THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:14.06.2013

Coram

THE HONOURABLE Mr. JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.P.No.28643 of 2012 and

M.P.No.1 of 2012

The Registrar General,

High Court of Madras,

Chennai □ 600 104. ... Petitioner

Vs.

1.R.M.Subramanian

2.The Registrar,

The Tamil Nadu Information Commission,

No.2, Theyagaraya Salai,

Teynampet,

Chennai □ 600 018. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records in Case No.11224/Enquiry/A/2012 dated 22.05.2012 of the Tamil Nadu Information Commission and quash the same.

For Petitioner : Mr.S.Haja Mohideen Gisthi

For 1st Respondent : Served □ No appearance

For 2nd Respondent : Mr.G.Rajagopalan, Senior Counsel

For M/s.G.R.Associates

ORDER

M.VENUGOPAL,J.

The Petitioner has filed this Writ Petition praying for issuance of Writ of Certiorari as against the order dated 22.05.2012 in Case

No.11224/Enquiry/A/2012 passed by the 2nd Respondent/Tamil Nadu Information Commission, Chennai.

2.The 2nd Respondent/Tamil Nadu Information Commission, Chennai, while passing the order in Case No.11224/Enquiry/A/2012 dated 22.05.2012, has, among other things, observed that 'it is contended on behalf of Public Information Officer that even though this order passed on administrative side by the Hon'ble High Court Judge, the same is concerned with Judicial Department and further that the 1st Respondent/Petitioner has been permitted to peruse/inspect this order and to that effect, a letter dated 28.04.2011 has been sent. Also, the 1st Respondent/Petitioner has informed that he has seen the order but not able to remember the date of inspection/perusal and also stated that the said order relates to Judiciary and more so, it is a judicial order and as such, he requires a copy of the same. For obtaining copy of the said order from the Court, through filing of a copy petition, the 1st Respondent/Petitioner is advised to obtain the same and accordingly, the case has been closed'.

3.The Learned Counsel for the Petitioner/Registrar General, High Court, Madras submits that the impugned order dated 22.05.2012 in Case No.11224/Enquiry/A/12 passed by the 2nd Respondent/Tamil Nadu Information Commission, Chennai is illegal and void ab initio and further, the same has been passed in violation of the provisions of the Right to Information Act, 2005.

4.The Learned Counsel for the Petitioner urges before this Court that the 2nd Respondent/Tamil Nadu Information Commission has passed the impugned order in Case No.11224/Enquiry/A/2012 dated 22.05.2012 without considering the fact that the information sought for by the 1st Respondent/Petitioner is barred by the provisions of the Right to Information Act, 2005.

5.Yet another submission of the Learned Counsel for the Petitioner is that the 2nd Respondent/Tamil Nadu Information Commission has gone wrong in accepting the plea of the 1st Respondent/Petitioner/Appellant that

the order passed by the Hon'ble High Court in Criminal Contempt Petition is a judicial order and thus the party is entitled for copy of the order as per the High Court of Madras Appellate Side Rules, 1965.

6.It is the contention of the Learned Counsel for the Petitioner that the 2nd Respondent/Tamil Nadu Information Commission has committed an error in entertaining an Appeal as the motive of the 1st Respondent/Petitioner is to hinder the administrative function of the Hon'ble High Court.

7.The grievance of the Petitioner is that the 2nd Respondent/ Tamil Nadu Information Commission has failed to appreciate a primordial fact that if frivolous petitions are entertained, then, the administration of any public authority much less the Petitioner/High Court, Madras would come to stand still and also that it would defeat the very purpose for which the Right to Information Act, 2005 was enacted.

8.Although notice has been served on the 1st Respondent/ Petitioner/Appellant as early as on 24.11.2012, he has not appeared either in person or through counsel to contest the proceedings in the Writ Petition.

9.Conversely, the Learned Senior Counsel appearing for the 2nd Respondent/Tamil Nadu Information Commission, Chennai contends that the 1st Respondent/Petitioner, being a citizen, has a statutory right to obtain the informations sought for by him, through his letters dated 03.12.2010, 05.04.2011, 01.08.2011 and 18.08.2011 etc. addressed to the Public Information Officer of the Writ Petitioner/High Court. In this regard, the Learned Senior Counsel for the 2nd Respondent seeks in aid of the ingredients of Section 4 of the Right to Information Act, 2005 which refers to 'Obligations of Public Authorities'.

10.According to the Learned Senior Counsel for the 2nd Respondent, the information sought for by the 1st Respondent/ Petitioner, through his various letters addressed to the Public Information Officer of the Madurai

Bench of the Madras High Court, clearly fall within the ambit of Section 4 of the Act.

11.That apart, the Learned Senior Counsel for the 2nd Respondent invites the attention of this Court to the ingredients of Section 22 of the Right to Information Act, 2005 which categorically envisages that the provisions of the Act have an overriding effect on 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.

12.The Learned Counsel for the Petitioner submits that the 1st Respondent/Petitioner/Appellant as a Power of Attorney Agent of L.Narayanan and 3 others filed Criminal Contempt Petition under Section 15(2) of the Contempt of Courts Act, 1971 before the Learned District Munsif-cum-Judicial Magistrate, Thirumayam in E.A.Nos.11, 12 and 20 of 2003 in E.P.No.5 of 2001 in O.S.No.85 of 1985 praying the said Court to refer the matter to the Hon'ble High Court, Madras, Madurai Bench for initiating Criminal Contempt against Thiru.Venkatesan, Tahsildar, Ponnamaravathy Taluk and 9 others for the wilful and patent violation of the execution proceeding on 14.09.2009 by the Respondents 1, 5 and 6 therein and subsequently, on 22.09.2009 by the 10th Respondent and on 11.01.2010 by the Respondents 1 to 9 in E.A.Nos.11 & 12 of 2003 in E.P.No.5 of 2001 in O.S.No.85 of 1985 pending on the file of the trial Court.

13.The Learned Counsel for the Petitioner brings it to the notice of this Court that the Learned District Munsif-cum-Judicial Magistrate, Thirumayam has referred the matter to this Court by letter in D.No.894/2010 dated 22.07.2010 and that the Hon'ble High Court has taken further action on the said Criminal Contempt Petition referred to by the trial Court in terms of Rule 5(2) of the Rules to regulate proceedings for Contempt of Subordinate Courts and of the High Court.

14.Further, it is contended on behalf of the Petitioner that the Petitioner/Hon'ble High Court, on the administrative side, has taken a view that the subject matter in issue was not a fit case for initiating contempt proceedings and the 1st Respondent/Petitioner was informed about this by the Registrar (Administration)/Public Information Officer, Madurai Bench of

the Madras High Court, Madurai in Roc.No.467/2010/ RTI/MB and Roc.No.130/2011/RTI/MB dated 15.03.2011.

15.The Learned Counsel for the Petitioner takes a plea that not content with the reply sent by the Registrar (Administration)/ Public Information Officer, Madurai Bench of Madras High Court as referred to supra, the 1st Respondent/Petitioner projected fresh Petitions dated 01.08.2011 and 18.08.2011 under the Right to Information Act, 2005 requesting supply of the order passed by the Hon'ble Chief Justice of this Court in the Contempt Petition filed by him, for which, the Registrar (Administration)/Public Information Officer, Madurai has given a reply on 18.10.2011 in Roc.No.411 & 430/ 2011/RTI/MB to the effect that his request for certain information is negatived as per Clauses 8(e) and (j) of the Right to Information Act, 2005.

16.The 1st Respondent/Petitioner filed an Appeal before the Petitioner/High Court, Madras (Registrar General - being an Appellate Authority) through his petition dated 11.11.2011 under the Right to Information Act, 2005. The Petitioner/Appellate Authority informed the 1st Respondent/Petitioner that the Public Information Officer of Madurai Bench of Madras High Court, through his communication dated 07.02.2012 in Roc.No.2609/2011/RTI, was right in rejecting the Petitions dated 01.08.2011 and 18.08.2011 since disclosure of these informations are exempted under Section 8(i)(e) and (j) of the Right to Information Act and closed the Appeal.

17.The 1st Respondent/Petitioner filed the Second Appeal [under Section 19 of the Act) before the 2nd Respondent/Tamil Nadu Information Commission, Chennai, being aggrieved against the order dated 07.02.2012 in Roc.No.2609/2011/RTI passed by the Registrar General of this Court (Appellate Authority). The 2nd Respondent has taken up the matter in Case No.11224/Enquiry/A/2012 based on the petition of the 1st Respondent/Petitioner dated 05.03.2012 and issued summons to the Public Information Officer of the Registrar's Office of Madurai Bench of Madras High Court, Madurai requiring him to appear on 16.05.2012 at 10.30 a.m. in connection with the enquiry to be held in the matter in issue.

18.Before the 2nd Respondent/Tamil Nadu Information Commission, on the date of enquiry on 16.05.2012, in Case No.11224/ Enquiry/A/2012, the 1st Respondent/Petitioner and his counsel were present. On behalf of the Petitioner/High Court, Thiru.Devanathan, the Assistant Public Information Officer/Assistant Registrar, Office of the Registrar, Chennai was present. After hearing both sides, the 2nd Respondent/Tamil Nadu Information Commission passed an order by pointing out that the public authority, while advancing his arguments, mentioned that the 2nd Respondent/Information Commission itself had already decided on various occasions, procedures for receiving the copies of the documents from the Court and advised the 1st Respondent/Petitioner to obtain the aforesaid copy, by filing copy application before the Court, by adhering to the procedure framed by the Court.

19.It comes to be known that the Petitioners L.Narayanan and 3 others in Criminal Contempt Petition No.__ of 2010 in E.A.Nos.11, 12 & 20 of 2003 in E.P.No.5 of 2001 in O.S.No.85 of 1985 on the file of the Learned District Munsif cum Judicial Magistrate, Thirumayam, arraying Venkatesan, Tahsildar, Ponnamaravathy Taluk, Pudukottai District and 9 others [Revenue Officials/Staff and Superintendent of Police, Pudukottai District] as Respondents, inter alia, stating that on 23.12.2009 the trial Court has sent notice to the Respondents 1, 5, 6 and 10 intimating that Senior Bailiff Mr.Chidambaram has been appointed to execute the order passed by this Court in Writ Petition No.11173 of 2009 dated 04.11.2009 and again he approached the 10th Respondent therein for protection on 05.01.2010 and he demanded to deposit Rs.39120/- for police force of 61 persons and he paid the entire money on the same day. Further, on 11.01.2010 at about 10.00 a.m., 4 Court Senior Bailiffs (one from Thirumayam Court and other 3 from District Court, Pudukottai) appeared on the spot and Respondents 5 to 7 arrived at the spot and when Senior Bailiff from Thirumayam asked Respondents 5 to 7 to measure the east west road to demarcate the boundary, the said Respondents have stated that they were directed by the 1st Respondent to measure Survey No.843 alone in which the building bearing door No.124 situated and that they would not measure as per the order of the Court. Little later, Respondents 2 to 6 and 8 rushed to the spot and shouted at the Court Amins that they would not allow to measure east west street so as to demarcate the suit property and put a fence etc. Subsequently, the 1st Respondent arrived at the spot and gave written

objection when the Court Amin asked the 1st Respondent to file the same into Court but the Respondents 2 and 3 threatened the Court Amin and stated that Tahsildar is also a Magistrate and that Tahsildar will obey only the Collector words but not the Court order etc.

20.In short, a reading of the contents of Affidavit in Criminal Contempt Petition No. of 2010 filed by the Petitioners through their Power of Attorney Agent, R.M.Subramanian, in E.A.Nos.11, 12 & 20 of 2003 in E.P.No.5 of 2001 in O.S.No.85 of 1985 on the file of trial Court clearly point out that the Petitioners have mentioned that all the Respondents have taken totally belligerent stand against judicial forums without regard to the rule of law and the principles of constitutional governance and therefore, the trial Court referred the matter to the Madurai Bench of Madras High Court for initiating Criminal Contempt against the contemnors/Respondents for wilful and patent violation of execution proceedings on 14.09.2009 by the Respondents 1, 5, 6 and subsequently on 22.09.2009 by the 10th Respondent and on 11.01.2010 by the Respondents 1 to 9 in E.A.Nos.11 and 12 of 2003 in E.P.No.5 of 2001 in O.S.No.85 of 1985. Also that the Petitioners in Criminal Contempt Petition No. of 2010 in E.A.Nos.11, 12 & 20 of 2003 in E.P.No.5 of 2001 in O.S.No.85 of 1985 on the file of the trial Court has, in paragraph 5, through a Power Agent, have categorically mentioned that W.P.No.11173 of 2009 was filed praying for the relief of mandamus directing the 10th Respondent/ Superintendent of Police, Pudukottai to appear in person on the spot and to provide a protection which requires strength of police and this Court, on 04.11.2009, in para 5 of its order, made the following observation:

"In the view of the submissions made by the learned counsel appearing on behalf of the petitioners as well as the respondents, this Court is of the considered view that it would be proper for the petitioners to approach the concerned executing court to request for sufficient police protection for the execution of the warrant of delivery and it is for the concerned court to pass appropriate order, directing the police officials to provide sufficient police protection at the time of execution of the warrant of delivery. The police officials concerned ought to abide by the directions issued by the executing court as and when such orders are passed".

21.The Learned District Munsif-cum-Judicial Magistrate, Thirumayam, in his communication D.No.894/2010 dated 22.07.2010 addressed to the Registrar (Judicial) of Madurai Bench of Madras High Court, Madurai, has resubmitted the Criminal Contempt Petition along with Affidavit etc. by specifying the guilty act of Respondents/ Contemnors which runs as follows:

1.The 1st respondent Tahsildar Venkatesan obstructed court amin on 11.1.2010 from discharging his duty, though he has given a written undertaking before the District Munsif Court Thirumayam on 17.9.2009 that he would co-operate with court amin to execute court Warrant whenever required. Thus, he committed guilty of criminal contempt.

2.The 2nd respondent who is Deputy Tahsildar Durairaj appeared on the suit property on 11.1.2010 without any summon or call from Court, shouted at court Amin by obstructing him from measuring the suit property for put up a fence as per the court order. Further he has stated that the Tahsildar is also a Magistrate will obey only Collector order but not the Court order. Thus he committed a guilty of contempt of Court.

3.The 3rd respondent is also Deputy Tahsildar Ravichandran obstructed a Court Amin physically and induced Taxi Owners and Drivers to create problem so as to stop the court execution. Thus, he committed a guilty of contempt of court.

4.The 4th Respondent Subramanian Revenue Inspector without any summon from the Court appeared at the suit property on 11.1.2010 questioned the court Amin by undermining the court order. Thus, he committed a guilty of contempt of court.

5.The 5th Respondent is a Village Administrative Officer Arumugam who refused to measure the suit property and adjacent road even there is a direction of the court to measure the same. Thus, he committed a guilty of contempt of court.

6.The 6th Respondent Balasubramnain being Surveyor even after receiving summon from the Court refused to measure the suit property. Thus, he committed a guilty of contempt of court.

7.The 7th respondent Gopal being a Village Maniel refused to render necessary assistance for measuring suit property as per the direction of court. Thus, he committed a guilty of contempt of court.

8.The 8th respondent Gunasekaran who is former Village Administrative Officer of Ponnamaravathy village without any summon from Court appeared at the suit property on 11.1.2010, obstructed court Amin. Thus, he committed a guilty of contempt of court.

9.The 9th respondent Executive Officer Ganesan of Ponnamaravathy Town Panchayat without any summon from the court appeared at the suit property on 11.1.2010 obstructed Court Amin from discharging his duty, though the claim petition filed by Ponnamaravathy Town Panchayat was dismissed. Thus, he committed a guilty of contempt of court.

10.The 10th respondent P.Moorthy as a Superintendent of Police as Superior Officer of the District failed to give suitable direction to the Subordinate officer to maintain law and order by controlling the erring persons including officials who obstructed the execution. He keep his word uttered already that he would give protection only to Amin but will not care about law and order. Thus, he committed a guilty of contempt of court."

22.The letter dated 22.07.2010 of the Learned District Munsif-cum-Judicial Magistrate, Thirumayam was placed before the Hon'ble Portfolio Judge of Pudukottai District, through an Office Note in Roc.No.1490-A/2010/Judl./MB, for perusal and obtaining necessary orders. On 16.12.2010, the Hon'ble Portfolio Judge, on careful consideration of the entire factual matrix, opined that this was not a fit case to initiate contempt proceedings against the Respondents.

23.Thereafter, the Registry put up an Office Note placing the entire papers in Roc.No.1490-A/2010/Judl./MB along with the Minutes recorded by the Hon'ble Portfolio Judge of Pudukottai District on 16.12.2010 before the Hon'ble Chief Justice for perusal and for further orders and the Hon'ble Chief Justice on 07.03.2011 agreed with the view of the Hon'ble Portfolio Judge.

24.It transpires that the 1st Respondent/Petitioner filed R.T.I. Petition on 05.04.2011 requesting the Registry of this Court to permit him and his counsel to peruse the entire records pertaining to his case. However, he was permitted to peruse the documents relating to the aforesaid Criminal Contempt Petition as per Section 2(j)(i) of the Right to Information Act,

2005. Accordingly, the 1st Respondent/Petitioner along with his counsel Thiru.B.Chandran, perused the entire note file in Roc.No.1490-A/2010/Judl./MB dated 11.07.2011 and also made an endorsement to that effect. Not resting with the same, the 1st Respondent/Petitioner filed two more R.T.I. Petitions in the subject matter in issue dated 01.08.2011 and 18.08.2011 praying for copies of the Minutes of the Hon'ble Portfolio Judge of Pudukottai District dated 16.12.2010 and the Minutes of the Hon'ble Chief Justice dated 07.03.2011.

25.The Registry of this Court placed an Office Note before the Hon'ble R.T.I. Committee seeking orders as to:

1)whether the copies sought for by the RTI applicant, viz., the Minutes of the Hon'ble Mr.Justice K.K.Sasidharan, dated 16.12.2010 and the minutes of the Hon'ble the Chief Justice, dated 07.03.2011, may be furnished to him?

or

2)Whether the request of the RTI applicant may be negatived, as per Section 8, Clauses (e) and (j) of the Right to Information Act, 2005, on the ground that the competent authority is not satisfied that the larger public interest warrants or justifies the disclosure of above information?"

and the Hon'ble Committee Judges recorded their individual views.

26.After the disposal of the Second Appeal (filed by the 1st Respondent/Petitioner under the Right to Information Act) by the 2nd Respondent/Tamil Nadu Information Commission in Case No.11224/A1 /2012, dated 22.05.2010, the 1st Respondent/Petitioner through his counsel at Madurai filed a Copy Application in C.D. Section, bearing No.3622/12 praying for copy of the Minutes, dated 16.12.2010 passed by the Hon'ble Portfolio Judge of Pudukottai District and the copy of the Minutes dated 07.03.2011, passed by the Hon'ble Chief Justice in Roc.No.1490-A/2010/Judl./MB, by duly affixing necessary Court Fees Stamp for the value of Rs.5/- and remitting flat rate of Rs.70/- (Rs.35/- for both copies of the Minutes).

27.Under the circumstances, the Registry once again placed the matter in Roc.No.152/2012/RTI/MB before the Hon'ble RTI Committee Judges (under the Right to Information Act) soliciting orders regarding the action to be taken on the Copy Application filed by the Learned Counsel for the 1st Respondent/Petitioner (RTI Applicant) seeking copy of the Minutes of the Hon'ble Portfolio Judge dated 16.12.2010 and the copy of the Minutes recorded by the Hon'ble Chief Justice dated 07.03.2011. The Hon'ble Committee Judges have expressed their individual opinions on 09.07.2012, 10.07.2012 and 12.07.2012 respectively. Ultimately, the Hon'ble Chief Justice has rendered his opinion on 21.08.2012. Based on the opinion recorded by the Hon'ble Chief Justice, a meeting of the Hon'ble Judges of the R.T.I. Committee was held on 30.08.2012 and it was resolved to instruct the Registrar General to file Writ Petition challenging the order of the Tamil Nadu Information Commission dated 16.05.2012 directing the Applicant to obtain copies of the Minutes. Thereupon, the Petitioner/ Registrar General of this Court has filed the present Writ Petition.

28.There is no two opinion of the fact that Right to Information Act is a legislation that takes into account the legal rights of citizens seeking information from public or other concerned private authorities. As a matter of fact, 'Right to Information Act' is a constitutional guarantee and by means of this Act 'Democracy' will become energetic and vibrant in our fabric of society. In fact, Right to Information Act is a means and not an end for equity, activism, public participation and orderly good governance in larger interest and better functioning of the system. In this regard, we relevantly point out that in the decision of the Hon'ble Supreme Court in S.P.Gupta and others V. President of India and others, [AIR 1982 Supreme Court 149], the Hon'ble Justice P.N.BHAGWATI, while referring to public interest, observed that 'Redressing public injury enforcing public duty, protecting social, collective, diffused rights and interests vindicate public interest ... (in the enforcement of which) public or clause of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected'.

29.We significantly point out that in the decision State of Gujarat V. Mirzapur Moti Kureshi Kassab Jamat and others, [AIR 2006 Supreme Court 212], the Hon'ble Supreme Court held that 'The interest of general public (public interest) is of a wide import covering public order, public health, public security, morals, economic welfare of the community and the objects enshrined in Part IV of the Constitution of India viz., 'the Directive Principles of State Policy'.

30.It is to be pertinently point out that in Latin the term 'Forma' refers to giving shape to something and forming a pattern. As a matter of fact, Sweden has granted the right of access to Government information under the Freedom of Press Act, 1766, to its citizens. Countries like Canada and Australia have enacted 'Access to Information Act, 1982' and the 'Freedom of Information Act, 1982'. England enacted 'Freedom of Information Act, 2000. Likewise, U.S.A. enacted 'Freedom of Information Act, 1966'. In many foreign countries, the concept of 'Iron Screen of Secrecy' has withered away and given way to an open and free deliberations/discussions coupled with a right to information.

31.In short, 'Information' is like a 'Candle' which showers light to remove one's darkness i.e. Ignorance. In fact, information is energy which kindles one's thought culminating in expression based on thinking capacity.

32.In the Golden words of R.N.Tagore in the Poem Gitanjali the need for freedom of information has been highlighted and spotlighted [vide verse XXXV]. Also, we recollect the following lines from 'Bible':

'Ye shall no other truth and the

truth shall make you free' (John □ 8:32)

33.Undoubtedly, the Official Secretes Act, 1923 (a colonial legacy) is an off shoot against the movement of Nationalism in our country. Other than this Act, there are some Secrecy Laws like Art. 74 and 163 of the

Constitution of India. Article 74 of the Constitution of India envisages that there shall be a council of Ministers with the Prime Minister as the head to aid and advise the President and such advise shall not be enquired into any Court. In a similar fashion, Art. 163 of the Constitution of India enjoins that 'there shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor and such advise shall not be enquired into by any Court.

34.That apart, Criminal Procedure Code, with Commissions of Enquiry Act, 1952 Atomic Energy Act, Preventive Detention Act, 1962, Prevention of Terrorists Act, 2002, Terrorists and Disruptive Activities (Prevention) Act, 1985 etc. do contain some provisions which lay emphasis on secrecy. Of course, the modern trend is that in place of 'Oath of Secrecy', there is increasing need/trend for an "Oath of Transparency".

35.It is to be remembered that individuals coming from the category of 'below poverty line' cannot be charged any fees/charges at all if they file any application under Right to Information Act. The form of access can be decided by the Public Information Officer concerned subject to the provisions of the Right to Information Act that the Information shall be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority.

36.Ordinarily, it is mandatory for a public authority to furnish all accessible information to the citizens except where the information is exempted under the provision of Section 8(1) of the Act. A public authority may permit access to every information in public interest. In case, where the information is exempted from disclosure, then, Section 10 of the Act says that access may be given to that part of record which does not contain any information which is exempted from disclosure and which can reasonably be severed from other part that contains the exempted information.

37.A mere glance of the ingredients of Section 10 of the Act makes it lucidly clear that under Section 10(2)(b) of the Right to Information Act, the Public Information Officer is the deciding authority for granting partial access to records that may contain exempted information. However, when only partial information is disclosed, the Public Information Officer needs to state

valid reasons for the decision. Furthermore, he is required to specify his name and designation as the decision maker and the applicant's right in regard to the review of the decision including the particulars of A.O., time limit, process fee etc. Only that portion of the record, which does not contain any information, which is exempted from disclosure and which can reasonably be severed from any part that contains exempted information, may be furnished.

38.If public interest outweighs private interest, then, information has to be furnished, otherwise, the concerned officer can record refusal to part with the information sought for. The Right to Information Act is a legislation which has overriding effect on the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force as per Section 22 of the Act. No wonder, the Right to Information Act is a boon to maintain transparency in public administration.

39.Section 2(e) of the Right to Information Act defines the 'Competent Authority' as follows:

"(i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;

(ii) the Chief Justice of India in the case of the Supreme Court;

(iii) the Chief Justice of the High Court in the case of a High Court;

(iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;

(v) the administrator appointed under article 239 of the Constitution."

40.Section 2(f) of the Act defines 'Information' as under:

"(f) □information□ 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."

41.Moreover, Section 2(h) of the Act means 'Public Authority' as follows:

"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;

(i) □record□ 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

(iii)(d) any other material produced by a computer or any other device."

42.Section 5 of the Act makes it obligatory on every public authority to designate as many officers as Central Public Information Officers and State Information Public Officers in all Administrative Units or Offices as may be necessary to furnish necessary information to the individuals requesting information under the Act. The authority is required to designate Central Assistant Public Information Officer and State Assistant Public Information Officer at the Sub Divisional or Sub District level. The Assistant Public

Information Officers are to perform two functions: (i) To receive the applications for informations; (ii) To receive appeals under the Act. The Applications/Petitions for information are to be forwarded to the Central Information Commission or State Information Commission as the case may be. These Officers are to be designated at all the aforementioned levels within 100 days of the enactment of the Act.

43.Admittedly, there is no provision under the Right to Information Act, 2005 which prescribes the qualification or experience that the Information Officers are required to possess. At this stage, a closer scrutiny of the language employed in Section 5 of the Act candidly makes it clear that any Officer can be designated as Central Public Information Officer or State Public Information Officer. Thus, there is no particular/specific requirement adumbrated for designating an Officer at Sub Divisional or Sub District level.

44.No doubt, the Appeals under Section 19(1) of the Right to Information Act against the orders of Public Information Officers are to be preferred before an Officer senior in the rank to Public Information Officer. But, under Section 19(3) of the Act, a further Appeal lies to Central or State Information Commission against the orders of Central or State Appellate Officer. These authorities are supposed to dispose of such Applications or Appeals within the scheduled time prescribed under the Act. Further, there is no qualification or experience required of these designated Officers to whom the First Appeal lie. However, in contrast, Sections 12(5) and 15(5) of the Act speak for experience and knowledge that the Information Commissioners at the Central and State Levels are required to possess mandatorily.

45.It is to be noted that an Applicant/Requisitionist is not bound to furnish any reason requiring the information or any personal details except those that are necessary for the purpose of contacting him.

46.Under the Right to Information Act, the Central Public Officer/ State Public Information Officer is supposed to deal with the matter where request is made for supply of information within 30 days. However, if the information concerns the life or liberty of a person, it is to be furnished within 48 hours

of the receipt of request. If the concerned officer fails to give his decision within 30 days or 48 hours as the case may be, then, he shall be deemed to have refused the request.

47.If a request is rejected, the concerned officer is to communicate the reasons for denying the request, the time limit within which the Appeal may be filed and the other relevant particulars of the Appellate Authority to the respective individual who made the request.

48.It is the duty of the Public Information Officer to deal with request from persons requiring information under the Right to Information Act. If the concerned request cannot be made in writing, then, he is to render reasonable assistance to the concerned person to reduce the same into writing. If the information sought for is held by or its subject matter is interlinked/connected with the function of another public authority, then, the Public Information Officer under the Act, is to transfer, within 5 days, the request to other public authority and inform the Applicant immediately.

49.The Public Information Officer may seek the assistance of any other officer for the proper discharge of his duties. In allowing partial access, the Public Information Officer shall issue notice to the Applicant informing that (a)Only part of the required request after severance of the record containing information which is exempted from disclosure is being provided; (b)The reasons for arriving at a conclusion including any findings on material question of fact, referring to the material on which those findings are based; (c)The name and designation of the person giving the decision; (d)The details of fees calculated by him and the amount of fee which the Applicant is required to deposit; (e)The Applicant's rights in regard to reviewing the decision recording the non disclosure of part of information, the amount of fee charged or form of access provided; (f) If the information requested has been supplied by the third party or is treated by confidential by that party, then, the Public Information Officer shall give the written notice to the third party within five days from the date of receipt of request and take his/her representation into account; (g) The third party ought to be given an

opportunity to make a representation before the Public Information Officer within ten days from the date of receipt of such notice.

50.Coming to the aspect of penalty provisions under the Right to Information Act, it is to be pointed out that every Public Information Officer will be liable for fine of Rs.250/- penalty upto a maximum of a Rs.25,000/-. Under Section 20(1) of the Right to Information Act, (i) for not accepting an application/petition; (ii) delaying information, without reasonable cause; (iii)malafidely denying information; (iv)knowingly furnishing incomplete, incorrect and misleading information; (v)destroying information for which a request has been made; (vi)obstructing the supply of information in any manner.

51.Undoubtedly, Section 20 of the Act, insofar as it relates to imposition of penalty, is penal in character. But before the levy of any penalty on an Officer/Official, enough opportunity is to be afforded to the delinquent/deviant concerned. If the Public Information Officer or concerned Department has not accepted an Application from the Applicant, then, he has the option of transmitting the said Application by post. Also, he can lodge complaint to the respective Information Commission under Section 18 of the Act. In fact, the Commission has power to impose penalty not exceeding Rs.25,000/- on the concerned errant/deviant officer, who refused to accept the Application from the concerned Applicant.

52.It is to be remembered that the recommendations of the State Information Commission/Directions issued by it to the concerned authority to take action against an errant Public Information Officer are not binding on the Competent/Public Authority under the Act. It is needless for this Court to point out that it is within the purview of the Public Authority/Competent Authority either to agree with the recommendations/directions so issued or to differ from the views taken by the State Information Commission, in the considered opinion of this Court. It cannot be lost sight of that under the Right to Information Act, the Public Information Officer concerned is an Independent Authority. Indeed, he shall not adopt a lackadaisical, a laissez-

faire attitude and also not to remain as an indolent person in regard to his discharge of duties under the Right to Information Act, 2005.

53.It cannot be gainsaid that Section 8(1) of the Right to Information Act, 2005 deals with 'exemption' from disclosure of information in regard to matters falling under (a) to (j) and further Section 8(2) and (3) of the Act refers to the Public Authority who may allow the access to information if public interest in disclosure outweighs the harm to the protected interests etc. In fact, the Competent Authority as per Section 2(e)(iii) and (h) of the Act speaks of 'Competent Authority' and 'Public Authority'. While denying the information as required under Section 8(e) of the Right to Information Act, 2005, the undermentioned facts can be taken into account by the concerned authority. They are as follows:

(a)Whether supplying/furnishing information on public records would impede the investigation/apprehension/prosecution;

(b)Whether the information is such that can be refused/denied to Parliament or State Legislature;

(c)Whether public interest in disclosure earns the protected interest;

(d)Section 22 of the Right to Information Act has an overriding effect and as such, the legal procedure enshrined for quasi judicial proceedings gets overridden by the Right to Information Act.

54.A closer scrutiny of the ingredients of Section 18 of the Act clearly point out that the State Information Commission has power to conduct an enquiry in a matter before it. The Information Commission is empowered to ascertain whether the endorsement made by the Public Information Officer is quite in tune with the provisions of the Right to Information Act, 2005. Moreover, the Information Commission can also find out whether the information sought for by the Applicant has been wilfully/purposely held back or the same has not been supplied within the prescribed time.

55.In a case of an Appeal under Section 19 of the Act, as per Section 18(4) of the Act, the State Information Commission prior to the passing of an order (pertaining to an information of a third party) is to necessarily issue a notice to the third party for providing a reasonable opportunity, by adhering to the principles of Natural Justice.

56.It is to be pointed out that 'Right to Privacy' is recognised as basic human right in Article 12 of Universal Declaration of Human Rights, 1948 and Article 17 of International Covenant on Civil and Political Rights, 1966. Added further, the concept of 'Right to Privacy' is an essential component of right to life under Article 21 of the Constitution of India.

57.Under two contingencies, the exemption under Section 8 of the Right to Information Act, gets attracted viz., (i) If the information is personal in nature and has no nexus or relationship to any public activity or interest; and (ii)furnishing of the same would cause an unwarranted invasion of the privacy of an individual as per the decision in Kunche Durga Prasad V. Public Information Officer, Oil and Natural Gas Corporation Limited, [AIR 2010 A.P. 105 and 106].

58.As regards the information under Section 4(1)(b) of the Right to Information Act, the same shall be disseminated through Notice Boards, Newspapers, Public Announcements, Media Broadcasts, Internet or by any other modes. Really speaking, the Right to Information Act enjoins that every public authority has to update its publications under Section 4(1)(b) every year. In fact, the Central/ State Government/Departments are to come out with necessary/ general instructions for time bound updating of all categories of information including formats of publication. Every public authority in turn must publish updated information i.e. Specific to its functions adhering to the guidelines.

59.Apart from the above, the Central Information Commission will transmit an annual report to the Central Government on the implementation of the provisions of the Right to Information Act at the end of the year. Likewise, the State Information Commission will send a report to the State Government. Each Ministry has a duty to compile reports from its public authorities and send them to Central Information Commission or State Information Commission as the case may be. Each Report will contain details of number of requests received by each public authority, number of rejections and appeals, particulars of any disciplinary action taken, amount of fees and charges calculated etc.

60.The Central Government is to table the Central Information Commission Report before the Parliament after the end of each year. Likewise, the State Government is to table the report of State Information Commission before the Chief House of the State Legislature, where there are two Houses and where there is one house before the House of State Legislature.

61.An information must be given to a citizen in the language which he appreciates/understands. It is the legislative mandate that 'information' must be disseminated considering inter alia 'the local language' of the area. Similar is the mandate under Article 350 read with 345 of the Constitution of India, as per the decision in State Consumer Disputes Redressal Commission, Uttarakhand V. Uttarakhand State Information Commission and others, [AIR 2010 Uttarakhand 55]. As per Section 4(1)(d) of the Act every public authority shall provide reasons for its administrative or quasi-judicial decisions to the affected persons.

62.The Information Commission satisfies the concept of a 'Judicial Tribunal' and as such, it has the trappings of Court. Also, the decision of Information Commission will swing the pendulum of Justice either way. In this regard, we aptly recollect the Golden words of Malcom Gladwell who observed that 'The key to good decision making is not Knowledge. It is understanding. We are swimming in the former lacking in the latter'.

63.In terms of Section 18 of the Act, the State Information Commission can conduct enquiry, as per the decision in Ahmedabad Education Society & Another V. Union of India & Others, [AIR 2008 Gujarat 42. Also, the Commission is a Tribunal fastened with an appellate power to determine the appeals etc., as per the decision in Poornaprajna House Building Co-operative Society Limited V. Karnataka Information Commission & others, [AIR 2007 Karnataka 136]. Moreover, in the said decision at page 146, it is laid down as follows:

"It is settled that any authority or body of persons constituted by law or having legal authority to adjudicate upon questions affecting the rights of a subject and enjoined with a duty to act judicially or quasi judicially is amenable to the certiorari jurisdiction of the High Court. Similarly, Art. 227 of the Constitution confers on every High Court the power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any Court or tribunal constituted by or under any law relating to armed forces. Thus, the orders of the Commission are amenable to the jurisdiction of the High Court."

64.Instead of making an Appeal to the Appellate Authority and then Information Commission, a person has the option to approach the Information Commission directly and projecting a complaint under Section 18(1) of the Act, if a person is not satisfied with the decision of Public Information Officer or if it is felt that the public authority is failing to comply with its information duties under the Act. However, if an individual is desirous of seeking a penalty from the Public Information Officer or compensation, unfortunately, the Appellate Authority under the Right to Information Act does not possess the power to order either of these reliefs. By approaching the Information Commission directly one can bypass the Appellate Authority and even though the lack of a specified time limit for the Information Commission to render its decision is an inherent defect of procedure.

65.Right to Information Act puts an embargo on the Law Courts for entertaining a suit, application or any proceeding under Section 23 of the Right to Information Act.

66.Dealing with the aspect of Section 15 of the Contempt of Courts Act, 1971 under the caption 'Cognizance of criminal contempt in other cases', it is to be pointed out that Section 15(1) is limited to criminal contempts not committed in the face of the Court. As a matter of fact, the ingredients of the Contempt of Courts Act, 1971 are procedural in character. Section 15 of the Act contemplates three methods in and by which cognizance of a criminal contempt can be taken by a Hon'ble High Court or Supreme Court for its own content. In respect of criminal contempt of a subordinate Court only two methods are specified in the Contempts of Court Act which can be sought in aid in regard to the taking of cognizance by the Court of record. In reality, the subordinate courts do not have power to take cognizance of content and to try the offence of contempt except in contingencies specified under Proviso to Section 10 of the Act.

67.At this stage, we aptly point out the decision of the Hon'ble Supreme Court in Delhi Judicial Service Association, Tis Hazari Court, Delhi V. State of Gujarat and others, [AIR 1991 Supreme Court 2176] at special pages 2179 & 2180], it is observed and laid down as follows:

"The plea that the Supreme Court has no supervisory jurisdiction over the High Court or other subordinate Courts and therefore, it does not possess powers which High Courts have under Article 215 is misconceived. Article 227 confers supervisory jurisdiction on the High Court and in exercise of that power High Court may correct judicial orders of subordinate Courts, in addition to that, the High Court has administra- tive control over the subordinate courts. Supreme Court's power to correct judicial orders of the subordinate courts under Article 136 is much wider and more effective than that contained under Article 227. Absence of administrative power of superintendence, over the High Court and subordinate court does not affect this Court's wide power of judicial superintendence of all courts in India. Once there is power of judicial superintendence, all the Courts whose orders are amenable to correction by this Court would be subordinate courts and

therefore this Court also possesses similar inherent power as the High Court has under Article 215 with regard to the contempt of subordinate courts. The jurisdiction and power of a superior Court of Record to punish contempt of subordinate courts was not founded on the court's administrative power of superintendence, instead the inherent jurisdiction was conceded to superior Court of Record on the premise of its judicial power to correct the errors of subordinate Courts.

Since the Supreme Court has power of judicial super- intendence and control over all the courts and Tribunals functioning in the entire territory of the country, it has a corresponding duty to protect and safeguard the interest of inferior courts to ensure the flow of the stream of justice in the courts without any interference or attack from any quarter. The subordinate and inferior courts do not have adequate power under the law to protect themselves, therefore, it is necessary that this Court should protect them. Under the constitutional scheme it has a special role in the administration of justice and the powers conferred on it under Article 32, 136, 141 and 142 form part of the basic structure of the Constitution. The amplitude of the power of the court under these Articles of the Constitution cannot be curtailed by law made by Central or State Legislature. No doubt High Courts have power to persist for the contempt of subordinate courts but that does not affect or abridge the inherent power of this court under Article 129. The Supreme Court and the High Court both exercise concurrent jurisdiction under the constitutional scheme in matters relating to fundamental rights under Article 32 and 226 of the Constitution, therefore this Court's jurisdiction and power to take action for contempt of subordinate courts would not be inconsistent to any constitutional scheme. There may be occasions then attack on Judges and Magistrate of subordinate courts may have wide repercussions through out the country, in that situation it may not be possible for a High Court to contain the same, as a result of which the administration of justice in the country may be paralysed, in that situation the Apex Court must intervene to ensure smooth functioning of courts. The Apex Court is duty bound to take effective steps within the constitutional provisions to ensure a free and fair administration of justice through out the country. For that purpose it must wield the requisite power to take action for contempt of subordinate Courts. Ordinarily, the High Court would protect the subor- dinate courts from any onslaught on their independence, but in exceptional cases, extraordinary situation may prevail affecting the administration of public justice or where the entire judiciary is affected, the

Supreme Court may directly take cognizance of contempt of subordinate Courts. However, it was observed that the Supreme Court will sparingly exercise its inherent power in taking cognizance of the contempt of subordinate Courts, as ordinarily matters relating to contempt of subordinate Courts must be dealt with by the High Courts. The instant case is of exceptional nature as the incident created a situation where functioning of the subordinate courts all over the country was adversely affected and the administration of justice was paralysed, therefore, this Court took cognizance of the matter."

68.That apart, in regard to a criminal contempt of a High Court, a private party can approach the Hon'ble Supreme Court with the consent in writing of the Advocate General. On a closer scrutiny of ingredients of Section 10 of the Contempt of Courts Act under the head 'Power of High Court to punish contempts of subordinate courts' and the ingredients of Section 15(2) of the Act under the caption 'Cognizance of criminal contempt in other cases'. It is clear that the High Court has power of taking cognizance of criminal contempt of a subordinate court suo motu notwithstanding the fact that Section 15(2) of the Contempt of Courts Act in contra distinction to sub-Section (1) of the Section 15 which does not expressly confer such power, as per the decision of the Hon'ble Supreme Court in Board of Revenue, Uttar Pradesh V. Vinay Chandra Misra, [AIR 1981 SC 723].

69.It is to be noted that the entire aim of prescribing procedures of taking cognizance under Section 15 of the Contempt of Courts Act is mainly to save the precious time of High Court from being wasted by untenable and frivolous complaints. If the Hon'ble High Court is prima facie satisfied that the information received by it regarding commission of a Contempt of Subordinate Court is not frivolous and the contempt lodged is not either technical or a small one, in its discretion, act suo motu and commence the proceedings against the contemner. But this method of suo motu cognizance of contempt of a subordinate court ought to be resorted to sparingly and only where the contempt concerned is of a serious nature. The High Court is not compelled or bound to proceed against a contemnor just for the sake of reference from a subordinate court. It may reject or discharge the reference,

if, in its view it is based on allegations which are totally devoid of substance, as per the decision XXV Additional Sessions Judge, Bangalore V. Ningegowda, [1997 Cri LJ 3873 (Karn ☐ DB)].

70.The power of High Court under Section 15(2) of the Contempt of Courts Act, 1971 to take action on a reference is coupled with the duty to do so and that duty is obviously to uphold the rule of law, as per the decision of the Hon'ble Supreme Court in Ranveer Yadav V. State of Bihar, [(2010) 11 SCC 493]. Also, in the said decision, it is held that 'the High Court's power under Section 15(2) of the said Act is analogous to the power of a guardian and that it discharges its jurisdiction in loco parentis over the subordinate judiciary'.

71.A cursory reading of Section 15 of the Contempt of Courts Act, 1971 categorically point out that it does not spell out the basis or the source of information which the High Court can act on its own accord. However, if the High Court acts on information obtained from its own sources, such as from perusal of records of a subordinate court or on reading of a report in a Newspaper or hearing of a public speech, where there being any reference from the subordinate court or the Learned Advocate General, it can be said to have taken cognizance on its own motion. However, if the High Court is directly approached by means of a petition by a private individual, feeling aggrieved, not being the Advocate General, then, the High Court in such a contingency, has a discretion to refuse to entertain the petition or to take cognizance on its own accord on the basis of information supplied to it in the said petition.

72.Further, the word 'Reference' means 'conveying information'. The said word 'Reference' is not defined under the Contempt of Courts Act. An information sent through proper channel containing ingredients which makes out a prima facie case for contempt would be termed as reference as per the decision C.J.M., Fatehpur, through D.J. Fatehpur V. Prakash Singh, [2010 Cr LJ 2774].

73.One cannot lose sight of a vital fact that any one, who approaches the Hon'ble High Court for initiating proceedings for criminal contempt, describing the facts constituting the commission of criminal contempt to the notice of the Court and sooner or later the said facts when placed before the Court, then, it is a matter pertaining to the Court and the contemner.

74.At this juncture, we relevantly cite the decision in Jomon Puthenpurackal V. Judicial 1st Class Magistrate-III [2004 (1) KLT 720], wherein it is, among other things, held as follows:

"Even in cases in which proceeding in contempt are initiated by the court the court can drop the proceedings in exercise of its discretion. An outsider comes only by way of drawing the attention of the court to the contempt which has been committed. Such a person does not become a part of the proceedings for contempt which is initiated by the court. So, it is not possible to find fault with the learned Magistrate in exercising his discretion not to proceed with the reference even it it is assumed that he has come to the conclusion that there are materials to show prima facie that there was contempt of court committed."

75.In this connection, it is to be noted that this Court in P.Dis.No.166/75 has framed Rules to Regulate Proceedings For Contempt of Subordinate Courts and of the High Court [published in Part III, Section 2, page 114, Tamil Nadu Government Gazette, dated 3.9.1975]. Rule 5 sub-clause (2) speaks as follows:

"5.(2)Every such reference on receipt in the High Court shall first be dealt with in the Administrative Side and will be placed before the Judge in charge of the district in which the Subordinate Court making the reference is situated, and the Chief Justice for directions to send the papers to the Advocate-General for taking appropriate action."

76.As far as the present case is concerned, we relevantly extract Clause 37 of the Letters Patent which speaks of 'Regulation of Proceedings' which runs hereunder:

□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.□

77.Indeed, Order XII Rules (1) & (2) of the High Court of Madras Appellate Side Rules, 1965, runs thus:

□1.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"

78.On going through the contents of Article 37 of the Amended Letters Patent, and of all other powers conferred hereunto, this Court has brought the following amendments to Rules 3 & 4 of Order XII of the Rules of High Court, Madras, Appellate Side, 1965 which enjoins as under:

□(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.□

79.It is to be borne in mind that the Right to Information Act is silent in regard to the review of the orders passed by the Information Commission, as per the decision in Capt. V.K.Sehgal, Chandigarh, V. Public Information Officer, O/o. The Director, Sainik Welfare, Punjab, [(2008) 1 ID 25 (State Information Commission, Punjab)].

80.The ingredients of Section 22 of the Right to Information Act postulates 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.

81.At this juncture, to promote substantial cause of Justice and to prevent an aberration of Justice, we quote the following decisions:

(a)In the decision Kunche Durga Prasad and another V. Public Information Officer, Office of Chief Manager (HR) Oil and Natural Gas Corporation Limited, Rajamundry & others, [AIR 2010 Andra Pradesh 105] at page 107 in paragraphs 10 and 11, it is observed and held as follows:

"10.The 2nd petitioner is not able to state as to how the copies of qualification certificates of the selected candidates have any characteristics of public activity or partake public interest. The aggrieved parties including the 1st petitioner have already approached this Court by filing W.P.No.17355 of 2008. Such of the selected candidates who are impleaded in that writ petition would certainly have to defend themselves. Any direction to the respondents herein to furnish the testimonials of the selected candidates to the petitioners would have its own impact upon the pleadings or the stands

which the parties to the pending proceedings may take. It may appear to be enterprising or tempting for any one to have access to every possible information for an individual whether it relates to an individual or not. The freedom of an individual to have access to the information cannot be projected to such an extent as to invade the rights of others. Further, Section 6(2) of the Act cannot be read in isolation, nor can be interpreted to mean that an applicant can seek every information relating to any one. Just as he cannot be compelled to divulge the purpose for which he needs the information, he must respect the right of the other man to keep the facts relating to him, close to his chest, unless compelled by law to disclose the same. It is relevant to mention that even where an individual is placed under obligation to speak, the law can only draw adverse inference from his failure or refused to speak but cannot go further to invade his privacy or private life.

11.The learned counsel for the petitioners submits that the view taken by the respondents conflicts with the very spirit of Section 6(2) of the Act. This contention cannot be accepted for the simple reason that Section 8 of the Act, on one hand, and the Section 6 of the Act, on the other hand, operate in different and distinct fields. Though Section 6(2) of the Act enables every individual to seek information without disclosing the purpose, the information that can be furnished to him is subject to the restrictions placed under Section 8 of the Act. Therefore, no exception can be taken to the impugned orders.

(b)In the decision The State of Uttar Pradesh V. Raj Narain and others, [AIR 1975 Supreme Court 865 at page 866], the Hon'ble Supreme Court has observed and laid down as follows:

"The foundation of the law behind Sections 123 and 162 of the Evidence Act is the same as in English Law. It is that injury to public interest is the reason for the exclusion from disclosure of documents whose contents, if disclosed, would injure public and national interest. Public interest which demands that evidence be withheld is to be weighed against the public interest in the administration of justice that courts should have the fullest possible access

to all relevant materials. When public interest outweighs the latter, the evidence cannot be admitted. The Court will proprio motu exclude evidence, the production of which is contrary to public interest. It is in public interest that confidentiality shall be safeguarded. The reason is that such documents become subject to privilege by reason of their contents. Confidentiality is not a head of privilege. It is not that the contents contain material which it would be damaging to the national interest to divulge but rather that the documents would be of a class which demand protection. To illustrate the class of documents would embrace Cabinet papers, Foreign Office dispatches, papers regarding the security to the State and high level interdepartmental minutes. In the ultimate analysis the contents of the document are so described that it could be seen at once that in the public interest the documents are to be withheld.

An objection under Section 123 is raised by an affidavit affirmed by the head of the department. The Court may also require a Minister to affirm an affidavit. That will arise in the course of the enquiry by the Court as to whether the document should be withheld from disclosure. If the Court is satisfied with the affidavit evidence, that the document should be protected in public interest from production the matter ends there. If the Court would yet like to satisfy itself the Court may see the document. This will be the inspection of the, document by the Court. Objection as to production as well as admissibility contemplated in section 162 of the Evidence Act is decided by the Court in the enquiry.

The documents in respect of which exclusion from production was claimed were the Blue book being rules and instructions for the protection of the Prime Minister when on tour and in travel. The Under Secretary, Confidential Department, came to Court and gave evidence that the Blue book was a document relating to the affairs of State and was not to be disclosed. The Chief Secretary filed an affidavit on 20 September, 1973 and claimed privilege in respect of the Blue book by submitting that the document related to affairs of State and should, therefore, be excluded from production. Held that in the facts and circumstances of the present case the affidavit affirmed by Chief Secretary on 20 September, 1973 was an affidavit objecting to the production of the documents. The oral evidence of the Under Secretary as well as the aforesaid affidavit showed that objection was taken at the first instance. Where no affidavit was filed an affidavit could be directed to be filed later on. If an affidavit was defective an opportunity

could be given to file a better affidavit. It is for the court to decide whether the affidavit is clear in regard to objection about the nature of documents. The Court can direct further affidavit in that behalf. The blue book was an unpublished official record. Any publication of parts of the blue book which might be described as innocuous part of the document would not render the entire document a published one. If the Court found on inspection that any part of the document was innocuous in the sense that it did not relate to affairs of State the Court could order disclosure of the innocuous part provided that would not give a distorted or misleading impression. Where the Court orders disclosure of an innocuous part the Court should seal up the other parts which are said to be noxious because their disclosure would be undesirable. AIR 1974 All 324 Reversed. Case Law discussed."

(c)In the decision B.Bindhu V. Secretary, Tamil Nadu Circle Postal Co-operative Bank Limited, Chennai, [AIR 2007 Madras 13 at page 14], it is held that 'The petitioner is not entitled to the details sought for by her under the provisions of the Right to Information Act, 2005'.

(d)In Khandapuram Gandaiah V. The Administrative Officer, Ranga Reddy District Courts and Others, [AIR 2009 Andhra Pradesh 174], at page 178, it is observed that 'Though Sections 8(1)(b) and 24 of the Act do not provide any exemption to the Judges or judicial officers from giving the information sought for' and further, it is held that 'The Petitioner has no locus to raise this contention because he can seek only information under the Right to Information Act'.

(e)In the decision Rajasthan Public Service Commission V. Ms.Pooja Meena & Another, [AIR 2012 Rajasthan 52] at page 53, in paragraph 11, it is observed as follows:

"11.To the valued observations of the Hon'ble Supreme Court, this Court would respectfully add that the provisions of RTI Act cannot be used as a tool to give vent to the frustration and dissatisfaction of a citizen as in the present case without anything more. The present case relates to RAS Examination 2007, which have long been concluded and appointments made

thereunder. A dissatisfied candidate who is disbelieving in the process of a constitutional body, ought not be allowed to continue pursuing the RPSC and seek information which can affect the efficient working and discharge of its constitutional obligations without any corresponding benefit or relationship to any public interest or activity. The impugned order dated 14.10.2010 is a mechanical order and does not disclose a careful consideration of the matter before the Chief Information Commissioner."

82.At this stage, this Court deems it fit to recall the decision of the Hon'ble Supreme Court in Union of India V. R.Gandhi, President, Madras Bar Association, [(2010) 11 SCC at page 1] at special page 42 in paragraph 64, it is observed as follows:

"64.Only if continued judicial independence is assured, tribunals can discharge judicial functions. In order to make such independence a reality, it is fundamental that the members of the tribunal shall be independent persons, not civil servants. They should resemble the courts and not bureaucratic Boards. Even the dependence of tribunals on the sponsoring or parent department for infrastructural facilities or personal may undermine the independence of the tribunal (vide Wade & Forsyth: Administrative Law, 10th Edn., Public Prosecutor.774 and 777)."

Also, in the aforesaid decision at page 55 & 56, in paragraph 101, the Hon'ble Supreme Court has held as follows:

"101.Independent judicial tribunals for determination of the rights of citizens, and for adjudication of the disputes and complaints of the citizens, is a necessary concomitant of the rule of law. The rule of law has several facets, one of which is that disputes of citizens will be decided by Judges who are independent and impartial; and that disputes as to legality of acts of the Government will be decided by Judges who are independent of the executive. Another facet of the rule of law is equality before law. The essence of the equality is that it must be capable of being enforced and adjudicated by an independent judicial forum. Judicial independence and separation of judicial power from the executive are part of the common law traditions implicit in a Constitution like ours which is based on the Westminster model."

Moreover, in the aforesaid decision, in paragraph 120, at page 67, it is held that '... (xiii) Two-member Benches of the Tribunal should always have a judicial member. Whenever any larger or special Benches are constituted, the number of technical members shall not exceed the judicial members'.

83.In the decision Namit Sharma V. Union of India, [2013-2-L.W. at page 1], at Special Pages 38 to 40, wherein in Paragraphs 90 to 95, it is observed 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 :

□32. □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.

Also, in the aforesaid decision at page 44 & 45 in paragraphs 106 & 107, it is observed and laid down as follows:

"106.For the elaborate discussion and reasons afore-recorded, we pass the following order and directions:

1.The writ petition is partly allowed.

2.The provisions of Sections 12(5) and 15(5) of the Act of 2005 are held to be constitutionally valid, but with the rider that, to give it a meaningful and purposive interpretation, it is necessary for the Court to ☐read into☐ these provisions some aspects without which these provisions are bound to offend the doctrine of equality. Thus, we hold and declare that the expression ☐knowledge and experience☐ appearing in these provisions would mean and include a basic degree in the respective field and the experience gained thereafter. Further, without any peradventure and veritably, we state that appointments of legally qualified, judicially trained and experienced persons would certainly manifest in more effective serving of the ends of justice as well as ensuring better administration of justice by the Commission. It would render the adjudicatory process which involves critical legal questions and nuances of law, more adherent to justice and shall enhance the public confidence in the working of the Commission. This is the obvious interpretation of the language of these provisions and, in fact, is the essence thereof.

3. As opposed to declaring the provisions of Section 12(6) and 15(6) unconstitutional, we would prefer to read these provisions as having effect ☐post-appointment☐. In other words, cessation/ termination of holding of office of profit, pursuing any profession or carrying any business is a condition precedent to the appointment of a person as Chief Information Commissioner or Information Commissioner at the Centre or State levels.

4.There is an absolute necessity for the legislature to reword or amend the provisions of Senior Counsel Section 12(5), 12(6) and 15(5), 15(6) of the Act. We observe and hope that these provisions would be amended at the

earliest by the legislature to avoid any ambiguity or impracticability and to make it in consonance with the constitutional mandates.

5.We also direct that the Central Government and/or the competent authority shall frame all practice and procedure related rules to make working of the Information Commissions effective and in consonance with the basic rule of law. Such rules should be framed with particular reference to Section 27 and 28 of the Act within a period of six months from today.

6.We are of the considered view that it is an unquestionable proposition of law that the Commission is a □judicial tribunal□ performing functions of □judicial□ as well as □quasi-judicial□ nature and having the trappings of a Court. It is an important cog and is part of the court attached system of administration of justice, unlike a ministerial tribunal which is more influenced and controlled and performs functions akin to the machinery of administration.

7.It will be just, fair and proper that the first appellate authority (i.e. the senior officers to be nominated in terms of Section 5 of the Act of 2005) preferably should be the persons possessing a degree in law or having adequate knowledge and experience in the field of law.

8.The Information Commissions at the respective levels shall henceforth work in Benches of two members each. One of them being a □judicial member□, while the other an □expert member□. The judicial member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. A law officer or a lawyer may also be eligible provided he is a person who has practiced law at least for a period of twenty years as on the date of the advertisement. Such lawyer should also have experience in social work. We are of the considered view that the competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioners. Chief Information Commissioner at the Centre or State level shall only be a person who is or has been a Chief Justice of the High Court or a Judge of the Supreme Court of India.

9.The appointment of the judicial members to any of these posts shall be made □in consultation□ with the Chief Justice of India and Chief Justices of the High Courts of the respective States, as the case may be.

10.The appointment of the Information Commissioners at both levels should be made from amongst the persons empanelled by the DoPT in the case of Centre and the concerned Ministry in the case of a State. The panel has to be prepared upon due advertisement and on a rational basis as afore-recorded.

11.The panel so prepared by the DoPT or the concerned Ministry ought to be placed before the High-powered Committee in terms of Section 12(3), for final recommendation to the President of India. Needless to repeat that the High Powered Committee at the Centre and the State levels is expected to adopt a fair and transparent method of recommending the names for appointment to the competent authority.

12.The selection process should be commenced at least three months prior to the occurrence of vacancy.

13.This judgment shall have effect only prospectively.

14.Under the scheme of the Act of 2005, it is clear that the orders of the Commissions are subject to judicial review before the High Court and then before the Supreme Court of India. In terms of Article 141 of the Constitution, the judgments of the Supreme Court are law of the land and are binding on all courts and tribunals. Thus, it is abundantly clear that the Information Commission is bound by the law of precedence, i.e., judgments of the High Court and the Supreme Court of India. In order to maintain judicial discipline and consistency in the functioning of the Commission, we direct that the Commission shall give appropriate attention to the doctrine of precedence and shall not overlook the judgments of the courts dealing with the subject and principles applicable, in a given case. It is not only the higher court□s judgments that are binding precedents for the Information Commission, but even those of the larger Benches of the Commission should be given due acceptance and enforcement by the smaller Benches of the Commission. The rule of precedence is equally applicable to intra appeals or references in the hierarchy of the Commission.

107.The writ petition is partly allowed with the above directions, however, without any order as to costs.□

84.In the decision Bihar Public Service Commission V. Saiyed Hussain Abbas Rizwi and another, [2013-2-L.W. 293 (Part 4)] at special page 301, in paragraphs 23 & 24, the Hon'ble Supreme Court has observed and held as follows:

"23. 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) = (1952) 62 L.W. 527]. It also means the general welfare of the public that warrants recommendation and protection; something in which the public as a whole has a stake [Black□s Law Dictionary (Eighth Edition)].

24.The satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity. Similarly, there may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given their due implementation as they spring from statutory exemptions. It is not a decision simpliciter between private interest and public interest. It is a matter where a constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly

when both these rights emerge from the constitutional values under the Constitution of India."

Also, in the aforesaid decision, at page 295, in paragraphs 29 & 30, the Hon'ble Supreme Court has held as follows:

"Firstly, the members of the Board are likely to be exposed to danger to their lives or physical safety. Secondly, it will hamper effective performance and discharge of their duties as examiners. This is the information available with the examining body in confidence with the interviewers. Declaration of collective marks to the candidate is one thing and that, in fact, has been permitted by the authorities as well as the High Court. We see no error of jurisdiction or reasoning in this regard. But direction to furnish the names and addresses of the interviewers would certainly be opposed to the very spirit of Section 8(1)(g) of the Act.

The disclosure of names and addresses of the members of the Interview Board would exfacie endanger their lives or physical safety. The possibility of a failed candidate attempting to take revenge from such persons cannot be ruled out. On the one hand, it is likely to expose the members of the Interview Board to harm and, on the other, such disclosure would serve no fruitful much less any public purpose. Marks are required to be disclosed but disclosure of individual names would hardly hold relevancy either to the concept of transparency or for proper exercise of the right to information within the limitation of the Act.

85.The requirement of a judicial mind/legal person in a quasi-judicial body has been internationally approved and recognised. At this stage, we appropriately point out that in the Canadian Human Rights Tribunal, under the Canadian Human Rights Act, a Vice Chairman and Members of the Tribunal are required to possess a Degree in Law from a recognised University and be the Member of bar of a Province or a Chamber desnotaries due quebec for atleast 10 years. Together with this qualification, such individual requires to possess General Knowledge of Human Rights Law as well as Public Law including the Administrative and Constitutional Laws.

86.Under the Canadian Law, the Information Commissioner has to be appointed by the Governor in Council after consultation with the leader of every recognised party in senate and the House of the commons. An approval of such appointment is made by resolution of senate and the houses of commons. The Vice Chairperson place a significant role within this Administrative Tribunal by ensuring a fair timely and impartial adjudication process for Human Rights complaints, so as to benefited the individuals concerned.

87.In United Kingdom, the Director in Office of the non-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 District of Colombia and North Carolina in U.K. etc.

88.It is to be pointed out that in 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), whereby and whereunder, it is held 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.' Also, it is observed 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'.

89.It appears that 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 filed Civil Appeal No.10044 of 2010 (arising out of SLP (C)No.32855 of 2009) and the Honourable Supreme Court taking up the same with C.A.10045/2010 @ SLP (C)No.32856 of 2009, the 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, has framed the following substantial questions of law as to the interpretation of the Constitution 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?

and directed the Registry to place this matter before the Hon'ble Chief Justice of India for constitution of Bench for appropriate strength.

90.We more aptly point out the decision of the Hon'ble Supreme Court in High Court of Judicature for Rajasthan V. Ramesh Chand Paliwal and another, [AIR 1998 Supreme Court 1079], it is observed as follows:

"Art.229 makes Chief Justice of the High Court the supreme authority in the matter of appointment of the High Court officers and servants. This Article also confers rule making power on the Chief Justice for regulating the conditions of service of officers and servants of the High Court subject to certain restrictions. The power available to the Chief Justice of the High Court, under Art. 229, is akin to the power of the Chief Justice of India under Art. 146. Just as Chief Justice of India is the supreme authority in the matter of Supreme Court Establishment including its office staff and officers, so also the Chief Justice of the High Court is the sole authority in these matters and no other Judge or officer can legally usurp those administrative functions or power."

91.A deeper scrutiny of the ingredients of Sections 8 and 11 of the Right to Information Act, 2005 categorically point out that there is an absolute fetter on six out of ten exceptions viz., 1(a), (b), (c), (f), (g) & (h). In regard to the matters coming within the ambit of Section 8(1)(d), (e), (h) and (i) of the Act, the Information Officers are obliged to record a finding by taking into consideration the relative merit between the public interest and secrecy. If the public interest outweighs private interest, in that event, the information has to be supplied. Otherwise, for denying/refusing to furnish the information in issue, the concerned officer is supposed to ascribe reasons thereto, in our considered opinion.

92.As far as the present case is concerned, the 1st Respondent/ Petitioner was permitted by the Registry of this Court to peruse the documents relating to the Criminal Contempt Petition No.__ of 2010 in E.A.Nos.11, 12 and 20 of 2003 in E.P.No.5 of 2001 in O.S.No.85 of 1985 on any working day during office hours, as per Section 2(j)(i) of the Right to Information Act and accordingly, he along with his counsel Thiru.B.Chandran, perused the entire note file in Roc.No.1490-A/2010/Judl./MB on 11.07.2011 and also made an endorsement to that effect.

93.At the risk of repetition, we point out that the 1st Respondent/ Petitioner along with his counsel, not satisfied with the perusal of Roc.No.1490-A/2010/Judl./MB on 11.07.2011, filed two R.T.I. Petitions dated 01.08.2011 and 18.08.2011 and sought for copies of the Minutes recorded by the Hon'ble Portfolio Judge for Pudukottai District dated 16.12.2010 and the Minutes recorded by the Hon'ble Chief Justice dated 07.03.2011. For that purpose, he filed Copy Application and remitted a flat rate of Rs.70/- (Rs.35/- for obtaining the copies of the minutes). In this regard, we relevantly point out that the Notings, Jottings, Administrative Letters, Internal Deliberations and Intricate Internal Discussions etc. on the administrative side of the Hon'ble High Court cannot be brought under Section 2(j) [under the caption 'Right to Information'] of the Right to Information Act, 2005, in the considered opinion of this Court.

94.To put it succinctly, the copies of Minutes recorded by the Hon'ble Portfolio Judge, Pudukottai District dated 16.12.2010 and the Minutes recorded by the Hon'ble Chief Justice on 07.03.2011 in the Criminal Contempt Petition issue, cannot be furnished or supplied to the 1st Respondent/Petitioner, for the purpose of maintaining utmost confidentiality and secrecy of the delicate function of the internal matters of High Court. If the copies of the Minutes dated 16.12.2010 and 07.03.2011, as claimed by the 1st Respondent/Petitioner, are furnished, then, it will definitely make an inroad to the proper, serene function of the Hon'ble High Court □ being an Independent Authority under the Constitution of India. Moreover, the Hon'ble Chief Justice of High Court [as Competent Authority □ Public Authority under Section 2(e)(iii) and 2(h)(a) of the Act, 22 of 2005 and also Plenipotentiary in the Judicial hierarchy] can be provided with an enough freedom and inbuilt safeguards in exercising his discretionary powers either to furnish the information or not to part with the information, as prayed for by any applicant much less the 1st Respondent/Petitioner.

95.That apart, if the copies of the Minutes dated 16.12.2010 and 07.03.2011 are supplied to the 1st Respondent/Petitioner, then, the interest of the administration of the High Court will get jeopardised and also it will perforce the Petitioner/High Court to furnish the informations sought for by the concerned Applicants/Requisitionists as a matter of usual course without any qualms or rhyme or reasons/ restrictions. In effect, to uphold the dignity and majesty of the Hon'ble High Court □ being an Independent Authority under the Constitution of India, some self-restrictions are to be imposed as regards the supply of internal/domestic functioning of the Hon'ble High Court and its office informations in respect of matters which are highly confidential in nature inasmuch as it concerns with the Intricate, Internal Discussions and Deliberations, Notings, Jottings and Administrative Decisions taken on various matters at different levels and as such, they are exempted from disclosure under Section 8(e)(i)(j) of the Right to Information Act, 2005. Even otherwise, they are not open to litigants/public without restrictions. No wonder, it can be fittingly observed that if Impartiality is the Soul of Judiciary, then, Independence is the Life Blood of Judiciary. Also that, without Independence, Impartiality cannot thrive/survive.

96.In short, if the informations sought for by the 1st Respondent/ Petitioner are furnished, then, it will prejudicially affect the confidential interest, privacy and well being of the High Court, in the considered opinion of this Court. In any event, the 1st Respondent/Petitioner cannot invoke the aid of Clause 37 of Amended Letters Patent dealing with 'Regulation of Proceedings' and also Order XII [pertaining to the entitlement of Certified Copies] of the Rules of the High Court, Madras, Appellate Side, 1965, since they are not applicable to him.

97.For the foregoing elaborate discussions and reasons and on an overall assessment of the facts and circumstances of the case which float on the surface, we unhesitatingly hold that the contention of the Public Information Officer, Office of the Registrar, High Court, Madurai Bench of Madras High Court pointing out before the 2nd Respondent/ Tamil Nadu Information Commission that 'the Commission, on numerous occasions, has determined procedures for receipt of documents from Court' as if it is a Judicial order, is not legal. Likewise, the order of the 2nd Respondent/Tamil Nadu Information Commission, Chennai in Case No.11224/Enquiry/A/2012 dated 22.05.2012, in advising the 1st Respondent/Petitioner to obtain the copies of the Minutes, by filing a Copy Application before Court, as per the procedure followed by the Judicial Department and closing the case, is prima facie unsustainable in the eye of law. Accordingly, this Court, in the interest of Justice, interferes with the said order dated 22.05.2012 in Case No.11224/Enquiry/A/ 2012 passed by the 2nd Respondent/Tamil Nadu Information Commission, Chennai and sets aside the same, to advance the cause of Justice. Resultantly, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(E.D.R.J.) (M.V.J.)

14.06.2013

Index :Yes

Internet :Yes

Sgl

To

1.The Registrar General,
High Court of Madras,
Chennai □ 600 104.

2.The Registrar,
The Tamil Nadu Information Commission,
No.2, Theyagaraya Salai,
Teynampet,
Chennai □ 600 018.

ELIPE DHARMA RAO,J.

AND

M.VENUGOPAL,J.

Sgl

ORDER IN

W.P.No.28643 of 2012

14.06.2013