

## JUDGMENT

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1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.
2. The Writ Jurisdiction of this Court is invoked against the order dated 15-5-2013 passed by the Respondent No.1 i.e. the Central Information Commission by which order, the Second Appeal filed by the Petitioner under the Right to Information Act 2005, (hereinafter referred to as the said Act) came to be dismissed and resultantly, the orders passed by the Central Public Information Officer (CPIO for short) of the Income Tax Department and the order dated 5-2-2013 passed by the First Appellate Authority came to be confirmed.
3. The Petitioner abovenamed claims to be an RTI activist and is a former Central Information Commissioner (CIC). Presently, the Petitioner is the Chairman of the Technical Advisory Committee set up by the Municipal Corporation of Greater Mumbai to advise on RTI, in a honorary capacity.
4. The Petitioner on or about 21-11-2012 made an application under Section 6 of the said Act, to the CPIO of the Income Tax Department inter alia requesting certain information and more particularly the Income Tax Returns and balance sheets of the Respondent No.3 herein for the preceding three years. The Petitioner in the said application justified the information sought by stating to the following effect: "There is a larger public interest in disclosing this information to compare his affidavit given to the Election Commission with his Income Tax returns". Since the information related to the Respondent No.3 who is a third party, it seems that in terms of Section 11 of the said Act, a letter was addressed by the CPIO to the Respondent No.3. A reply was received from the Respondent No.3 opposing the disclosure of any information. The CPIO of the Income Tax Department thereafter by her order dated 2-1-2013 denied the said information sought by the Petitioner. It was observed in the said order that the information sought for has no relationship to any public activity or interest and therefore does not qualify in view of the provisions of Section 8(1)(j) of the said Act. The Petitioner was however informed that if he is aggrieved by the said order, he may file an Appeal before the First Appellate Authority whose designation was mentioned in the said order.
5. The Petitioner accordingly filed a First Appeal under Section 19 of the said Act. The said Appeal inter alia contained the grounds on which the order was challenged, one of the grounds in the Appeal was that the disclosure of the information to another person cannot be construed as being unwarranted invasion of the privacy of the individual. Another ground that was set out was that the fulfilment of the statutory requirements would not be covered by the exemption contemplated under Section 8(1)(j). A further ground which was set out was that the information which cannot be denied to Parliament, a citizen would be entitled to the same information, as Parliament itself derived its legitimacy from the citizens, and lastly it was set out that the standard of disclosure for those who want to be public servants has been set higher by the Apex Court in the Judgment in *Union of India v. Association for Democratic Reforms* [2002] 5 SCC 294. The said order was therefore challenged on the ground that exemption under Section 8(1)(j) does not apply.
6. The First Appeal was considered by the Appellate Authority i.e. the Additional Commissioner of Income Tax-18(2) who by his order dated 5-2-2013 rejected the said Appeal. The First Appellate Authority reiterated the grounds on which the information was denied by the CPIO. The First Appellate Authority referred to the Judgment of the Apex Court in the case of *Girish Ramchandra Deshpande v. Central Information Commission* [2013] 351 ITR 472/[2012] 211 Taxman 46/25 taxmann.com 525 wherein the Apex Court has held that the details disclosed by a person in his Income Tax returns is personal information which stands exempted from disclosure under clause (1) of Section 8(j) of the said Act unless larger public interest is involved. The First Appellate Authority held that in view of the third party's objection as also in view of the decision of the Apex Court in *Girish Ramchandra Deshpande's*

case (*supra*), the information sought by the Petitioner falls under the exempted category specified under Section 8(1)(j) of the said Act. The First Appellate Authority further observed that the said information is a personal information the disclosure of which has no relationship to any public activity or interest and which would cause unwarranted invasion of the privacy of the concerned party. Hence on the aforesaid grounds, the Appeal filed by the Petitioner came to be rejected.

7. The Petitioner thereafter filed a Second Appeal before the Central Information Commission, New Delhi. The Petitioner in the Second Appeal relied upon the judgment of the Apex Court in the matter of *R. Rajagopal v. State of Tamil Nadu* [1994] 6 SCC 632 and the Judgment of the Apex Court in *Association for Democratic Reforms* case (*supra*), a ground was raised that the judgment of the Apex Court in *Girish Ramchandra Deshpande's* case (*supra*) has been rendered without considering the said two judgments as also without considering the proviso to the said Section 8(1)(j) of the said Act. The said Second Appeal filed by the Petitioner came to be disposed of by the Central Information Commissioner by upholding the orders passed by the Public Information Officer and the First Appellate Authority. The Central Information Commissioner in his order referred to the 5 Member Bench Judgment dated 5-6-2009 of the Commission wherein the said 5 Member Bench had held that Income Tax Returns have been rightly held to be personal information exempted from disclosure under clause 8(1)(j) of the said Act. The Second Appellate Authority also referred to the judgment of the Apex Court in *Girish Ramchandra Deshpande's* case (*supra*) holding that the details disclosed by a person in his Income Tax Returns is personal information which has been exempted from disclosure under clause (j) of Section 8(1) of the said Act, unless involved a larger public and the CPIO and or State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information. The Central Information Commissioner has observed that in the present Appeal the Petitioner has not been able to prove any larger public interest with corroborative evidence and therefore upheld the decisions of the Central Public Information Officer and the First Appellate Authority and disposed of the said Second Appeal. As indicated above, it is the said order dated 15-3-2015, passed by the Central Information Commissioner which is taken exception to by way of the above Petition.

An Affidavit in Reply dated 27-2-2014 is filed on behalf of the Respondent No.2. The Learned Counsel for the Petitioner submitted Written Submissions on 7-5-2015.

#### SUBMISSIONS OF THE LEARNED COUNSEL MR. JABBAR SHAIKH ON BEHALF OF THE PETITIONER

- (i) That the Central Public Information Officer, the First Appellate Authority and the Central Information Commissioner have erred in rejecting the application filed by the Petitioner seeking the Income Tax Returns for 3 years of the Respondent No.3 which have been sought for by the said application on the ground that the said information is exempted under Section 8(1)(j) of the said Act.
- (ii) That all the three authorities below have failed to appreciate that the filing of the Income Tax Returns is a public activity and is a matter of public interest and hence privacy of the Respondent No.3 is not breached if the Income Tax Returns are provided to the Applicant.
- (iii) That Section 8(1)(j) itself postulates that the larger public interest justifies the disclosure of the information sought by the Applicant then the said information has to be provided. The authorities below have failed to appreciate the reason why the Applicant was seeking the said information which was sought by him by the application in question.
- (iv) That the authorities below have erred in applying the judgment of the 5 Member Bench of the Information Commission as also the Judgment of the Apex Court in *Girish*

*Ramchandra Deshpande's case (supra)* as the facts in the said cases are distinguishable from the facts of the present case.

- (v) That the Judgment in *Girish Ramchandra Deshpande's case (supra)* does not lay down any proposition of law and therefore cannot be applied.
- (vi) That the disclosure of the information sought for by the Applicant would be in larger public interest which outweighs the breach of privacy if any of the Respondent No.3.
- (vii) That the authorities below failed to consider the application on the touchstone of the proviso to Section 8(1)(j) of the said Act namely that the information which cannot be denied to the Parliament or the State Legislature cannot be denied to a citizen.
- (viii) That a Division Bench of this Court in the case of *Surup Singh Naik v. State of Maharashtra* AIR 2007 Bom. 121 has dealt with the proviso to Section 8(1)(j) and has held in the said case that the information which cannot be denied to the Parliament or the State Legislature cannot be denied to the citizen.
- (ix) That the disclosure of the information is in larger public interest has been demonstrated by the Petitioner by making out a case in the Appeal namely that the same would amount to reducing corruption and increasing the faith in the elected representatives.
- (x) That the judgment in *Girish Ramchandra Deshpande's case (supra)* does not lay down any law and the said Judgment was purely based on facts and circumstances of the case and therefore has no precedential value. Reliance is sought to be placed on the following judgments of the Apex Court.
  - (1) in the matter of *Dalbir Singh v. State of Punjab* [1979] 3 SCC 745
  - (2) in the matter of *State of Punjab v. Surinder Kumar* [1992] 1 SCC 489
  - (3) in the matter of *S. Shanmugavel Nadar v. State of Tamil Nadu* [2002] 8 SCC 361
- (xi) That it has been held in the matter of *Union for Civil Liberties (PUCL) v. Union of India* AIR 2003 SC 2363 as also in the matter of *R. Rajagopal case (supra)* and in the cases of *Association for Democratic Reforms (supra)* and *Union for Civil Liberties (supra)* that the public interest element involved in divulging information relating to public servants, MP's and Ministers outweighs the right to privacy.

SUBMISSION OF THE LEARNED COUNSEL MR. MALHOTRA ON BEHALF OF THE RESPONDENT NO.2

- (i) That the orders passed by the CPIO, the First Appellate Authority and the Central Information Commissioner cannot be faulted with in view of the Judgment of the Apex Court in the matter of *R.K. Jain v. Union of India* [2013] 14 SCC 794 and the Judgment of the 5 Member bench of the Commissioner whereby it has been held that the Income Tax Returns fall in the exempted category under Section 8(1)(j) of the said Act.
- (ii) That the Petitioner has not been able to connect the information sought i.e. the Income Tax Returns of the Respondent No.3 with any public activity of the Respondent No.3 and therefore the authorities were right in refusing to provide the information to the Petitioner.

SUBMISSION OF THE LEARNED SENIOR COUNSEL MR. R.M.KADAM ON BEHALF OF THE RESPONDENT NO.3

- (i) That from the reason mentioned in the application for seeking the information that the

Petitioner/Applicant has sought in respect of the Respondent No.3 no case of public interest has made out and hence the Petitioner has failed to discharge the burden which would entitle him to the said information. Reliance is placed on the judgment of the Apex Court in the matter of *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi* [2012] 13 SCC 61

- (ii) That the information sought namely the Income Tax Returns of the Respondent No.3 has no relation with any public activity of the Respondent No.3
- (iii) That in view of the Judgment of the Apex Court in *Girish Ramchandra Deshpande's* case (*supra*) which has been reiterated by the Apex Court in *R.K. Jain's* case (*supra*), the information relating to the Income Tax Returns falls within the exempted category under Section 8(1)(j) and since no case of public interest has been made out by the Petitioner, the said information cannot be provided. The authorities below were therefore right in rejecting the application of the Petitioner.
- (iv) That the Judgments on which reliance is placed on behalf of the Petitioner have no relevance in the context of the information sought by the Petitioner under the Right to Information Act. The Right to Information Act is a self contained code and unless public interest is made out or that the public interest outweighs the right to privacy of the Respondent No.3, the information sought by the Petitioner cannot be provided.
- (v) That the reliance placed by the Petitioner on the proviso to Section 8(1)(j) is misplaced as the matter cannot be approached from the perspective and hypothesis that the information sought cannot be denied to the Parliament or the State Legislature and therefore cannot be denied to the Petitioner. The Parliament has its own rules of business and it cannot be presumed that the information in respect of Income Tax Returns of a member of the State Legislature would be sought. Reliance is placed on the judgment of a Learned Single Judge of the Delhi High Court in the matter of *Vijay Prakash v. Union of India* [2009] 160 DLT 631
- (vi) That the Judgment in *Surup Singh Naik's* case (*supra*) though dealing with the said proviso is clearly distinguishable on facts and therefore the said Judgment has no application.
- (vii) That the reason given by the Petitioner for seeking the information cannot stand scrutiny in view of the fact that under the Representation of People Act, 1950, if incorrect information is provided by a candidate, then the candidate can be prosecuted under Section 125 of the said Act. The Parliament in its wisdom having directed the candidate to provide the information to the extent mentioned in the said Act at the time of filing of the nomination, it is for the Parliament to determine if any further information is required to be divulged by the candidate for which necessary amendment in the Representation of People Act would have to be made. It is therefore not open for the Petitioner to contend that the Petitioner seeks the information sought as he wants to cross check the information given by the Respondent No.3 at the filing of his nomination form with the Income Tax Returns.
- (viii) That the Election Commission in the interest of conducting free and fair elections has the power to issue appropriate directions. However since the Election Commission has not provided for filing of Income Tax Returns the said information cannot be sought by having recourse to the Right to Information Act on the ground that the information is to be compared with the information given at the time of filing the nomination.

CONSIDERATION

8. Having heard the Learned Counsel for the parties, I have considered the rival contentions. The question that arises for consideration in the instant matter is whether the Petitioner is entitled to the information he has sought for vide his application filed under the said Act or whether the said information falls within the exempted category under Section 8(1)(j) of the said Act. At this stage, it would necessary to refer to the provisions of the said Act which have a bearing in the instant matter. The said provisions are Section 8(1)(j) and Section 11 of the said Act, which for the sake of ready reference are reproduced herein under :

8. *Exemption from disclosure of information.* —(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(a) to (j)\*\*

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(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

11. Third party information.— (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section b, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

**9.** In so far as Section 11 is concerned, if the information sought relates to a third party, the CPIO or the State Public Information Officer as the case may be is within 5 days from the receipt of the request is required to give a written notice to such third party of the request and of the fact that the CPIO or the State Public Information Officer as the case may be intends to disclose the information or the record or part thereof and invited the third party to make a submission in writing or orally regarding whether the said information should be disclosed. Hence in terms of Section 11, the third party is required to be given a notice and the reply given by the third party to the request made has to be considered by the Information Officer whilst deciding the application.

**10.** In so far as Section 8(1)(j) is concerned, it relates to the personal information of an individual which has no relationship to any public activity or interest. The said clause (j) is a part of Section 8 which contains various categories of information which are exempted from disclosure. In so far as clause (j) is concerned, the CPIO or the State Public Information Officer may provide the said information to the information seeker if he is satisfied that larger public interest justifies the disclosure of such information. The proviso to the said clause (j) carves out an exemption that the information which cannot be denied to the Parliament or the State Legislature shall not be denied to any person. It is on the touchstone of the aforesaid two provisions that the application filed by the Petitioner in the instant matter would have to be considered. The Petitioner in his application made on 21-11-2012 has sought the Income Tax Returns of the previous three financial years of the Respondent No.3. The reason for which the information sought has been stated thus "There is a larger public interest in disclosing this information to compare his affidavit given to the Election Commission with his Income Tax Returns". The CPIO of the Income Tax Department sent a notice to the Respondent No.3 who in his reply objected to the information being supplied to the Petitioner. As indicated herein above, the said application of the Petitioner came to be rejected by the CPIO. The reason mentioned in the order dated 2-1-2013 was to the effect that the information sought has no relationship to any public activity or interest and it therefore does not qualify for being disclosed in view of Section 8(1)(j) of the said Act.

**11.** The Petitioner aggrieved by the said order dated 2-1-2013 filed an Appeal before the First Appellate Authority under Section 19 of the said Act. After justifying the reason for seeking information, the Petitioner in paragraph (4) of the said Appeal has stated to the following effect :

"There is a general belief that politicians and elected representatives are corrupt and mass wealth at the expense of the public. There is also a common belief that Income Tax authorities do not check that IT returns of those who are elected with their declared affidavits filed at the time of standing for elections. If this true, citizens will act as monitors and help correct such practices. On the other hand if citizens apprehensions are not true, it would enhance the trust and respect for the elected representative, which is necessary for a healthy democracy. Besides it would also improve the Citizens' trust in the Income Tax department."

Hence the Petitioner had sought to supplement the reason given in his original application before the CPIO by making a general statement in his Appeal to the effect mentioned in the excerpted portion of paragraph (4) as above of his Appeal. The said Appeal as indicated above was dismissed by the First Appellate Authority by its order dated 5-2-2013 and the reason mentioned by the CPIO was reiterated by the First

Appellate Authority. The First Appellate Authority has only broadened the ground mentioned by the CPIO by stating that the disclosure of the said information would cause unwarranted invasion of the privacy of the concerned party. The ground mentioned in the application filed by the Petitioner before the CPIO as also the ground mentioned in the Appeal filed by the Petitioner before the First Appellate Authority has been adverted to so as to consider whether the Petitioner has made out any case for disclosure of the information on the ground of the same being in public interest.

**12.** At this stage, it would be necessary to refer to the Judgment of the Apex Court in *Girish Ramchandra Deshpande's case (supra)* and *R. K. Jain's case (supra)* as also the judgment of the 5 Member Bench of the Commission.

In so far as *Girish Ramchandra Deshpande's case (supra)* is concerned, amongst the information sought by the Petitioner was the information relating to the details of the investments of the third party in the said case, lending and borrowing from banks and other financial institutions, the details of the gifts said to have been accepted by the Respondent No.3 were also sought. The Apex Court observed that the information sought mostly finds place in the Income Tax Returns of the Respondent No.3. The Apex Court further observed that the details disclosed by a person in his Income Tax Returns is personal information which stands exempted from disclosure under clause (j) of Section 8(1) of the said Act, unless involves larger public interest and the CPIO or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information. Paragraphs 11 to 13 of the judgment in *Girish Ramchandra Deshpande's case (supra)* are material and are reproduced hereinunder:

'11. The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the above-mentioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act.

12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

13. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause(j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.'

**13.** In so far as the Judgment in *R. K. Jain's case (supra)* is concerned, the facts were identical as the facts in *Girish Ramchandra Deshpande's case* in as much as the information relating to the service record of the third party was sought by the Petitioner which was denied on the ground that the same is personal

information which stands exempted under Section 8(1)(j) of the said Act. The Apex Court referred to the Judgment in *Girish Ramchandra Deshpande's* case (*supra*) and especially paragraphs 11 to 13 thereof and thereafter concluded that the said information could not be provided and accordingly affirmed the Judgment of the Division Bench of the High Court. Paragraph 21 of the said report is material and is reproduced hereinunder:

"21. In view of the discussion made above and the decision in this Court *Girish Ramchandra Deshpande*, as the appellant sought for inspection of the documents relating to the ACR of the Member, CESTAT, inter alia relating to adverse entries in the ACR and the follow up action taken therein on the question of integrity we find no reason to interfere with the impugned judgment passed by the Division Bench whereby the order passed by the learned Single Judge was affirmed".

**14.** In so far as the Judgment of the 5 Member Bench of the Commission is concerned, the 5 Member Bench has whilst deciding the Appeal has referred to various Judgments of the Commission and thereafter has concluded that the Income Tax Returns fall in the category of personal information and is therefore exempted under Section 8(1)(j) of the said Act.

**15.** Hence what flows from the Judgments of the Apex Court is that the Income Tax Returns constitute personal information and are exempted from disclosure under Section 8(1)(j) and that the said personal information can only be divulged if the CPIO or the State Public Information Officer reaches a conclusion that it would be in the larger public interest to reveal such information. In the instant case, the reason set forth in the first application filed by the Petitioner before the Public Information Officer hardly makes out a case for the information to be disclosed on the ground of public interest. In so far as the ground made out in the Appeal filed before the First Appellate Authority is concerned, the Petitioner has sought to make a general statement which does not specifically relate to the Respondent No.3. The Petitioner has also sought to justify the information sought on the ground that the Income Tax authorities do not check the Income Tax Returns of those who are elected with their declared affidavits filed at the time of standing for elections. The said ground also does not make out any case of there being any public interest involved in the disclosure of the information sought by the Petitioner by way of the Income Tax Returns of the Respondent No.3 for the preceding three years. The Petitioner is in fact seeking the information by questioning the manner in which the Income Tax Department functions. Since the Petitioner is seeking information relating to the Respondent No.3 the Petitioner was required to demonstrate as to how the disclosure of the information relating to the Respondent No.3 would serve public interest. As indicated above, the Petitioner has made a general and sweeping statement which can hardly be said to satisfy the test of disclosure being made in public interest.

The Petitioner has sought to assail the reliance placed by the CIC on the judgment in *Girish Ramchandra Deshpande's* case (*supra*) on the ground that the same does not lay down any law and that the same has been rendered without considering the judgment of the Apex Court in *Union for civil liberties (PUCL)* (*supra*) case and *R. Rajagopal's* case (*supra*). In the context of the challenge to the applicability of the judgment in *Girish Ramchandra Deshpande's* case is concerned, it would be necessary to revisit the facts involved in the said case. In the said case, as indicated above the information sought was relating to the service record of the Respondent No.3 in the said Petition as also the information relating to the investments, loans and borrowing from banks and other financial institutions. In so far as the information relating to the service record of the Respondent No.3 is concerned, the Apex Court observed that the same would be governed by service rules and is a matter between the employer and the employee and that the information falls within the expression personal information, disclosure of which according to the Apex Court had no relationship to any public activity or public interest and on the other hand would cause unwarranted invasion of the privacy of that individual. In so far as the information sought by the Petitioner/Applicant relating to the investments, loans and borrowing from banks, the Apex Court held that the same being part of the Income Tax Returns, is personal information which stands exempted from

the disclosure under Sub-Section (j) of Section 8(1) of the said Act. The Apex Court as indicated above after having recorded the said finding further observed that in a given case if the CPIO or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information appropriate orders could be passed, but the Petitioner cannot claim the said details as a matter of right. Hence the Apex Court in *Girish Ramchandra Deshpande's case (supra)* was directly concerned with Section 8(1)(j) of the said Act and exemption from disclosure covered by the said provision, it is in the said context that the Apex Court made observations and recorded a finding that the details in the Income Tax Returns is personal information and can be disclosed only if public interest so warrants. The Apex Court thereby laid down a proposition that the information covered by section 8(1)(j) is an exempted information and can be disclosed only if the CPIO or the Appellate Authority is satisfied that it would be in the public interest to do so. Hence the contention urged by the Learned Counsel for the Petitioner that the judgment in *Girish Ramchandra Deshpande's case (supra)* lay down any law has to be rejected. In my view the reliance placed by the Petitioner on the judgments of the Apex Court in *Dalbir Singh's case (supra)*, *Surinder Kumar's case (supra)* *S. Shanmugavel Nadar's case (supra)* to contend that *Girish Ramchandra Deshpande's case (supra)* does not lay down any law, is thoroughly misplaced, as the said judgments have been rendered in the factual context prevailing in the said cases. Hence in so far as whether the Income Tax Returns fall in the exempted category the issue has been concluded by the Apex Court in *Girish Ramchandra Deshpande's case*, which has been fetched in *R.K. Jain's case (supra)*.

**16.** Since the Petitioner seems to be basing his case on the purity of elections and probity in public life, before adverting to the two judgments of the Apex Court in the two *Union for Civil Liberties (PUCL)'s case (supra)*, it would be necessary to refer to the relevant provisions of the Representation of the People Act, 1950. By the amendment carried out in the year 2002, Sections 33A and 33B have been introduced in the Representation of the People Act. In terms of Section 33A, a candidate shall apart from any information which he is required to furnish in his nomination has also to furnish information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed, whether he has been convicted of an offence, the candidate has to submit an affidavit in the prescribed form verifying the information specified in sub-section (1). The returning officer after the information is furnished to him under sub-section (1) displays the said information by displaying a copy of the said affidavit at a conspicuous place in his office. Section 33B provides that no candidate is liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made thereunder.

Section 125A which has also been introduced by the amendment of the year 2002 provides for prosecution if the candidate fails to furnish the information specified in Section 33A or gives false information which he knows or has reason to believe to be false. Hence a reading of the aforesaid provisions disclose that to have free and fair elections and to bring purity in the electoral process in the country and to bring probity in public life that certain electoral reforms were introduced which are now reflected in the framing of Section 33A and Section 125A of the Representation of the People Act. Hence the Parliament has provided for disclosure of information relating to the candidate to the extent mentioned in Section 33A. The plenary power of the Election Commission of India to issue directions for a free and fair conduct of the elections cannot be doubted, if the Election Commission is of the opinion that some further directions are required to be issued to see to it that the elections are free and fair undoubtedly has the powers to issue the directions.

However since the Parliament has deemed it appropriate to limit the information in respect of the candidate to the extent mentioned in Section 33A, it is not open for a citizen to contend that he seeks certain information to cross check the information which has been revealed by the candidate at the time of filing of his nomination. If the information furnished by a candidate is false, he can be prosecuted under Section 125A of the said Act. In the instant case, as indicated above, the Petitioner has sought information

to cross check the information furnished by the Respondent No.3 at the time of filing of his nomination with his Income Tax Returns the said reason can therefore hardly be said to satisfy the test of the same being in public interest. The information sought also has no connection with any public activity of the Respondent No.3. The Petitioner possibly being aware of the said position has therefore sought to contend that filing of the Income Tax Returns is a public activity. I am afraid the said contention is thoroughly misconceived as filing of Income Tax Returns can be no stretch of imagination be said to be a public activity, but is an obligation which a citizen owes to the State viz. to pay his taxes and since the said information is held by the Income Tax Department in a fiduciary capacity, the same cannot be directed to be revealed unless the pre-requisites for the same are satisfied.

17. Now coming to the judgment in *Union for Civil Liberties (PUCL)'s case (supra)*. The said judgment concerns the directions issued by the Election Commission of India under Article 324 of the Constitution of India. The Apex Court has summed up the legal and constitutional position which emerges from the directions issued by the Election Commission of India in Paragraph 46 of the said judgment. Paragraph 46 of the said judgment, is for the sake of ready reference reproduced herein under :—

'46. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:—

1. The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word 'elections' is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.
2. The limitation on plenary character of power is when the Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article is a reservoir of power to act for the avowed purpose of having free and fair election. Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions, Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya Lal Omar's case*, the Court construed the expressions "superintendence, direction and control" in Article 324 (1) and held that a direction may mean an order issued to a particular individual or a precept which may have to follow and it may be specific or a general order and such phrase should be construed liberally empowering the election commission to issue such orders.
3. The word "elections" includes the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the process of choosing a candidate. Fair election contemplates disclosure by the candidate of his past including the assets held by him so as to give a proper choice to the candidate according to his thinking and opinion. As stated earlier, in *Common Cause case (supra)* the Court dealt with a contention that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election. If on affidavit a candidate is required to disclose the assets held by him at the time of election, voter can decide whether he could be re-elected even in case where he has collected tons of money. Presuming, as contended by the learned senior counsel Mr. Ashwini Kumar, that this condition may not be much effective for breaking a vicious circle which has polluted the basic democracy in the

county as the amount would be unaccounted. May be true, still this would have its own effect as a step-in-aid and voters may not elect law-breakers as law-makers and some flowers of democracy may blossom.

4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.
5. The right to get information in democracy is recognized all throughout and it is natural right flowing from the concept of democracy. At this stage, we would refer to Article 19[1] and [2] of the International Covenant of Civil and Political Rights which is as under:—
  - "1. Everyone shall have the right to hold opinions without interference.
  2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."
6. Cumulative reading of plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the Executive to subserve public interest.
7. Under our Constitution, Article 19(1) (a) provides for freedom of speech and expression. Voters' speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is must. Voter's (little man-citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law breakers as law makers.'

**18.** In so far as the next judgment of the Apex Court in *Union for Civil Liberties (PUCL)'s case (supra)* is concerned, the Apex Court was considering the challenge raised to Section 33B of the Representation of the People Act. The Apex Court was considering the disclosure of information by a candidate under Section 33A of the said Act in the context of the right to privacy which is protected under Article 21 of the Constitution of India. The observations of the Apex Court in paragraph 49 of the said judgment are material and are for the sake of ready reference reproduced herein under :—

"49. It is to be stated that the Election Commission has from time to time issued instructions/orders to meet with the situation where the field is unoccupied by the legislation. Hence, the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible and in any case within two months."

**19.** In my view, the aforesaid judgments can hardly further the case of the Petitioner to contend that since the Respondent No.3 being a people's representative, his right to privacy would not be affected if the information sought by the Petitioner is disclosed. The Apex Court has made the observations that it has made having regard to the amended provisions of the Representation of People Act, and the said

observations cannot be applied whilst considering the provisions of the said Act, which is a self contained code.

**20.** The Petitioner has also sought to place reliance on the judgment of the Apex Court in *R Rajagopal's* case (*supra*). The said judgment also concerns the right to privacy under Article 21 of the Constitution of India and the case concerns the publication of the autobiography of one Auto Shankar who was convicted for 6 murders and was sentenced to death and who had written his autobiography in jail and has handed over the same to his wife with the knowledge and approval of the jail authorities for being delivered to his advocate with a request to publish the same in the Petitioner's magazine. It seems the autobiography depicted a close nexus between the prisoner and several IAS and IPS and other officers some of whom were alleged to be his partners in several crimes. The Petitioner had decided to commence serial publication of the autobiography and announced the same in their magazine. The Inspector General of Prisons wrote a letter to the Petitioners alleging that the serial in question was not written by Auto Shankar and asking the Petitioners to stop publishing the same forthwith. The question that the Apex Court framed was, does such an authorised writing infringes the citizen's right to privacy. The Apex Court in Paragraph 26 laid down the broad principles in so far as the right to privacy is concerned qua the right to publish. The Apex Court in clause (2) of Paragraph 26 has observed that exception to the right of privacy is that the publication becomes unobjectionable if such publication is based upon the public records including Court records. The Apex Court justified the observation by stating that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. In my view, the said judgment does not further the case of the Petitioner in seeking the information sought on the ground that no right of privacy of the Respondent No.3 is affected, in fact the said judgment supports the case of the Respondent No.3 as the Apex Court has observed that the right to privacy would have to give way if what is published is from public records. In the instant case, the records maintained by the Income Tax Department in respect of an individual who is an assessee before it cannot be said to be a public record as it is well settled that the Income Tax Department holds the said records in a fiduciary capacity.

**21.** The learned counsel for the Petitioner has sought to place reliance on the judgment of a learned Single Judge of this Court reported in the matter of *Kashinath J. Shetye v. Dinsh Vaghela* 2009 (0) AIJ-MH 146009. In the light of the judgments of the Apex Court in *Girish Ramchandra Deshpande's* case (*supra*) also *R.K. Jain's* case (*supra*) which judgments of the Apex Court are latter in point of time. The said judgment of a learned Single Judge of this Court stands impliedly overruled.

**22.** The exemption under Section 8(1)(j) of the said Act had come up for consideration before the Apex Court recently in *Bihar Public Service Commission's* case (*supra*). The Apex Court after observing that information which relates to personal information recorded by Section 8(1)(j) of the said Act stands exempted and can be disclosed only if the public interest so warrants, has thereafter held that the said exemption is a statutory exemption which must operate as a rule and only in exceptional cases, would disclosure be permitted that too for reasons to be recorded demonstrating satisfaction to the test of larger public interest. In so far as the competing claims between larger public interest and the invasion of privacy, the observations of the Apex Court in paragraph 23 of the said judgment are material and are reproduced herein under:

"23. The satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to the 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. On 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 emerged from the constitutional values under the Constitution of India."

Since the right to privacy has been recognized as a fundamental right to which a citizen is entitled to, therefore, unless the condition mentioned in Section 8(1)(j) is satisfied, the information cannot be provided. Hence the burden on the Applicant is much more onerous than may be a routine case. As indicated in the earlier part of this judgment the reason mentioned in the original application as supplemented by the grounds in the First Appeal hardly make out a case of public interest. Hence in the instant case, the said burden cannot be said to have been discharged by the Petitioner. Hence the finding of the First Appellate Authority as well as the CIC that the Petitioner has not made out any case for disclosure of the information on the ground of public interest cannot be faulted with.

**23.** The Petitioner has sought to place reliance on the proviso to Section 8(1)(j) of the said Act and has sought to contend that the authorities below have not considered the application of the Petitioner on the touchstone of the said Proviso. It was the submission of the learned counsel for the Petitioner based on the said proviso that the Petitioner would have to furnish the said information having regard to the proviso as the information sought by the Petitioner cannot be denied to the Parliament or the State Legislature. In support of the said contention the Petitioner has sought to place reliance on the judgment of a Division Bench of this Court in *Surup Singh Naik's* case (*supra*). In so far as the said judgment of the Division Bench is concerned, to which this Court was a party, no doubt in the said judgment proviso to Section 8(1)(j) was in contention and the Division Bench of this Court had allowed the application filed by the Petitioner seeking information relating to the hospitalization of the Petitioner Surup Singh Naik which was denied by the authorities below. However, the proviso was applied in the facts that were prevailing in the said case. The facts in the said case was that the Petitioner Surup Singh Naik was a Minister in the State Government at the relevant time who was punished for contempt of court by the Apex Court by judgment dated 10-05-2006 and was to undergo imprisonment for one month. It seems that the Petitioner surrendered to the police in Mumbai on 12-05-2006. On 14-05-2006 the Petitioner was shifted to one of the Government Hospitals i.e. the Sir J J Hospital on account of suspected heart problem as well as low sugar and blood pressure. The Respondent No.5 in the said Petition who was a private citizen had by his application dated 27-05-2006 sought information from the CPIO of the said Sir J J Hospital of the medical reports of the Petitioner. In his application it was set out that it was in public interest to know about why a convict is allowed to stay in the air conditioned comfort of the hospital and there had been intensive questioning about this aspect in the media and the peoples mind, and that there is, therefore, a legitimate doubt about the true reasons for the convict being accommodated in air conditioned comfort of the hospital. The CPIO did not furnish the necessary information. The Respondent No.5 thereafter filed an Appeal before the Respondent No.3 which also did not meet with any success. The Respondent No.5 therefore preferred a Second Appeal before the Respondent No.2. The Respondent No.2 i.e. Second Appellate Authority allowed the Appeal and directed the information to be provided to the Respondent No.5 which order was challenged before the Division Bench of this Court by way of the said Writ Petition. The Division Bench crystallized the question that it was required to answer namely the right of an individual to keep certain matters confidential on the one hand and right of the public to be informed on the other considering the provisions of the said Act. The Division Bench observed that it was concerned with a case where a person convicted for contempt of court, does such a person during the period of

incarceration, claim privilege or confidentially in respect of the medical records maintained by a public authority. The Division Bench considered the issue on the touchstone of the proviso and recorded a finding that such information normally cannot be denied to Parliament or the State Legislature unless the person who opposes the release of the information makes out a case that such information is not available to Parliament or the State Legislature under the Act. The Division Bench went on to observe that having regard to the plenary powers which the legislature enjoys, such information cannot be denied to Parliament or State legislature by any public authority. The Division Bench concluded that the records of the institution i.e. Sir J J Group of Hospitals, therefore,, ought to be made available to Parliament or the State Legislature. The Parliament/Legislature and/or its Committees are entitled to the records even if they be confidential or personal records of a patient. Hence the judgment of the Division Bench of this Court was revolving around the facts in the said case, where a Minister in Office was punished for Contempt of Court and was admitted to a Government Hospital and was being treated therein and the suspicion was that he had got himself admitted to avoid incarceration. The said judgment, in my view, cannot be extended to mean that any and every information is to be provided to the Parliament or the State Legislature. This has to be viewed in the context of the facts of *Surup Singh Naik's case (supra)* wherein the Division Bench of this Court was of the view that the information relating to the patient Surup Singh Naik could not have been denied to the Parliament or State Legislature. In my view, therefore, the judgment of the Division Bench of this Court does not in any manner further the case of the Petitioner based on the proviso to Section 8(1)(j) of the said Act.

**24.** The proviso to Section 8(1)(j) had also come up for consideration before a Learned Single Judge of the Delhi High Court in *Vijay Prakash's case (supra)*. Before The Learned Single Judge of the Delhi High Court the Judgment of the Division Bench of this Court was cited. The Learned Single Judge observed that he is unpersuaded by the reasoning of this Court which appears to have given undue, even overwhelming deference to Parliamentary privilege. The Learned Single Judge observed that were that the true position, the enactment of Section 8(1)(j) would itself be rendered meaningless and the basic safeguard bereft of content. The Learned Judge concluded that if the proviso is to be interpreted in a manner that the Parliament has the right to demand any information then there would be nothing left to the right to privacy which has been elevated to the status of a fundamental right by several judgments of the Supreme Court.

**25.** In my view therefore, the proviso cannot be sought to be interpreted in the manner which the Learned Counsel for the Petitioner seeks to do. There is also a basic fallacy in the contention raised on behalf of the Petitioner. The Petitioner wants to proceed on the hypothesis that the information sought by him cannot be denied to the Parliament. In so far as the Parliament is concerned, the Parliament has its own rules of business and it therefore cannot be presumed that the information in respect of the Income Tax Returns of a Member of Legislature would be sought. The same would undoubtedly be in the discretion of the Honourable Speaker. In the said context, it is also relevant to refer to Section 75A of the Representation of the People Act under which every elected candidate for a House of Parliament has to furnish information relating to the movable and immovable property, his liabilities to any public financial institution, his liabilities to the Central Government or the State Government to the Chairman of the Council of States or the Speaker of the House of the People i.e. Loksabha or the Chairman of the Council of the State i.e. Rajyasabha. Hence there are adequate provisions in the Representation of the People Act under which the information sought is to be provided to the Parliament to the extent mentioned in the said provisions and therefore reliance cannot be placed on the proviso to Section 8(1)(j) to contend that the exemption provided in the said Section would not operate.

**26.** For the reasons afore stated the impugned order dated 15-5-2013 passed by the Central Information Commissioner, confirming the orders passed by the First Appellate Authority and the CPIO does not suffer from any illegality or infirmity for this court to interfere in its Writ Jurisdiction. The Writ Petition is accordingly dismissed. Rule discharged with parties to bear their respective costs.

