik Welfare, Punjab, (2008) 1 ID 25 (State Information Commission, Punjab).

53.The ingredients of Section 22 of the Right to Information Act envisages that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

54.Section 28 of the Right to Information Act, 2005, refers to the power of the Competent Authority, by notification in the Official Gazette to make rules in carrying out the provisions of the Act etc.,

55.At this stage, it is not out of place for this Court to quote the decision of the High Court of Delhi in Secretary General, Supreme Court of India v. Subhash Chandra Agarwal, 2010 (1) CTC 241 (Full Bench), wherein it is inter alia observed that 'every citizen is entitled to information held by or under Control of Public Authority unless it is exempted by Section 8(1) of the Right to Information Act etc.,' Further, it is held that 'the Resolution of Full Court of the Honourable Supreme Court treating declaration of assets by Judges as confidential does not make it any less information which citizen is entitled to access'.

56.As against the Judgment in L.P.A.No.501/2009, dated 12.01.2010 (by the Full Bench of the Delhi High Court) between Secretary General, Supreme Court of India and Subhash Chandra Agarwal, the Central Public Information Officer of Supreme Court of India and another (on the file of the Honourable Supreme Court of India) has preferred Civil Appeal No.10044 of 2010 (arising out of SLP (C)32855 of 2009) and the Honourable Supreme Court with C.A.10045/2010 @ SLP (C)No.32856 of 2009, Central Public Information Officer of Supreme Court of India and another v. Subhash Chandra Agarwal and Civil Appeal No.2683 of 2010, Secretary General, Supreme Court of India v. Subhash Chandra Agarwal and the Honourable Supreme Court, on 26.11.2010, in Paragraphs 12 to 19 has observed and laid down as follows: 2.Having heard the learned Attorney General and the learned counsel for the respondent, we are of the considered opinion that a substantial question of law as to the interpretation of the Constitution is involved in the present case which is required to be heard by a Constitution Bench. The case on hand raises important questions of constitutional importance relating to the position of Hon'ble the Chief Justice of India under the Constitution and the independence of the Judiciary in the scheme of the Constitution on the one hand and on the other, fundamental right to freedom of speech and expression. Right to information is an integral part of the fundamental right to freedom of speech and expression guaranteed by the Constitution. Right to Information Act merely recognizes the constitutional right of citizens to freedom of speech and expression. Independence of Judiciary forms part of basic structure of the Constitution of India. The independence of Judiciary and the fundamental right to free speech and expression are of a great value and both of them are required to be balanced.

13.The Constitution is fundamentally a public text-the monumental character of a Government and the people-and Supreme Court is required to apply it to resolve public controversies. For, from our beginnings, a most important consequence of the constitutionally created separation of powers has been the Indian habit, extraordinary to other democracies, of casting social, economic, philosophical and political questions in the form of public law remedies, in an attempt to secure ultimate resolution by the Supreme Court. In this way, important aspects of the most fundamental issues confronting our democracy finally arrive in the Supreme Court for judicial determination. Not infrequently, these are the issues upon which contemporary society is most deeply divided. They arouse our deepest emotions. This is one such controversy. William J. Brennan, Jr. in one of his public discourse observed: We current Justices read the Constitution in the only way that we can: as twentieth-century Americans. We look to the history of the time of framing and to the intervening history of interpretation. But the ultimate question must be, what do the words of the text mean in our time? For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs. What the constitutional fundamentals meant to the wisdom of other times cannot be the measure to the vision of our time. Similarly, what those fundamentals mean for us, our descendants will learn, cannot be the measure to the vision of their time. This realization is not, I assure you, a novel one of my own creation. Permit me to quote from one of the opinions of our Court, Weems V. United States, 217 U.S. 349, written nearly a century

ago: Time works changes, brings into existence new conditions and purposes. Therefore, a principle to be vital must be capable of wider application than the mischief which gave it birth. This is peculiarly true of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice John Marshall, designed to approach immortality as nearly as human institutions can approach it. The future is their care and provision for events of good and bad tendencies of which no prophesy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been, but of what may be.

14.The current debate is a sign of a healthy nation. This debate on the Constitution involves great and fundamental issues. Most of the times we reel under the pressure of precedents. We look to the history of the time of framing and to the intervening history of interpretation. But the ultimate question must be, what do the words of the text mean in our time?

15.Following substantial questions of law as to the interpretation of the Constitution arise for consideration:

1.Whether the concept of independence of judiciary requires and demands the prohibition of furnishing of the information sought? Whether the information sought for amounts to interference in the functioning of the judiciary?

2.Whether the information sought for cannot be furnished to avoid any erosion in the credibility of the decisions and to ensure a free and frank expression of honest opinion by all the constitutional functionaries, which is essential for effective consultation and for taking the right decision?

3.Whether the information sought for is exempt under Section 8(i)(j) of the Right to Information Act? 16.The above questions involve the interpretation of the Constitution raise great and fundamental issues.

17.For the aforesaid reasons, we direct the Registry to place this matter before Hon'ble the Chief Justice of India for constitution of a Bench of appropriate strength. Let the papers be accordingly placed before Hon'ble the Chief Justice of India.

18.Special Leave Petition (Civil) No. 32856 of 2009.

Leave granted. Tag with Civil Appeal arising out of S.L.P.(c) No. 32855 of 2009.

19.Civil Appeal No. 2683 of 2010

Tag with Civil Appeal arising out of S.L.P.(c) No. 32855 of 2009.

57.Be that as it may, on a careful consideration of respective contentions advanced on either side, the Respondent/ Petitioner has sought the copy of all Diary notings and hearing of records of CMSA No.10 of 2007 on the file of this Court from first hearing namely, April 2007 till the date of deliverance of Judgment on 22.12.2008 etc., under the Right to Information Act, 2005, as per his letter dated 29.04.2011 etc. Further, the Registrar General/Appellate Authority of High Court has sent a communication in R.O.C.No.2539/2011/RTI, dated 01.12.2011, addressed to the Registrar of the Tamil Nadu Information Commission, Chennai, inter alia stating that the mediation proceedings are totally confidential proceedings and therefore, the documents of mediation proceedings were denied to the Respondent. Moreover, the Registrar General of this Court (Writ Petitioner) has also informed the Registrar of Tamil Nadu Information Commission, Chennai that the Respondent/ Petitioner's request for supply of copies of Grounds of Appeal in CMSA No.10/2007, Cross Objection No.48/2007 and the Judgment and Decree dated 22.12.2008, was denied to him because of the fact that the same could not be furnished under the Right to Information Act, inasmuch as there is a separate provision under the Madras High Court Appellate Side Rules for supply of judicial records etc.,

58. At this juncture, we deem it appropriate to point out the Order dated 29.03.2006 passed in Appeal No.21/IC(A)/2006, DOO, between Arun Varma vs. Department of Company Affairs, New Delhi, wherein an information was sought for relating to register under the Companies Act and in view of the specific provisions viz., Section 610 of the Companies Act, the Appellant has been directed to approach the Registrar of Companies, to obtain relevant information.

59. Admittedly, the Respondent/Petitioner (Husband) is a party to the matrimonial proceedings from HMOP No.32 of 2002, CMA No.70 of 2005, CMSA No.10 of 2007 and finally, in SLP No.19109 of 2009 before the Honourable Supreme Court of India. At the risk of repetition, we pertinently point out that Clause 37 of the Letters Patent confers power on this Court (High Court of Madras) from time to time to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before this Court, etc., Also, we bear in mind Order XII Rules 1 and 2 of this Court's Appellate Side Rules, 1965 which permits any party to obtain certified copies as mentioned thereunder. Therefore, we are of the considered view that the Respondent/Petitioner (Husband) is entitled to receive copies of Diary notings, hearing records of CMSA No.10 of 2007, copies of Grounds of Appeal in CMSA No.10 of 2007, Cross Objection No.48 of 2007, Common Order in CMSA No.10 of 2007 and Cross Objection No.48 of 2007, dated 22.12.2008, only under the relevant provisions of the Rules of High Court, Madras (Appellate Side), 1965. Even the Respondent/Petitioner can avail the benefit of Rule 4 of the Madras High Court, Right to Information (Regulation of Fee and Cost) Rules, 2007, in and by which the information under Sections 7(1) and (5) of the Right to Information Act, can be provided to him on payment of necessary charges thereto by filing an application in respect of the copies of the order/judgment/statements/reports sought for, on payment of Rs.100/- towards cost, besides the application fee. Therefore, the contrary view taken by the Tamil Nadu Information Commission, Chennai, by virtue of its orders dated 27.06.2011 in Case No.40997/Enquiry/A/2011, to the effect that the Public Information Officer shall furnish copies of all Diary notings and hearing of records in CMSA No.10 of 2007 of High Court to the Respondent/Petitioner, free of cost, by 11.07.2012 and report compliance, is not a correct one, because of the fact that the independence of judiciary is a basic structure of the Constitution of India and also that in the Constitutional scheme of things judiciary is free from executive and legislature, in the considered opinion of this Court.

60. As such, to prevent an aberration of Justice, we interfere with the orders dated 02.07.2012 in Case No.40997/Enquiry/A/2011, passed by the Tamil Nadu Information Commission, Chennai-18 and sets aside the same. Consequently, the Writ Petition succeeds.

61. In the result, the Writ Petition is allowed, leaving the parties to bear their own costs. Resultantly, the orders passed by the Tamil Nadu Information Commission, Chennai-18, in Case No.40997/ Enquiry/A/2011, dated 27.06.2011, is set aside by this Court for the reasons assigned in this Writ Petition.

62. In view of the fact that the Respondent/Petitioner (Husband) is entitled to receive/obtain certified copies of all Diary notings and hearing records of CMSA No.10 of 2007 of this Court from first hearing April 2007 to final hearing and Judgment dated 22.12.2008, etc., under the Rules of the High Court, Madras, Appellate Side, 1965, on payment of necessary charges, to advance, the cause of Justice, we direct the Registrar General of this Court (Petitioner in the Writ Petition) to supply the copies of all Diary notings and hearing of records of CMSA No.10 of 2007 on the file of this Court from first hearing i.e., April 2007 to final hearing and Judgment on 22.12.2008 to the Respondent/Petitioner (RTI Applicant), on payment of necessary charges, as per Rules of the High Court, Madras, Appellate Side, 1965, within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

mps

To

The Registrar,

Tamil Nadu Information Commission,

No.2, Theagaraya Road,

Teynampet,

Chennai 18