Central Information Commission, New Delhi
File No. CIC/SH/A/2015/001081

Right to Information Act-2005-Under Section (19)

Name of the Appellant	**:**	**Shri Gulab Singh Rana** **General Manager, O/o. the Indian Overseas Bank, Central Office,** **P. B. No. 3765, 763, Anna Salai,** **Chennai- 600002**
Name of the Public Authority/Respondent	**:**	**Central Public Information Officer,** **Indian Overseas Bank,** **Central Office, P. B. No. 3765, 763,** **Anna Salai, Chennai- 600002**
Date of hearing	**:**	**6th June 2016**
Date of decision	**:**	**21st July 2016**

This matter arises out of the Commission's interim order No. CIC/SH/A/2015/001081 dated 21.4.2016 given by single member bench, recommending constitution of a full bench to

consider the issues thrown up by this case. Accordingly, the Chief Information Commissioner constituted a bench comprising the following Information Commissioners:-

1. Shri Sharat Sabharwal.

2. Prof. M. Sridhar Acharyulu.

3. Shri Sudhir Bhargava.

The full bench heard this matter on 6.6.2016. The Appellant was present at the NIC studio, Chennai with Advocate S. Sathiaseelan. The Respondents were represented by Shri P. Madhavan, DGM who was also present at the NIC Studio, Chennai. The following were present on behalf of the Central Bureau of Investigation:-

i. Shri Jasbir Singh, SP.

ii. Shri Naveen Kumar, Senior Public Prosecutor.

iii. Shri Prashant Srivastava, Dy. SP.

2. At the outset of the hearing, the Respondents stated that their stand in the matter remained the same as before the single member bench.

3. The CBI had sent their written submissions dated 30.5.2016 to the Commission, with a copy to the Appellant. They have stated that a charge-sheet was filed against the Appellant in 2013, the court has taken cognizance of the matter and it is at pre-charge stage. In case the Appellant needs any documents to defend himself, he can request the Court for the same at the appropriate stage of the trial. Since the matter is pending in a court, disclosure of the

information sought by the Appellant, under the RTI Act, would adversely affect the due process of law. They have also stated that the CBI is included in the Second Schedule to the RTI Act under Section 24 as an organization enjoying certain exemption under the Act. Therefore, the Respondent Bank may not part with the documents sought by the Appellant under the RTI Act because these relate to the sanction for prosecution accorded to the CBI and related correspondence between the CBI and the Respondent. It is stated that the information in question was sent by the CBI under "Secret / Confidential" category. Section 8 (1) (h) of the RTI Act is not only limited to the information which would impede the process of investigation, it also includes information which would impede the prosecution of offenders. It has been submitted that in two similar matters, decisions of CIC passed in cases No. CIC/SM/C/2012/000374 dated 31.10.2012 and CIC/SM/C/2011/000117/SG dated 1.7.2011 with respect of the accused's plea for Secret and Confidential documents of CBI were challenged by the CBI vide Writ Petition (Civil) No. 7439 of 2012 before the High Court of Delhi and Writ Petition (Civil) No. 40407 of 2011 before the High Court of Judicature of Allahabad and the Courts were pleased to stay the orders of CIC. CIC vide order dated 7.6.2010 in Appeal No. CIC/AT/A/2008/01238 dated 19.9.2008 decided that "all determinations about disclosure of any information relating to an ongoing prosecution should be through the agency of the Trial Court and not otherwise." Same views were reiterated by the Commission in case No. CIC/SH/A/2014/000085 dated 16.12.2014. The CBI have further stated that the required information can be sought from the Trial Court u/s 91 r/w 311 Cr.PC. Even the Trial Court can seek such information for the just decision of the case u/s 311 Cr.PC r/w 165 Indian Evidence Act. The Court also has the power to summon official communications (privileged

documents) u/s 162 of the Indian Evidence Act. At the end of their written submissions, the CBI conclude that the sought information / documents are under the control of Trial Court and the Appellant may approach the Trial Court at the relevant stage in the interest of justice. For a fair trial, proper procedure has been mentioned in Cr.PC and the Indian Evidence Act. Any interference in that procedure amounts to impeding the process of prosecution of offenders and the same is exempted u/s 8 (1) (h) of the RTI Act. The CBI also made oral submissions in the course of the proceedings. They stated that in terms of Section 2 (j) of the RTI Act, the information sought by the Appellant is under the control of the Court, as held in the CIC decision dated 7.6.2010 in appeal No. CIC/AT/A/2008/01238. They referred, in particular, to paragraphs 27 and 28 of the above decision. They cited Section 5 of the Indian Evidence Act. It was submitted that the mention of prosecution of offenders in Section 8 (1) (h) of the RTI Act is important. Citing Section 311 of Cr.PC, they stated that the Court has the power to summon any person as a witness. Citing Section 165 of the Indian Evidence Act, they stated that the judge has the power, in order to discover or to obtain proper proof of relevant facts, to ask any question of any witness and may order the production of any document or thing. The CBI also cited Section 91 of Cr.PC to the effect that whenever any court considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation, enquiry, trial or other proceedings, such court may issue a summons to the person in whose possession or power such document or thing is believed to be, requiring him to produce it. At that stage, no one can deny production of any documents stating that the same are privileged. The CBI also cited Section 162 of the Indian Evidence Act r/w Section 123 of the Indian Evidence Act. Reverting to the Commission's decision dated 7.6.2010 mentioned above, they

recalled that in S. M. Lamba vs. S. C. Gupta and Anr., the High Court of Delhi held: “This Court would like to observe that under the Code of Criminal Procedure, 1973, once the stage of an order framing charges have been crossed, it would be open to the accused to make an appropriate application before the learned trial court to summon the above documents in accordance with the law.” Speaking of Section 24 (1) of the RTI Act, they stated that the bar to get the information from the CBI, flowing from the above section, would also apply to getting the same information indirectly through the Respondent Bank. The CBI reiterated that the proviso to Section 24 (1) pertaining to allegations of corruption and human rights violations applies only in cases of corruption / violation of human rights involving officials of the CBI.

4. The Appellant has also made his written submissions dated 7.6.2016, in which he has mentioned the following questions of law in this case:-

(a) Whether the reference of the present appeal to the full bench is correct, in view of the final orders of the High Court of Delhi in (i.) Sudhirranjan Senapati case dated 5.3.2013. (ii.) Adeshkumar case dated 16.12.2014 and (iii.) B. S. Mathur case dated 3.6.2011? The Appellant states that the above cases constitute binding precedents over all the CIC decisions on Section 8 (1) (h) of the Act, relied upon by the CPIO and the CBI and the interim orders of the Delhi High Court in W. P. (C) No. 7439 of 2012 and the Allahabad High Court in W. P. (C) No. 40407 of 2011 relied by the CBI have no precedential value.

b. Whether the single Commissioner's order referring the matter to full bench relying on the order of the Commission in CIC/AT/A/2008/01238 dated 7.6.2010 (full bench) in which the father of the delinquent officer sought the information, whereas in the case on hand the delinquent officer is the Appellant, challenging the denial of information by the Respondent / CPIO and FAA, and without following the binding precedents of the Delhi High Court in Sudhirranjan Senapati case etc., is correct?

c. Whether the invocation of Section 8 (1) (d), (g) and (h) of the Act by the CPIO is correct, particularly invocation of Section 8 (1) (h) on the ground that divulging the information sought "would impede the prosecution of offenders" and whether u/s 8 (1) (h) "impede the prosecution of offenders" would also include the cases pertaining to the allegations of corruption and human rights violations, in view of the first proviso to Section 24 (1) of the Act?

d. Whether the CBI / third party herein can be excluded from the purview of the RTI Act invoking Section 24 (1) of the Act and the Second Schedule appended to it, by reading the provisions in isolation of the first and second provisos to Section 24 (1) of the Act and deny the information sought by the Appellant?

e. Whether the CBI / third party is correct in submitting that the Appellant, to avail the information sought for in the RTI application, has to approach only the Trial Court

u/s 91 of Cr.PC and 162 and 165 of the Indian Evidence Act, in the presence of Section 22 of the RTI Act?

f. Whether the submission of the CBI is correct, to the extent that "sought information / documents are under the control of Trial Court and applicant may approach Trial Court at the relevant stage in the interest of justice", in view of three charge-sheets and annexures through which alone the CBI can submit its evidences and material documents to the Trial Court?

g. In view of the categorical admission by the CBI before the Commission that the Appellant's trial before the Trial Court in New Delhi is at pre-charge stage and the Commission's full bench order dated 7.6.2010, relying on the Delhi High Court decision in S. M. Lamba vs. S. C. Gupta, observing that once the stage of an order framing of charges have been crossed it would be open to the accused to make an application before the Trial Court to summon the above documents in accordance with the law, "whether the referral to full bench is warranted?

h. Whether the information sought by the Appellant can be denied under the pretext that all the information sought emanates only from the sanction for prosecution sought by the CBI from the competent authority invoking Section 24 (1) of the Act, ignoring that the subject matter of sanction is allegation of corruption against the Appellant?

i. Whether, the very fact that the CBI sought sanction for prosecution only against the Appellant herein and he is the subject matter of the same and the information sought, can be ignored by relying on the CBI submission before the CIC that “all the information sought for by the Appellant arising out of sanction for prosecution sought by CBI”, “projects as if the information sought for by the Appellant is not pertaining to his case and of someone else is correct.”

5. In addition to the above questions of law mentioned by him, the Appellant states that relying on the submissions of the CBI and its reliance on the interim order of the High Court of Delhi in CPIO, CBI vs. C. J. Karira in Writ Petition (C) No. 7439 / 2012 dated 30.11.2012, staying the operation of the CIC’s order dated 31.10.2012 directing the CPIO to furnish the information sought by the Appellant and the interim order of the Allahabad High Court in W. P. (C) No. 40407 of 2011 staying the order of CIC and the CPIOs reliance on CIC’s orders No. CIC/SH/A/2014/000202 dated 3.2.2015, CIC/SH/A/2014/000085 dated 16.12.2014, based on the earlier full bench decision dated 7.6.2010, the single Commissioner ought not to have referred the matter to the full bench, giving a go by to the three binding precedents of the High Court of Delhi mentioned in paragraph 4 (a) above which, according to the Appellant, hold the field as on the date of reference to the full bench. The Appellant states that the above three decisions of the High Court of Delhi “in Sudhirranjan Senapati case (following Bhagat Singh case which was ratified by the Division Bench of Delhi High Court in LPA No. 1377/ 2007 dated 17.12.2007) etc., the Court held that in the absence of any reason as to in what manner the

information sought for if divulged would impede the prosecution of offenders by the CPIO, the person seeking information is entitled to such information ...." In the light of the above, the reference of the matter to the full bench relying on the above interim orders of the High Court of Delhi and Allahabad and the CIC's full bench decision dated 7.6.2010, "which has no precedential value" was not necessary and the matter ought to have been decided in line with the above decisions of the High Court of Delhi. In view of the finding on Section 8 (1) (h) of the Act by the High Court of Delhi in Sudhirranjan Sentapati case judgment dated 5.3.2013, the earlier decision of the full bench of CIC dated 7.6.2010 has become "extinct". The information has also been denied by invoking Section 8 (1) (h) on the ground that the same would impede the process of investigation or prosecution of the offenders. In support of the above ground, the CPIO has relied on the decisions of CIC in CIC/SH/A/2014/000202 dated 3.2.2015 and CIC/SH/A/2014/000085 dated 16.12.2014. The above two decisions were rendered following the full bench decision dated 7.6.2010 confirming the order of the CPIO denying the information sought for invoking Section 8 (1) (d) and (h) of the Act. The facts involved in the aforesaid full bench decision dated 7.6.2010 and in the case on hand are "diametrically different", because in the full bench decision, the information was sought by the father of the delinquent employee but in this case, the delinquent employee himself is the Appellant before the CIC. Therefore, the above decision of the full bench of the CIC cannot be made applicable to the case on hand. In this context, the Appellant states that the Supreme Court has held in catena of judgments particularly in (2003) 5 SCC 568 paragraph 23 that "a little difference in the facts or additional facts may lead to a different conclusion." In view of the above, relying on the full bench decision dated 7.6.2010 cannot be substantiated.

6. The Appellant questions the decision of the CPIO and the FAA to deny the information by invoking Section 8 (1) (d) and states that the above section is not relevant at all to this case as none of the ingredients of Section 8 (1) (d), which deals only with commercial confidence / trade secrets / intellectual property and the disclosure of which would harm the competitive position of the third party, is present in this case. Referring to invocation of Section 8 (1) (g) by the Respondents to deny the information, the Appellant states that the information sought by him pertained to the process and decisions taken in the course of granting or rejecting the sanction for prosecution and the draft sanction, if any, sent by the CBI to the competent authority. Further, the officials involved in the processes and decisions are already known to the Appellant and to all the staff of the Appellant's department. This issue came up before the CIC in Sree Madhurkar K. Ferde vs. Employees PF Office in order No. CIC/BS/A/2012/001056/3264 dated 20.8.2013 in which the CIC directed the CPIO to furnish the information excluding the names and signatures of the officers concerned. The Appellant states that the information cannot be denied because, if Section 8 (1) (h) of the Act is read along with the first proviso to Section 24 (1) of the Act, there is no embargo even on the CBI providing the information sought by the Appellant because of the proviso to Section 24 (1) concerning cases involving corruption and human rights violations. The Appellant states that Section 8 (1) (h) of the Act namely, impede the prosecution of offenders will take the colour of first proviso of Section 24 (1), that the prosecution covered u/s 8 are the prosecutions other than the cases of corruption and human rights violations. Therefore, the CPIO is not correct in refusing the information by invoking Section 8 (1) (h). Further, the first and second proviso of

Section 24 (1) being a later Section to Section 8, the Section 8 (1) (h) of the Act has to be read down to the effect that the exemptions covered under Section 8 (1) (h) of the Act cover only the process of investigation and prosecution other than the corruption and human rights violation cases. The CBI have stated that the Appellant can avail the information sought for under the RTI Act through the Trial Court invoking Section 91 r/w 311 of the Cr.PC and the Sections of the Indian Evidence Act. However, Section 22 of the RTI Act has an overriding effect over any other law for the time being in force. The RTI Act nowhere in its statute put any embargo to the effect that in the presence of an alternative remedy available to obtain sought for information under any other law in force, the Appellant is prevented from approaching the information authority under the RTI Act. Therefore, the submission with regard to the Appellant approaching the Trial Court for the information, has no legal backing. Referring to the submission of the CBI that the information / document sought are under the control of Trial Court, the Appellant submits that the IO of the CBI submits evidence and material documents only through the charge-sheets. In the case on hand, the CBI have submitted three charge-sheets and materials but these do not contain even a single information sought by the Appellant in his RTI application, except the sanction for prosecution dated 10.9.2014. The information sought by the Appellant pertains to the details and information much prior to 10.9.2014 i.e. what had happened between the date of the FIR 23.2.2012 and 10.9.2014. The Appellant believes that in the interregnum the competent authority had twice rejected the sanction for prosecution, but thereafter on the very same materials, the changed competent authority had “buckled to the pressure of the CBI and given sanction for prosecution”. The Appellant never sought any information relating to the materials that were placed for

consideration to the competent authority for granting sanction for prosecution. The above fact about what happened between the dates mentioned above has not even been whispered about in the three charge-sheets. "Therefore, there is no situation arise for Trial Court to call for those information prior to 10.9.2014 or for the CBI to submit the same to the Trial Court". The CBI, deliberately suppressing the information prior to 10.9.2014, i.e. date of sanction, submitted three charge-sheets but argues before the CIC that all the sought for information is under the control of the Trial Court. Referring to the CIC full bench decision dated 7.6.2010 in respect of Section 8 (1) (h) of the RTI Act, the Appellant states that the information sought by him is only the "processes and decisions" of the Competent Authority taken in the course of granting or rejecting the sanction for prosecution and draft sanction, if any, sent by the CBI to the competent authority and nothing else. The above information cannot be classified as evidence or related to evidence. The materials / evidence available before the Trial Court, collected by the Investigation Officer of the CBI, were not the subject matter of the RTI application but only the administrative decision while granting / rejecting sanction for prosecution. Though the sanction for prosecution dated 10.9.2014 was submitted to the Court, which is sine qua non for taking cognizance by the Trial Court, but the Court was not informed of the processes and decisions taken by the competent authority in the course of rejecting and finally granting the sanction for prosecution.

7. In his written submissions, the Appellant has also objected to the very constitution of the full bench in this case, comprising the Information Commissioner (Shri Sharat Sabharwal), who had originally heard the matter till the appeal was referred to the full bench, stating that this was contrary to the well established judicial and quasi-judicial practice. Because of the

different decisions of different benches of the CIC taken already, which was the reason for reference to the full bench, the Information Commissioner who constituted the single bench has already decided two cases, CIC/SH/A/2014/000202 dated 3.2.2015 and CIC/SH/A/2014/000085 dated 16.12.2014 in favour of the authorities denying the information to the applicants therein. Hence, the full bench in the Appellant's case should exclude the Information Commissioner, Shri Sharat Sabharwal.

8. Advocate Sathiaseelan also made oral submissions during the proceedings on behalf of the Appellant, reiterating the points included in the Appellant's written submissions mentioned above. He objected to the constitution of the full bench and inclusion of the Information Commissioner, Shri Sharat Sabharwal in the bench. He emphasized that the case of the Appellant rested on the binding precedent constituted by the three cases mentioned in paragraph 4 (a) above. These cases, he stated, drew from decision of the High Court of Delhi in the Bhagat Singh case regarding Section 8 (1) (h) of the RTI Act. Therefore, the reference to the full bench could have been avoided as decisions of High Court prevail over CIC decisions. The judicial procedure is that when a single judge gives his findings in a matter, it is placed before the Chief Justice and the single judge is excluded from it. He also emphasized that the Appellant has sought information regarding the sanction for prosecution given against him and is not a third party to this information. He added that according to the CBI, the matter is at pre-charge stage, while they have quoted the S.M. Lamba case in which the High Court of Delhi held that under the Code of Criminal Procedure, once the stage of an order framing charges has been crossed, it would be open to the accused to make an appropriate

application before the Trial Court to summon the documents in accordance with law. According to Advocate Sathiaseelan, Section 22 of the RTI Act overrides the Cr.PC and the Indian Evidence Act provisions cited by the CBI. Further, the RTI Act does not say that in the presence of alternative remedies, information can be denied under the RTI Act. According to High Court orders, the concerned CPIO of the original authority, from whom information was sought, should have dealt with how prosecution would be impeded. However, the CBI has supplemented through its submissions on this issue. This cannot be done because the CPIO of the bank failed to submit how prosecution would be impeded. The Respondents submitted at this stage that the CBI has only supplemented what the CPIO of the bank had stated regarding impeding of prosecution.

9. The representative of the CBI stated that disclosure of the information sought by the Appellant would impede the framing of charges and delay the trial. In any case, the court has to consider all evidences and an opportunity is given to the accused in the trial stage to make his submissions in this regard. The stage of the court summoning the documents is not yet reached. The sanction for prosecution can be assailed before the Trial Court and the accused can call for the documents, sought by him under the RTI Act, at that stage. The court can examine such documents and witnesses to go into whether the sanction for prosecution was given properly. Providing such information in advance under the RTI Act would impede the process of prosecution.

10. The Appellant has made a plea for exclusion of the Commissioner who constituted the single bench (Shri Sharat Sabharwal) from the full bench. We have given a careful consideration to this plea and find it devoid of merit for the following reasons. Firstly, the full bench has been constituted by the Chief Information Commissioner in keeping with the general practice in the Commission to include in such benches the Commissioner, who constituted a single member bench on a particular matter and after consideration of it, recommended constitution of a full bench in the case. It is to be noted that the single member bench gave only an interim order, and not a final order, in this case. Secondly, the reason given by the Appellant for exclusion of the Commissioner is that he has already decided in two cases (CIC/SH/A/2014/000202 dated 3.2.2015 and CIC/SH/A/2014/000085 dated 16.12.2014), in favour of the authorities denying the information to the applicants. These two cases were cited by the Respondents during the very first hearing before the single member bench on 19.2.2016. The Appellant did not object to the constitution of the single member bench during that hearing or a subsequent hearing on 18.4.2016. He has chosen to do so after a recommendation was made by the single member bench in the interim order dated 21.4.2016 to constitute a full bench so that at least three minds could be applied to the matter. Further, while cases may be similar, no two cases are the same either in terms of the facts of the case or the material placed before a bench. Therefore, in seeking exclusion of an Information Commissioner from the full bench on the ground of two decisions given by him in other matters, the Appellant ignores his own submission, contained in his written submissions dated 7.6.2016, that the Apex Court has held in catena of judgments, particularly in (2003) 5 SCC 568 paragraph 23 that “a little difference in facts or additional facts may lead to a different

conclusion." Moreover, an Appellant cannot choose the Commissioner(s), who would hear his case, on the basis of the decisions given by him / them in some other matters. If this were allowed, it would become extremely difficult to constitute full benches, because the opposite party may seek to exclude a Commissioner who may have given a decision in favour of disclosure of information of the kind sought by the Appellant. Finally, in addition to the above factors, establishing that the Appellant's request is without any merit, we would also like to refer to the following observations made by Justice J. S. Khehar in his order dated 16.10.2015 in Writ Petition (Civil) No. 13 of 2015:-

"In my considered view, the prayer for my recusal is not well founded. If I were to accede to the prayer for my recusal, I would be initiating a wrong practice, and laying down a wrong precedent. A Judge may recuse at his own, from a case entrusted to him by the Chief Justice. That would be a matter of his own choosing. But recusal at the asking of a litigating party, unless justified, must never to be acceded to. For that would give the impression, of the Judge had been scared out of the case, just by the force of the objection. A Judge before he assumes his office, takes an oath to discharge his duties without fear or favour. He would breach his oath of office, if he accepts a prayer for recusal, unless justified. It is my duty to discharge my responsibility with absolute earnestness and sincerity. It is my duty to abide by my oath of office, to uphold the Constitution and the laws. My decision to continue to be a part of the Bench, flows from the oath which I took, at the time of my elevation to this Court."

Discussion and Decision

11. With regard to the Appellant's objection to the constitution of full bench for consideration of this matter, it need not detain us for very long as the issue is dealt with in the interim order dated 21.4.2016 of the single bench. The issue concerning the three judgments of the High Court of Delhi, described by the Appellant as binding precedents, is dealt with further down in this order. As stated in paragraph 18 of the interim order dated 21.4.2016, there is nothing on record to show that the Commission's decision dated CIC/AT/A/2008/01238 dated 7.6.2010 was overturned by a superior court. The Appellant has also contended that in the above case, the father of delinquent officer was the information seeker, while in this case, the delinquent officer himself is the information seeker. This difference has no impact on the matter before us because the Commission's above mentioned decision dated 7.6.2010 to uphold the decision of the Respondents in that case to deny disclosure of information had nothing whatsoever to do with the fact that the information in that case was sought by the father of the delinquent officer and not by the delinquent officer himself. Moreover, both the Respondents and the CBI have raised the issue of the exemption granted to CBI from applicability of the RTI Act under Section 24 (1) of the Act and the Appellant has objected to the above on the ground of the first proviso to Section 24 (1). This question of law also needs consideration.

12. We now come to the grounds for denial of the information cited in this case. We have considered carefully the submissions made by the parties. The First Appellate Authority claimed exemption from disclosure of information u/s 8 (1) (d), (g) and (h) of the RTI Act. We agree with the Appellant that there is no ground to invoke Section 8 (1) (d) in this case. We also see no ground to invoke Section 8 (1) (g), particularly since the information can be provided by redacting the names, signatures and designation of the officers, who dealt with the matter of grant of sanction for prosecution.

13. With regard to the exemption claimed under Section 8 (1) (h) of the RTI Act, we would first like to dispose of some points made by the Appellant in his written submissions dated 7.6.2016. He states that the first and second provisos to Section 24(1) of the RTI Act being a later section to Section 8, the Section 8 (1) (h) of the Act has to be read down to the effect that the exemptions covered under Section 8 (1) (h) cover only the process of investigation and prosecution other than the corruption and human rights violation cases. We find no merit in this attempt by the Appellant to place restrictions on a general provision such as Section 8 (1) (h) on the basis of the provisos to a Section dealing with the specific matter of exempting certain organizations from the applicability of the RTI Act. The Appellant has also contended that the materials / evidences available before the Trial Court collected by the Investigating Officer of CBI were not the subject matter of the RTI application but only administrative decision taken while granting or rejecting sanction for prosecution. He, therefore, concludes that the information sought is not evidence or is related to evidence. This is not correct. The administrative action of granting or rejecting the sanction for prosecution is taken by the

competent authority in the light of the detailed information provided by the CBI to the competent authority regarding the evidence available to the agency and its findings. Therefore, the information sought cannot be said to be purely concerning administrative decisions or information which is not related to evidence. A reading of the information sought by the Appellant (reference paragraph 1 of the interim order of the single member bench) would also negate the above submission of the Appellant. The Appellant also states that the information sought by him has not been produced by the CBI before the Trial Court and in this context, notes the CBI submission that the matter is at pre-charge stage. In this context, the key issue, in our view, is not whether the information is available or was available at the timing of the filing of the RTI application before the Court, but that the sanction for prosecution can be assailed before the court during the trial stage and the court can summon all the relevant documents in this regard after hearing both the parties and the court decides the production / admissibility of a document. In favour of his challenge to the exemption claimed under Section 8 (1) (h) of the RTI Act, the Appellant has cited, in his appeal to the Commission the following observations made by the High Court of Delhi in Bhagat Singh vs. CIC [W.P.(C) No.3114/2007]:-

"Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore is to be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that

the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8 (1) (h) and other such provisions would become the haven for dodging demands for information."

The Appellant has also cited the following judgments of the High Court of Delhi:-

(i) Sudhirranjan Senapati case, judgment dated 5.3.2013 in W. P. (C) 7048 / 2011.

(ii) Adeshkumar vs. UOI & Ors., judgment dated 16.12.2014 in W. P. (C) 3543/ 2014.

(iii) B. S. Mathur case dated 3.6.2011.

14. In the judgment in Sudhirranjan Senapati case, there is a reference to the judgment of a single bench of the High Court of Delhi dated 10.11.2006 in Surinder Pal Singh vs. UOI & Ors. in which the Court upheld the decision of the CIC regarding denial of information in that case. In that case, the applicant had sought the following information concerning a sanction for prosecution granted against him under Section 6 (1) of the RTI Act: (i) Note Sheet page 1 to page 55; (ii) Correspondence to and from the above file with CBI; (iii) Correspondence to and from the above file with C.V.C.; (iv) Correspondence to and from the above file with

Department of Vigilance CBEC. The above judgment of the single bench was confirmed by a division bench on 23.3.2007 in LPA 213/2007 in Surinder Pal Singh vs. UOI & Ors.

15. The Respondents have cited two decisions of the Commission based on the full bench decision dated 7.6.2010 in appeal No. CIC/AT/A/2008/01238. In the above decision, the Commission made, inter alia, the following observations:-

"25. In our view, the word 'impede' used in Section 8(1)(h) holds the key to whether information requested by the appellant should be allowed to be disclosed.

26. We note that the essential information which appellant wants is all that happened between the CBI and the competent authority records of discussion, telephonic conversations, filenotings, etc. which led to the sanction of prosecution dated 02.08.2007 against appellant's son, Shri Srinivas for action under prevention of corruption Act. We have been informed that this sanction of prosecution is an absolute requirement for a Trial Court to allow prosecution proceedings against an accused, who happens to be a government employee. It is always open to the accused to impeach the sanction of prosecution, in course of which he is free to request the Trial Court to summon all such evidence which may be relevant for him to prove his point. Such evidence would include every single item of information appellant has now demanded through RTI

proceeding. ***The Court's decision, whether to allow the appellant access to such evidence, is taken after hearing both sides.***

27. It is thus obvious that in the matter of access to the requested information, appellant is not all that helpless. He can seek the same information through the Trial Court in full measure and should he succeed in persuading the Court he would have received the records and documents which he is wanting now to access through RTI Act.

In our view, an information which is evidence or is related to evidence in an ongoing prosecution comes under the control of the Trial Court within the meaning of Section 2(j) of the RTI Act, which states as follows:

'"right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to……..'

28. It is significant that this Section uses two expressions about the location of a given information, i.e. "held" and "under the control of". In our view, expression 'held' implies that a public authority has physical possession of a given information. The word "under the control of" implies that the information, regardless of which public authority holds it,

is under the control of a specific public authority on whose orders alone it can be produced in a given proceeding. In the present case, the material sought by the appellant is undoubtedly related to an ongoing court proceeding and hence it can be rightly said to be under the control of the Trial Court, who alone can decide how the information is to be dispensed. Any action under the RTI Act or any other Act for disclosure of that information to the very party who is arraigned before the Trial Court or to anyone representing that party, would have the effect of interfering with the discretion of the Court, thereby impeding an extant prosecution proceeding. In S.M.Lamba Vs. S.C.Gupta and another Delhi High Court has held "This court would like to observe that under the Code of Criminal Procedure, 1973 once the stage of an order framing charges have been crossed, it would be open to the accused to make an appropriate application before the learned trial court to summon the above documents in accordance with the law."

30. It is, therefore, important that all determinations about disclosure of any information relating to an ongoing prosecution should be through the agency of the Trial Court and not otherwise."

16. The key issue emphasized in the three judgments of the High Court of Delhi, cited by the Appellant, is that when state takes a stand that the information cannot be disclosed under Section 8 (1) (h), while dilating on its stand in that behalf, the state would necessarily have to deal with as to how the information sought is of a such a nature that it would impede the process of investigation or apprehension or prosecution of offenders. Since the above burden was not discharged by the Respondents in the three cases cited by the Appellant, the Court ordered disclosure of the information. The Appellant pleads that since this burden has not been discharged in his case also by the Respondents, the information sought by him cannot be denied.

17. As stated above, in the Sudhirranjan Senapati case judgment, the High Court took note of the judgment of a single judge of the High Court of Delhi dated 10.11.2006, passed in W. P. (C) 16712/2006 in Surinder Pal Singh vs. UOI & Ors. in which the single judge made the following observations:-

"The Central Information Commission and the Appellate Authority and CPIO had held that the prosecution of the offender is pending before the Special Judge. If the prosecution of the offender is pending and not yet complete, the information which is sought by the petitioner may impede the prosecution of the offender, cannot be faulted. The emphatic argument by the learned counsel for the petitioner that since the process of investigation is already over as the chargesheet has already been filed by the Central Bureau of Investigation is not correct. Exemption from disclosure of information can be

claimed for any information which may impede the process of investigation or apprehension or prosecution of offenders. Since the chargesheet has been filed, the process of investigation has been completed but the petitioner cannot contend that there is no apprehension with the respondent that the information sought by the petitioner may impede the prosecution of the offender. Whether the respondents have apprehension or not is to be decided by the respondents in the present facts and circumstances. The apprehension of the respondents is not without any basis. In any case the prosecution of the offender is pending. Since prosecution of the offender is pending and has not been completed, it can not be inferred that divulgence of information will not impede the prosecution of the offender. The respondents, therefore, are justified in claiming exemption under Section 8 (1) (h) from disclosure of information sought by the petitioner. The argument of the learned counsel for the petitioner that since the process of investigation has been completed as chargesheet has already been filed can not be accepted and is contrary to all the circumstances under which exemption can be claimed under Section 8 (1) (h) of Right to Information Act, 2005."

18. It is noted that both in the Sudhirranjan Senapati and Adheshkumar cases, decided by a single judge, the High Court of Delhi took note of the fact that the accused during the course of his prosecution could impugn the sanction accorded for his prosecution and all the material relied upon by the prosecution to prosecute the accused would be available to him, but rejected the above as a ground for denial of the information under the RTI Act. The same aspect was considered by a division bench of the High Court of Delhi in its order dated

23.3.2007 in Surinder Pal Singh vs. UOI & Ors. and the division bench arrived at a different finding as is evident in the following observations made in the judgment:-

"5. We have heard learned counsel for the appellant. It is submitted that the aforesaid grant of sanction against the appellant is illegal.

6. The appellant in our considered opinion has sufficient scope and option to raise the issue of sanction in the trial. This cannot be a ground to direct furnishing of information contrary to Section 8 (1) (h) of the Right to Information Act. The authorities under the aforesaid Act cannot examine and hold that sanction is valid or bad in law.

7. The respondents herein have sought exemption from furnishing the information sought for by the appellant in view of provisions of Section 8 (1) (h) of Right to Information Act 2005, which provides that notwithstanding other provisions in the Right to Information Act, no application to give specific information which would impede the process of investigation or apprehension or prosecution of offenders will be entertained and furnished. Section 8 (1) (h) of the Act is an overriding and a non-obstante clause. It cannot be denied that the aforesaid clause is attracted. The concerned authorities have right to deny information once Section 8 (1) (h) of the Act is attracted.

8. The information, which is sought for, is in our opinion would impede the prosecution of the offender and, therefore, the respondents are justified in invoking clause 8 (1) (h) of the Right to Information Act and claim exemption from furnishing such information. In view of the said provision, we find no reason to interfere with the aforesaid orders by the concerned authorities and interfere with the order passed by the learned Single Judge. Appeal has no merit and the same is dismissed."

19. The Appellant states in his written submissions that the three judgments of the High Court of Delhi cited in paragraph 4 (a) above, based on Bhagat Singh case which was ratified by the division bench of the Delhi High Court in LPA No. 1377/2007 dated 17.12.2007, are binding precedents. However, it is noted that the information sought in the Bhagat Singh case included, inter alia, disclosure of the investigation conducted by the Respondents in that case on a Tax Evasion Petition filed by the RTI applicant. Therefore, the matter concerned information relating to an investigation and not a prosecution, even though the Appellant wanted to produce the information in a separate criminal case instituted against him. Further, in confirming the judgment of the single judge in the Bhagat Singh case, the division bench of the High Court of Delhi made the following observations in its judgment dated 17.12.2007:-

"In the grounds of appeal, it is stated that the appellant is ready and willing to disclose all the records once the same is summoned by the criminal court where proceedings under Section 498A of the Indian Penal Code are pending. If that is the stand of the appellant, we find no reason as to why the aforesaid information cannot be furnished at this stage as the investigation process is not going to be hampered in any manner and particularly in view of the fact that such information is being furnished only after the investigation process is complete as far as Director of Income Tax (Investigation) is concerned. It has not been explained in what manner and how information asked for and directed will hamper the assessment proceedings.

9.Therefore, no prejudice would be caused in any manner to the Department even if the said information is disclosed. We find no merit in this appeal, which accordingly stands

dismissed. All other applications stand consequently disposed of in terms of the aforesaid order."

It is to be noted that while upholding the judgment of the single judge, the division bench observed that the investigation process was not going to be hampered in any manner and particularly in view of the fact that such information was being furnished only after the investigation process was completed as far as the Director of Income Tax (Investigation) was concerned. The facts of the Bhagat Singh case were, therefore, different from the facts of the case before us; firstly because the information sought was regarding an investigation and not prosecution and secondly, in upholding the decision of the single judge, the division bench noted that the investigation had already been completed. The case before us concerns prosecution and the prosecution process has not been completed so far. In the above context, it is noted that in N. S. Giri vs. Corporation of City of Mangalore and Ors., while taking note of the decision in LIC of India vs. D. J. Bahadur in the context of binding precedent under Article 141, the Supreme Court observed:-

"....suffice it to observe that the Constitution Bench decision in New Maneck Chowk Spg. and Wvg. Co. Ltd. v. Textile Labour Assn.[25] and also the decision of this Court in Hindustan Times Ltd. v. Workmen[26] which is a four-Judge Bench decision, were not placed before the learned Judges deciding LIC of India case. A decision by the Constitution Bench and a decision by a Bench of more strength cannot be overlooked to treat a later decision by a Bench of lesser strength as of a binding authority; more so, when the attention of the Judges deciding the latter case was not invited to the earlier decisions available."

In the light of the above, the decision dated 23.3.2007 of the division bench of the High Court of Delhi in Surinder Pal Singh & UOI & Ors. is germane to the case before us and constitutes the binding precedent instead of the judgments of single judges of the High Court of Delhi cited by the Appellant. (The B. S. Mathur case was also decided by a single judge).

20. In the above context, it is useful to recall that the Commission has taken a very cautious position even regarding disclosure of information relating to ongoing disciplinary proceedings, which are often governed by the service regulations of a public authority and not by any law, as is the case with prosecution in a criminal case. Thus, in its decision No. CIC/AT/A/2008/00437 dated 31.10.2008 in Shri G. V. Rao vs. Centre for DNA, Fingerprinting and Diagnostics, the Commission observed the following with regard to disclosure of information relating to ongoing disciplinary proceedings:-

"5. In similar matters which came up before the Commission in the past (V.K. Gulati Vs. DG Vig. Customs & Central Excise; CIC/AT/A/2007/01508; Date of Decision: 17.06.2007), it was the considered view of the Commission that disclosure of information relating to ongoing disciplinary proceedings, which are in the nature of ongoing investigations, will have the impact of compromising those proceedings and restricting the discretion of the Enquiry Officer to decide as to what documents the officer proceeded against will have access to. Since departmental enquiry is in the nature of ongoing investigation, it is covered by Section 8(1)(h) of the RTI Act. The only element which needs to be proved is whether the requested disclosure would impede the process

of investigation. It has been the view of the Commission that such disclosures would impede the process of investigation in so far as these would affect the ability of the Enquiry Officer to conduct and regulate the extant departmental proceeding. It is also true that during any preliminary enquiry, a number of witnesses are examined and information is collected. Disclosure of this variety of information would undoubtedly bring out into the open its sources, which will be injurious to the interests of those who offer their assistance to the preliminary enquiry in the confidence that their identity would not be disclosed.

6. Commission has noted that a number of employees of the public authorities facing departmental / vigilance and other forms of proceedings from their respective managements have tended to use the RTI Act to access information – specially file-notings in their own vigilance matters / disciplinary matters – in order to somehow lay hands on evidence that they could use in their favour. Commission has no problem with such an approach but since premature disclosure of information, specially file notings, prior to the final decision being made in a disciplinary action has the potential to disrupt the proceedings, Commission has been guarded in authorizing such disclosures. The RTI Act, apart from being a rights-expanding instrument, it is also an instrument for improving governance. In that sense, it is always helpful to be guarded in interfering with the disciplinary proceedings, through which the managements enforce discipline within the organization and bring the guilty employees to book. Most disciplinary proceedings are under laws, which prescribe the processes of the proceeding such as the documents

that can be disclosed to the officer proceeded against, the discretion of the enquiry officers to decide what documents to be disclosed to the accused officers in conformity with the norms of justice and fair-play and so on. Each time an RTI-proceeding is started to force disclosure of documents, regardless of what the enquiry officers may have to say on this, potentially the process of the enquiry is impeded. Considering its large ramification, it is unsafe to authorize disclosure of such information under the RTI Act."

21. In the Adhesh kumar case, the High Court of Delhi made the following observation:-

"Even if one went by the interpretation placed by this Court in W.P. (C) No.7930 of 2009 [Additional Commissioner of Police (Crime) v. CIC, decision dated 30th November 2009] that the word "impede" would "mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed "hamper" or "interfere" with the investigation, which in this case is the second enquiry."

The definition of interfere, as given in the Oxford Dictionary is as follows:-

"Prevent (a process or activity) from continuing or being carried out properly."

Section 162 of the Indian Evidence Act reads as follows:-

"162. Production of documents.—A witness summoned to produce a document shall, if it is in his possession or power, bring it to the Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on

by the Court. The Court, if it sees, fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility. Translation of documents.—If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code (45 of 1860)."

The Appellant contends that Section 22 of the RTI Act overrides the provisions of Cr.PC and the Indian Evidence Act. However, Section 22 clearly does not nullify Section 8 (1) (h) of the RTI Act. As per Section 162 of the Indian Evidence Act, a witness summoned to produce a document shall, if it is in his possession or power, bring it to the Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided by the Court. Thus, the discretion regarding production or admissibility of a document has been given to the Court, which is required to take into account the objections raised by the parties to the matter. Disclosure of the information under the RTI Act would clearly pre-empt the decision of the Court regarding production and admissibility of documents, thereby preventing the prosecution process from being carried out properly in keeping with the laws governing it. The division bench of the High Court of Delhi alluded to this matter in their judgment dated 23.3.2007 in the Surinder Pal Singh case, when they stated that the contention of the information seeker in that case that the sanction for prosecution given against him was illegal could not be a ground to direct furnishing of information under the RTI Act **as the authorities under the aforesaid Act could not examine and hold that the sanction was valid or bad in law**.

22. In the light of the foregoing, in our view, the invocation of Section 8 (1) (h) by the Respondents was justified. The Appellant has contended that the CBI supplemented in this case the position taken by the Respondents in regard to invocation of Section 8 (1) (h). In this context, as noted in paragraph 9 of the interim order dated 9.3.2016 of the single member bench, since the matter had gone to the prosecution stage, it was considered necessary to give an opportunity to the prosecuting agency, CBI, to make their submissions. Further, it would be noted that in the case decided by the Commission vide order No. CIC/AT/A/2008/01238 dated 7.6.2010 also, the CBI were treated as a third party even though the information was sought from the Commisionerate of Customs & Central Excise.

23. Another issue to be considered is the submission of the Respondents and the CBI that the CBI is exempted from applicability of the RTI Act in terms of Section 24 (1) r/w schedule II to the said Act. The Appellant has questioned this submission on the ground that his case concerns allegation of corruption against him and, therefore, is excluded from the purview of Section 24 (1) in the light of the first proviso to that section. The CBI, on the other hand, maintain that the proviso cited by the Appellant applies only to the cases of corruption / violation of human rights of their own officials and not to all cases of corruption in other parts of the Government. The question of law arising from the above two interpretations of the first proviso to Section 24 (1) was considered by the Commission in its order No. CIC/SM/C/2012/000374 dated 31.10.2012 and the Commission came to the following conclusion:-

"Therefore, there is no escape from the fact that the CBI will have to consider all RTI requests for information which pertains to any allegations of corruption and human rights violation irrespective of the individual against whom such allegations are made."

The above decision of the Commission was stayed by the High Court of Delhi vide order dated 30.11.2012 in CPIO CBI vs. C. J. Karira [W.P.(C) 7439 / 2012] and the stay has not been lifted. Further, in its order No. CIC/SM/A/2011/001999 and CIC/SM/A/2011/002285 dated 7.12.2012, a full bench of the Commission considered a matter in which the RTI applicant had sought information from the CBI regarding the cases filed against certain individuals. In the course of the proceedings, the issue of the stay granted by the High Court of Delhi on the Commission's above mentioned order No. CIC/SM/C/2012/000374 dated 31.10.2012 came up. The full bench decided as follows:-

"6. It is to be noted that the Hon'ble Delhi High Court has granted stay in the matter referred to above in exercise of its writ jurisdiction. Hence, we feel it would not be prudent to decide the present matter at this stage and it would be preferable to await the court's verdict. The matter, therefore, is being adjourned."

In the light of the above decision of the full bench of the Commission and the fact that the High Court of Delhi is yet to pronounce on the question of law regarding coverage of the first proviso to Section 24 (1) of the RTI Act, which was the subject of the Commission's decision No. CIC/SM/C/2012/000374 dated 31.10.2012, we would not like to take a decision on the

Appellant's plea that the information cannot be denied to him in the light of the first proviso to Section 24 (1), as his case involves a charge of corruption against him; and would prefer to await the High Court verdict. The only issue that remains for consideration is whether the information sought by the Appellant, which did not emanate directly from the CBI, can be provided to him. In our view, the remaining information sought by him, regarding processing of the matter in the Respondent public authority, is also inextricably linked to the material and information provided by the CBI while seeking the sanction for prosecution. Therefore, the exemption granted to the CBI from applicability of the RTI Act, in terms of Section 24 (1), would become meaningless if RTI applicants could get from another public authority the very information that they cannot get from the CBI or information inextricably linked to the information and material provided by the CBI to a public authority.

24. In view of the foregoing, we would not interfere with the decision of the Respondents to deny the information in this case.

25. With the above observations, the appeal is disposed of.

26. Copies of this order be given free of charge to the parties.

(Sudhir Bhargava) **(Sharat Sabharwal)**

Information Commissioner **Information Commissioner**

Copy to:- Shri Prashant Srivastva, DSP,
The Central Public Information Officer
Central Bureau of Investigation, 5th Floor,
CBI Building, CGO Complex,
Lodhi Road, New Delhi - 110003

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Shri Sharat Sabharwal,
Prof M Sridhar Acharyulu, Shri Sudhir Bhargava,
Central Information Commissioners

CIC/SH/A/2015/001081

Gulab Singh Rana v CPIO Indian Overseas Bank & DSP, CBI

Date of hearing	**:**	**06-06-2016**
Date of decision	**:**	**21.06.2016**

Per Prof. M. Sridhar Acharyulu CIC(SA)

Factual background

1. Appellant, Mr Gulab Singh Rana, 12th accused in CC No.22/2013 (CBI v M/s CCL & Ors) before CBI Special Court Saket, New Delhi, is seeking through RTI application dated 30.9.2014, details- file notings, letters and documents relating to the grant of sanction for his prosecution. As the PIO (on 13.10.2014)and First appellate authority (on 16.12.2014)denied, he preferred second appeal on 30.3.2015. He also filed a Writ Petition before Madras High Court seeking speedy hearing of his second appeal. The HC directed on 22.12.2015 CIC to dispose it within 4 weeks. Ld IC Mr Sharath Sabharwal heard the matter till 21st April 2016 and recommended constitution of full bench in view of the fact that there existed a CIC 3-member-bench decisionon 7.6.2010 on similar matter.

2. Appellant's objection to constitution of 3-member bench and inclusion of Mr Sharath Sabharwal, is rejected as not justified, devoid of merits and legal support.

3. **Information sought by appellant:**

a) Copy of request letter received from CBI for seeking sanction for appellant's prosecution.

b) Copy of internal office memorandum containing the opinion/views of the disciplinary authority for giving sanction for my prosecution based upon appellant's reply dated 1-12-2012 to the first explanation lettr dated 18-10-2012 issued to the appellant.

c) Copy of first advice given by CVC, New Delhi.

d) The outcome of the reconciliatory meeting between the disciplinary authority and CBI

e) Copy of any further clarification sought by CVC

f) Copy of internal office memorandum containing opinion of the disciplinary authority

g) Copy of latest correspondence from CVC

h) Copy of internal office memorandum containing opinion of disciplinary authority based on which permission was given

i) Copy of draft sanction supplied to CBI

4. **Summary of Appellant's contention**: The CPIO has not been able to establish that disclosing information would impede the process of prosecution u/s 8(1)(h), and thus did not discharge the onus u/s19(5) of RTI Act. The section 8(1)(g) could not be invoked as he was not seeking names of 'informers' but wants only the file notings on sanction of prosecution.

5. **Summary of respondent's contention**: The CBI invoked exception under Section 8(1)(h), and claimed complete exemption under Section 24. The CBI also pleaded s 8(1)(g) saying divulging names of officers could endanger the officers participated in process.

6. **Issues & answers emerged:**

a) Whether information about sanction for prosecution impedes prosecution: Answer: **No**

b) Whether CBI and Banks are exempted to disclose information under Section 24 of RTI Act? Answer: **They have to disclose under proviso to Section 24.**

7. **Appellant's contentions:**

i) In view of admission of CBI before the Commission that the appellant's trial before the Trial Court, New Delhi is at pre-charge stage and the Commission's Full Bench order dated 7-6-2010 relying on the order of the Delhi High Court decision in ***S.M. Lamba vs SC Gupta,*** W.P. (C) 6226/2007 observing that once the stage of framing of charges had been crossed it would be open to accused to make an application before the trial court to summon the above documents in accordance with the Law,

ii) Whether the referral to Full Bench is warranted?

iii) Whether the information sought for by the appellant can be denied under the pretext that all the information sought for by the appellant emanates only from the sanction for prosecution sought for by the CBI from the competent authority invoking section 24(1) of the Act?

iv) Section 8(1)(d) cannot be invoked because his demand for information does not include any commercial confidence/trade secret/intellectual property or disclosure of which would harm the competitive position of third party. Even if information of such kind, it could be released in larger public interest as per law.

v) The claim of danger to physical safety of the persons invoking S8(1)(g) has no legs to stand, because the information sought for the appellant was pertained to the processes and decisions taken in the course of granting or rejecting the sanction for prosecution and the draft sanction, if any, sent by the CBI to the Competent Authority. The officials involved in the processes and decisions are already known to the delinquent/appellant and to all the staffs of the appellant's department. As decided in ***Sree Madhvkar K Ferde v Employees of PF Office, Delhi*** in File No. CIC/BS/A/2012/001056/3264 dated 20.8.2013 in which Hon'ble CIC directed the CPIO to furnish the file-notings in the form of typed copy excluding the names and signatures of the officers concerned.

vi) Ground of Section 8(1)(h) that disclosure impedes prosecution cannot stand. Full Bench decision of CIC on 7.6.2010 cannot be invoked as the facts are totally different.

In this case accused himself is seeking information. Though two cases are similar, even a slight little difference in the facts will necessarily lead to different result.

vii) The decision of High Court in ***Sudhir Ranjan Senapati*** WP(C) No. 7048/2011 dated 5.3.2013 held that in the absence of any reason as to how the information sought for would impede the prosecution by CPIO, the person seeking information is entitled to such information. The High Court relied on the earlier judgment of the Hon'ble High Court of Delhi in the Case of ***Bhagat Singh v Directorate of Income Tax,*** CM No. 17356/2007, which was upheld by the Hon'ble Division Bench of High Court of Delhi in LPA No. 1377 of 2007 dated 17.12.2007 on the point that 'the impeding' factor has to be convincingly established to invoke exception 8(1)(h).

viii) Relying on CIC full bench decision dated 7.6.2010 is not correct as it has no precedential value after Delhi High Court Judgment in ***Sudhir Ranjan***. The finding on 8(1)(h) in ***Sudhir Ranjan*** became final.

ix) Section 24 will not come to the rescue of CBI because appellant's demand for information is covered by proviso.

8. **Respondents contention:** CBI has come up with four key points:

I. Appellant can seek these documents from Court at appropriate stage of the trial. Trial Court can seek such information for the just decision of the case u/s 311 of Cr.P.C. read with S 165 Indian Evidence Act. Court is also having power to summons official communications (privileged documents) under section 162 of Indian Evidence Act. Since the matter is pending in a Court, disclosure of the information sought by the Appellant, under the RTI Act, would adversely affect the due process of law.

II. Information sent by CBI to respondent Bank 'under secret/confidential' category may not be part with by Bank.

III. Disclosure will impede the prosecution of offenders and hence hit by S. 8(1)(h).

iv. Decisions of CIC directing disclosure in CIC/SM/C/2012/000374 dated 31.10.2012 and CIC/SM/C/2012/000117/SG dated 1.7.2011 with respect to secret and confidential documents of CBI were challenged by CBI in High Court of Delhi in WP(C) 7439/2012, and Allahabad High Court in Writ Petition (c) 40407 of 2011, wherein the courts were pleased to grant stay.

9. Joining with the CBI, the IOB simply stated that it could not give information because it was furnished to them by the CBI, an exempted organization and it was advised not to give that information under Section 8(1)(h) and Section 24 of RTI Act.

Analysis:

10. The facts, circumstances, the law and relevant judicial decisions regarding four issues contended by the respondents need to be considered and analysed in detail and in depth.

(I) Alternative access under Cr. P.C.:

11. Another contention of the CBI that trial court has power u/s 91 r/w s311 Cr PC or u/s 311 Cr P C r/w s165 Evidence Act, and appellant may approach the court for the same is not acceptable. CBI was so magnanimous to recognize accused's right under Criminal Procedure Code, but it has no inclination to accept the same right under RTI Act. When two statutory routes are available for a citizen to seek information legally, one route cannot be closed because the other is available. Once it is a legal right, and he exercised his choice properly under one law, it cannot be rejected on this unconnected ground that another law provided for it. Such an excuse is an invention of public authorities to deny the RTI of appellant, which is not recognised by any law. There is no scope for judicial recognition of such a plea as held by DB of Kerala High Court, because of Section 22 of RTI Act. It is the legal duty of public authority to give information, without which the legal right granted by RTI will have no meaning at all. Kerala PSC pleaded similarly that it cannot be compelled to give information under RTI

when they have their own separate provision and procedure to give. PSC asked appellant to come under their own rules. In ***Kerala Public Service Commission &ors v State Information Commission***, ***Kerala & anr,*** WPC No 33718 of 2010 Hon'ble Judges T B Radhakrishnan and P S Gopinathan, JJ of Kerala High Court held on 9.3.2011 that there was no scope for judicial recognition of such a plea because Section 22 of the RTI Act provides that the provisions of that Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any law other than that Act. Such statutory provision having been made by the legislature, within its competence, it cannot be watered down or modified except by recourse to legislative procedures. There are several judicial pronouncements to the effect that RTI is extension of right to freedom of speech and expression as guaranteed by the Constitution of India. It is a fundamental right granted by our Constitution, which cannot be undermined because of an alternative remedy is available.

(II) 'Confidential and secret':

12. The contention of the CBI that information sought cannot be given because it is 'confidential and secret' can't stand because no such exemption is recognized under Section 8 or 9.

(III) Section 8(1)(h) of RTI Act:

13. Section 8(1)(h) is most contended issue. Whether disclosure will impede the prosecution or not is the question.

a) On this aspect, there is one decision of Delhi High Court in 2006, just within a few months of commencement of Right to Information Act. ***Surinder Pal Singh v Uol*** (2006), the High Court concluded that disclosure of information sought would 'impede' and should be denied. We need to examine the judgment of Justice Anil Kumar (Delhi High Court) in ***Surinder Pal Singh v UOI*** delivered on 10.11.2006, which was later agreed by Division Bench in LPA. In this case phones of petitioner were monitored, his alleged nexus with Capt IPS Malhotra was revealed and during a house search conducted at the residence of Capt Malhotra the bribe amount of Rs 3 lakhs allegedly

belonging to petitioner Surinder Singh was seized by CBI. He demanded details about sanction of his prosecution. The public authority took the defence of 'sub-judice' and section 8(1)(h). Based on the facts and evidence of the case, CPIO, First Appellate authority, CIC and the High Court were convinced that disclosure would impede the prosecution. Mr. Surinder Pal Singh preferred LPA to a division bench, which refused to intervene. The DB of Delhi High Court in this case observed: "The appellant in our considered opinion has sufficient scope and option to raise the issue of sanction in the trial. This cannot be a ground to direct furnishing of information contrary to section 8(1)(h) of the Right to Information Act. The authorities under the aforesaid Act cannot examine and hold that sanction is valid or bad in law". Careful reading of these two orders in ***Surinder Pal Singh*** reveal that none brought Section 22 of RTI Act to the notice of either single judge bench or division bench of the Honourable High Court of Delhi; had it been discussed, the result would have been different. It is correct that the authorities under RTI Act cannot examine validity or legality of 'sanction' but it is within their statutory jurisdiction to decide whether it could be disclosed or not. Information cannot be denied under RTI Act because the trial court is considered appropriate forum and appellant has sufficient scope and option to raise the issue of sanction in the trial. Question whether information should be disclosed or not need to be decided under the provisions of RTI Act only, because it overrides all the existing laws as per Section 22.

b) This being a division bench judgment surely has significance. Several cases that came on this subject before the Delhi High Court, this order was not followed because it was given without referring to Section 22 of RTI Act.

In 2007

c) The disapproval to this order began in 2007. DHC disapproved this conclusion in ***SM Lamba vs. SC Gupta*****(2007)** case WP(C) no. 6226/2007,where the issue was again the demand for information on sanction of prosecution, which was declined by CBI, because it was treated as confidential. The bank has invoked section 11 of RTI Act to

refuse the information. The petitioner submitted that after charge sheet has been filed and an order framing charges has also been passed, withholding the documents was no longer justified. Justice S. Muralidharan made a categorical observation that under the CrPC, once the stage of an order framing charges has been crossed it would be open to the accused to ask the court to summon the document of sanction for prosecution. ***The court also observed that it would not impede the trial which is already under progress***. He finally held that there was no justification in withholding the information and modified CIC order directing the bank to provide information.

Proof of 'impeding' essential (2007)

d) In ***Bhagath Singh*** (2007) case the facts are totally different. Appellant wanted to defend the charges of dowry, for which he was probing the source of dowry, the income, tax etc. He apprehended tax evasion and filed TEP (Tax Evasion Petition). To know the investigation related details on TEP, he filed RTI request. The court went into the 'impede' question. The word 'impede' used in section 8(1)(h) holds the key to whether information requested by the appellant should be allowed to be disclosed. In Bhagath Singh it was held that disclosure would cause no prejudice to department (will not affect proceedings in TEP). Justice Ravinder Bhat's judgment in ***Bhagath Singh*** (2007) was upheld by the Hon'ble Division Bench of High Court of Delhi in LPA No. 1377 of 2007 dated 17.12.2007. In *SudhirRanjan*(2013), Justice Rajiv Shakdher referred to the conclusion in *Bhagat Singh*, that provision of the Act to mean that in order to claim exemption under the said provision, the authority withholding the information must disclose satisfactory reasons as to why the release of information would hamper investigation. The reasons disclosed should be germane to the formation of opinion that the process of investigation would be hampered. The said opinion should be reasonable and based on material facts. He said: 'the learned single Judge, I may note, goes on to observe that sans this consideration'. Whether facts are different or same, the principle is that "impeding" or 'hampering' effect of disclosure on prosecution has to be established by the public authority to take advantage under s. 8(1)(h). When

Commission asked the representing officer of CBI as to how the disclosure would impede the prosecution, he put forward only one point that accused would challenge the 'sanction' in the court of law, which would delay the prosecution. Except this he could not give any cogent reason to convince the Commission on this point.

Bhagath Singh confirmed in 2009

e) In ***Deputy Commissioner of Police v D K Sharma***, W.P.(C) 12428/2009 & CM APPL 12874/2009,Justice Muralidhar of Delhi High Court said: "*This Court is inclined to concur with the view expressed by the CIC that in order to deny the information under the RTI Act the authority concerned would have to show a justification with reference to one of the specific clauses under Section 8 (1) of the RTI Act. In the instant case, the Petitioner has been unable to discharge that burden".*

In 2011

f) ***B.S. Mathur v. Public Information Officer of Delhi High Court (2011)***: W.P.(C) 295/2011, decided on 03.06.2011 which said: *The question that arises for consideration has already been formulated in the Court's order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8 (1) (h) RTI Act? The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8 (1) (h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation." The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8 (1) (h) RTI Act. The burden lies on the public authority to show in what manner the disclosure of such information would 'impede' the investigation. Even if one went by the interpretation placed by this Court in W.P. (C) No.7930 of 2009 [**Additional Commissioner of Police (Crime) v. CIC, decision dated 30th November 2009**] that the word "impede"*

would "mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed "hamper" or "interfere" with the investigation, which in this case is the second enquiry". (Paragraph 19)

In 2012

g) This principle was reiterated in ***Union of India v O S Nahara (2012)***, W.P (C) 3616/2012, Delhi High Court held: . A careful reading of the provision would show that the holder of the information can only withhold the information if, it is able to demonstrate that the information would "**impede**" the process of investigation or apprehension or prosecution of the offenders.

Sudhir Ranjan Senapati, in 2013

h) Justice Rajiv Shakdher in his judgment on 5.3.2013 in ***Sudhir Ranjan Senapati, Addl Commissioner of IT vs Union of India,*** has dealt with an issue which is substantially same in this appeal, with utmost finality. In ***SudhirRanjan*** sanction accorded qua prosecution triggered the request for furnishing information with regard to the decision arrived at in that behalf. Appellant wanted certified true copies of all order sheet entries/note sheet entries/file notings of US, V & L etc, of Director, Admn. Member, Chairman, CBDT/Secretary, Revenue/MOS (R) if any, of Finance Minister, if any pertaining to prosecution sanction by the Central Government u/s 19(1)(a) of Prevention of Corruption Act, 1988 vide letter dated 9.4.2009 in F No C-14011/8/2008 of Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, GoI, New Delhi. The CBI told the Commission that trial of appellant (in Gulab Singh Rana) was at pre-charge stage. The CPIO denied on the grounds of Sec 8(1)(d), (g) and (h). First appeal also supported denial saying 'no disclosure is allowed for the internal communications, office notes which dealt with and relevant to the disciplinary and

appeal proceedings based on which the appellant who had been implicated as accused. The CPIO declined citing Section 8(1)(h) of RTI Act, without giving reasons. Appeal met the same fate at First Appellate Authority. In second appeal CIC also agreed with CPIO. The Court quoted Justice Ravinder Bhat (in ***Bhagath Singh v CIC***146 (2008) DLT 385 decided on 3rd Dec 2007), who explained: *"Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore is to be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information". (Para 13)*

i) This is the most significant ratio that was reiterated many times. Delhi High Court also emphasized on liberal interpretation of RTI and strict construction of restriction clauses in Section 8. *"A rights-based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view (See Nathi Devi v. Radha Devi Gupta 2005 (2) SCC 201; B. R. Kapoor v. State of Tamil Nadu V. Tulasamma v. Sesha Reddy. Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted". (Para 14)*

j) In ***Sudhir Ranjan***, Justice Rajiv Shakdher distinguished from the facts of Surinder Pal Singh case and held "that ratio of that judgment would not apply to the facts obtaining in the present (Sudhir Ranjan) case". Justice Shakdhar referred to the apex court'sjudgment in (2003) 5 SCC 568 paragraph 23 that 'a little difference in facts or additional facts may lead to a different conclusion". It is relevant to consider what the Delhi High Court said on this aspect in ***Sudhir Ranjan*** quoting ***Bhagat Singh***: "*Undoubtedly petitioner herein is seeking information with regard to the sanction accorded for his own prosecution. It cannot be disputed, as is noticed by my predecessor, in this very matter, in the order dated 14.0.2011 that the accused during the course of his prosecution can impugn the sanction accorded for his prosecution, on the basis of which the prosecution is launched. For this proposition, the learned judge, in its order dated 14.10.2011 relies upon the following judgments: "**State Inspector of Police, Visakhapatnam vs. Surya Sankaran Karri** (2006) 7 SCC 172 and **Romesh Lal Jain v. Naginer Singh Rana** (2006) 1SCC 294.*Justice Rajiv Shakdherin ***Sudhir Ranjan*** agreed with ratio of ***Bhagath Singh,***said: *I have no reason to differ with the view taken either in **Bhagath Singh** case or with the prima facie view taken in the order passed by my predecessor in his order dated 14-10-2010. It is trite that an accused can challenge the order by which sanction is obtained to trigger a prosecution against the accused. If that be so, I do not see any good reason to withhold information which, in one sense, is the underlying material, which led to the final order according sanction for prosecution of the petitioner. As a matter of fact, the Trial Court is entitled to examine the underlying material on the basis of which sanction is accorded when a challenge is laid to it, to determine for itself as to whether the sanctioning authority had before it the requisite material to grant sanction in the matter. See observations in **Gokulchand Dwarkadas Morarka vs The King** AIR 1948 PC 82 and **State of Karnataka vs Ameerjan** (2007) 11 SCC 273. Therefore, the said underlying material would be crucial to the cause of the petitioner, who seeks to defend himself in criminal proceedings, which the State as the prosecutor cannot, in my*

opinion, withhold unless it can show that such information would hamper prosecution." (Paragraph 11.3), In ***Sudhir Ranjan*** case Justice Rajiv Shakdher has set aside the order of CIC and has directed respondents to supply the information relating to sanction of prosecution after redacting names of officers, who wrote the notes or made entries in the concerned files.

In 2014 CBI was directed to disclose

k) In ***Adesh Kumar v Union of India (2014)***, W.P.(C) 3543/2014 decided on 16.12.2014, the information sought was file notes, correspondence with CBI, and other details of sanction of prosecution, including initial recommendation of Ministry of Urban Development against sanction of prosecution of appellant Adesh Kumar etc. The PIO refused, which was confirmed by First Appellate Authority. The CIC also found the contention of public authority that under Section 8(1)(h), as disclosure would impede the prosecution. The CIC order was challenged before Delhi High Court. Justice Vibhu Bhakru allowed the writ and directed the information to be given. Court explained: *"….the word 'impede' would ' mean anything which could hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed 'hamper' or 'interfere' with the investigation…"* He referred to judgment of a co-ordinate Bench of Delhi High Court in the case of **BS Mathur (2011)** on Section 8(1)(h), saying: "the mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8 (1) (h) RTI Act. The burden lies on the public authority to show in what manner the disclosure of such information would 'impede' the investigation". Justice Bhakru explained: *"A bare perusal of the order passed by the FAA also indicates that the aspect as to how the disclosure of information would impede prosecution has not been considered. Merely, citing that the information is exempted under Section 8(1)(h) of the Act would not absolve the public authority from discharging its onus as required to*

claim such exemption. Thus, neither the FAA nor the CIC has questioned the Public Authority as to how the disclosure of information would impede the prosecution".

l) Decision in ***Surinder Pal Singh*** (2007) case, was based on the facts that disclosure of details of sanction of prosecution would impede the prosecution. The Principle agreed upon in this case was also that disclosure could be ordered except when 'impeding' effect is proved. The judgment of ***Surinder Pal Singh*** was not reported and published. All these decisions the Delhi High Court was maintaining the same ratio that only when disclosure of information is proved to be impeding, it could be denied, otherwise, it has to be disclosed. Simply because result in ***Surinder Pal Singh*** was against disclosure, it is not correct to deny information regarding the sanction of prosecution though the impeding effect was not proved by the public authority. One cannot consider the result in Surinder Pal Singh as ratio and conclude that details of 'sanction of prosecution' could not be disclosed under any circumstance. The Learned Justice Anil Kumar in WPC 16712/2006 and the Division Bench in LPA in ***Surinder Pal Singh*** opined that the trial court would be appropriate forum to decide on validity and legality of the sanction and hence left it to be decided by the trial court. It did not lay down any rule to deny it under RTI Act. There is no possibility to infer any such ratio from this order, because of three reasons: 1) The Commission is only deciding a limited aspect of disclosure and application of Section 8(1)(h) 2) It is not, as it cannot, going into the questions of validity or legality of 'sanction' which is totally left to the trial court. 3) Section 22 of RTI Act specifically prevents possible contention that appellant should avail alternative accesses to information. Surinder Pal Singh cannot guide the CIC. Surinder Pal Singh case dealt with alternative access to information under Cr P C.

m) This was answered by Justice Muralidhar in ***DK Sharma (2009):*** *"The mere fact that a criminal case is pending may not by itself be sufficient unless there is a specific power to deny disclosure of the information concerning such case..... It is required to be noticed that Section 22 of the RTI Act states that the RTI Act would prevail notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force".*

n) One point to be noticed here is that Delhi High Court in ***Sudhir Ranjan*** discussed and analysed the order in ***Surinder Pal Singh***, explained how he distinguished his conclusions from that order in a very rational manner. There are seven judgments (***SK Lamba, Bhagath Singh, DK Sharma, BS Mathur, OS Nahara, Sudhir Ranjan and Adeshkumar***) on merits from Delhi High Court, which consistently differed from ***Surnider pal Singh*** and reiterated the principle that without proving how disclosure impedes prosecution, the exception under Section 8(1)(h) could not be invoked, and in at least two judgments (***Sudhir Ranjan and SK Lamba)*** held that details about sanction for prosecution are not so sacrosanct that it should not be disclosed under any circumstances. This chronology of Delhi High Court show that the result of Surinder Pal Singh was not followed by same Delhi High Court, but ratio was considered with Section 22 and disclosure was ordered, and CIC also did not ignore these re-affirmed principles which are more in conformity with the scheme, objective and stated principles of RTI Act, 2005. Important to be noted is that in ***BS Mathur***, the Delhi High Court Judge directed the **Delhi High Court** to give information ruling out objections raised by PIO, First Appellate Authority and orders of CIC.

Ratio

o) As far as the ratio is concerned there is no contradiction between the ***Sudhir Ranjan, SK Lamba*** and ***Bhagath Singh*** on one hand and ***Surinder Pal*** cases on the other, if former concluded that disclosure would not impede, the later thought otherwise. Reading this ratio coupled with Section 22 will facilitate disclosure of details of sanction of prosecution which will advance the public interest in securing principles of natural justice and basic tenets of criminal justice, hence facilitating accused appellant to challenge the legality of 'sanction'. In view of Section 22, the contention that decision on disclosing should be left to trial court is against the intention of Parliament expressed in unambiguous terms of Section 22, and Objectives & Preamble of RTI Act

p) In ***SM Lamba v SC Gupta and Anr.***, WPC No. 6226/2007, decided on 4.5.2010 by Justice S. Muralidhar, the High Court saw no point in withholding information related to

the ‘sanction of prosecution’ to the accused appellant, as the trial crossed the framing of charges stage also. The decision was based on the conclusion that there was no impeding effect. Supreme Court in ***State Bank of India v DC Agarwal and Anr.*** (on 13.10.1992) held that non-supply of CVC instructions which were prepared behind the back of the Respondent without his participation and one does not know on what material, which was not only sent to the disciplinary authority but was examined and relied, was certainly a violation of procedural safeguard and contrary to fair and just inquiry. Further the Hon’ble High Court of Karnataka in EP No 6558/1993 has also observed that if a copy of the report of CVC’s advice was furnished to the delinquent official, he would have been in a position to demonstrate before the disciplinary authority either to drop the proceedings or to impose lesser punishment instead of following blindly the directions in the CVC’s report.

CIC decisions in tune with RTI

q) I would like to mention some of the decisions of the learned Central Information Commissioners, who did not follow the CIC full bench directive or Surinder Pal Singh holding that internal communication within the office is ‘information’ as per Section 2(f) and can be disclosed subject to other provisions of RTI, which cannot be considered as third party information and access to it could not be denied. Learned Commissioner Sri Shailesh Gandhi on 30 December 2011 in ***Krishnalal Mittal v Ministry of External Affairs***, CIC/AD/C/2011/000793/SG/16694, complaint CIC/AD/C/2011/000793/SG, Learned Commissioner Sri Divya Prakash Sinha in ***Lt Col Shailendra Grover v Brigadier & CPIO, head quarters of Central Command***, CIC/CC/A/2014/903022/SD on 6.6.2016 rejected defence u/s 8(1)(h) and ordered disclosure of file notings regarding sanction of prosecution as sought after deleting the names of witnesses or sources as per Section 10 of RTI Act. In two similar cases where investigator was CBI, Learned Commissioner Shri Basanth Seth ordered disclosure of file notings and other details of sanction for prosecution on the strength of ratio of ***Sudhir Ranjan***. In ***S. K. Aggarwal v CPIO, Dept of Telecommunications***, CIC/BS/A/2013/000906/5166,

dated 22 May 2014, and in ***Rajendra Prasad v BSNL***, CIC/BS/A/2012/001788/3927 on 13 November 2013 Learned Commissioner Shri Basanth Seth held that file notings generated by department cannot be treated as third party information and there is no valid ground to withhold the information about file notings regarding sanction of prosecution. In both of these cases CBI was involved in investigation. It is relevant to refer to the order of Ld CIC Mrs. Manjula Prasher, in ***Shri SudarshanKumar v Dept of Financial Services***, New Delhi, CIC/DS/A/2013/001619/MP dated 22nd September 2014, where the appellant sought sanction for prosecution related information. The Ld Commissioner referred to ***Sudhir Ranjan, Bhagath Singh*** and ***SM Lamba*** as contended by appellant and directed disclosure of information, rejecting the stand of CPIO on 8(1)(h).

r) Surinder Pal Singh case, though confirmed by the division bench, is *per incurium* because it is against the existing binding authority and express provision of law. None brought Section 22 of RTI Act to the notice of single judge bench and division bench, which would have totally changed the result. Section 22 is a most significant provision of RTI Act which gives overriding power to it over past and contemporary practices and legislations in order to bring transparency. The Supreme Court in 2015 talked about practices that should fade out with this transparency legislation. It has pointed out the purpose and effect of Section 22 of RTI Act, in its landmark order in ***RBI v Jayantilal N Mistry***, Civil Appeals No. 91 to 101 of 2015 on December 16, 2015, as follows: The submission of the RBI that exceptions be carved out of the RTI Act regime in order to accommodate provisions of RBI Act and Banking Regulation Act is clearly misconceived. RTI Act, 2005 contains a clear provision (Section 22) by virtue of which it overrides all other Acts including Official Secrets Act. Thus, notwithstanding anything to the contrary contained in any other law like RBI Act or Banking Regulation Act, the RTI Act, 2005 shall prevail insofar as transparency and access to information is concerned. Moreover, the RTI Act 2005, being a later law, specifically brought in to usher transparency and to transform the way official business is conducted, would have to override all earlier practices and laws in order to achieve its objective. The only

exceptions to access to information are contained in RTI Act itself in Section 8. (Paragraph 43) The old mindset of holding back information somehow, should go. The practices referred by Supreme Court in above paragraph include the practices guided by the closed mindset. The right to information was available in its rudimentary form in Section 76 of Indian Evidence Act, 1875: Section 76 says: Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

Section 74 of Evidence Act, defines "public documents": "(1) The following documents are public documents: (i) of the sovereign authority, (ii) of official bodies and tribunals, and (iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country; (2) public records kept in India or private documents."

The CVC document on sanction for prosecution under Chapter VII “Prosecution” available on its official website says: “An order of sanction to prosecute a Government servant is a public document within the meaning of section 74 of the Indian Evidence Act. Under section 77 of the Evidence Act, it is permissible to produce in proof a certified copy of a public document and it should not be necessary to prove the signature of the officer who had signed or authenticated the order of sanction”. (http://cvc.nic.in/vigman/chaptervii.pdf)

The right of an accused person to obtain copies of public documents which concern the offence with which he is charged was recognised in ILR 20 Mad. 189 (FB). This was relied upon by the Madras High Court in State of Madras v G Krishnan on 22nd August, 1990. (AIR 1961 Mad 92). Three judges Bench held that if the documents

were held to be public documents, the accused should be held to have an interest therein which would entitle them to copies thereof under Section 76 of the Indian Evidence Act.

If the question of the respondent's right to grant of the copies has to be decided purely on Sections 74 and 76 of the Evidence Act, there can be no doubt that he would be entitled to it. This is subject to prohibition in any other law. If there is no prohibition, accused should get the copies.

Purport of this principle is that if the sanction for prosecution is not prohibited by any statute, the accused is entitled to get it. With RTI Act in place, the information has to be given subject to Section 8 of that Act. Because of overriding effect of this Act, by Section 22, even if there is any prohibition in any law would have no effect. There is no statute which prohibited that document. Based on the principles of Evidence established by a Full Bench decision of Madras High Court, Sections 74, and 76, as explained by the CVC document on 'Prosecution", read with the Right to Information Act, with its Section 22, the order of the Division Bench of Delhi High Court in Surinder Pal Singh is *per incuriam.*

Per incuriam is a Latin terms which means "through lack of care". A court decision made *per incuriam* is one which ignores a contradictory statute or binding authority, and is therefore wrongly decided and of no force. A judgment that's found to have been decided *per incuriam* does not then have to be followed as precedent by a lower court. In criminal cases a decision made *per incuriam* will usually result in the conviction being overturned. Thus the Delhi High Court single judge benches in seven cases have rightly refused to follow the order of Division Bench of Delhi High Court in ***Surinder Pal Singh.***

s) Hence, I consider that the CIC's order of majority [2-1, Learned CICs Shri A.N.Tiwari, S.N.Misra, Shailesh Gandhi (dissenting)] in ***C. Sitaramaiah v. CBI*** dated 7-6-2010 refusing sanction related information under Section 8(1)(h), RTI Act holds no water. The dissent judgement given by Learned Commissioner Shri Shailesh Gandhi in the

above case, which in principle was confirmed by Hon'ble Delhi High Court in ***S.M. Lamba, Sudhir Ranjan, and Bhagath Singh (***both by single and division benches), ***Adesh Kumar, B S Mathur, OS Nahara*** has occupied the field with a strong precedential value besides being in accordance with the objectives and tenets of RTI Act. The public authority should be accountable and answerable regarding the sanction of prosecution, which is possible only when details are disclosed. **Hence I hold that placing whole reliance on** *Surinder Pal Singh* **(2006) which per incuriam, and ignoring seven reasoned decisions of the same Delhi High Court from 2007 to 2014 as explained above is neither legal nor justified and against express provisions of RTI Act.**

Questions of fact

14. Respondent's refusal fails on facts also. Appellant contended that he was put in the dark regarding the materials which originally prompted the sanctioning authority to decline sanction and what made the same authority to sanction by subsequent order without discussing about any new material which has been supplied by the CBI. It is settled law that materials considered by the sanctioning authority must be discernable from the order. His emphasis was that he needed the information sought, to prove his bonafide and innocence. He cited two cases, WPC No 1329 of 2010(Q) in ***Kerala High Court at Ernakulam***, and WA No. 69 of 2010 in WP No 10569 of 2010 before Madras High Court, wherein the sanction orders for prosecution pertaining to Chief Managers of Indian Overseas Bank were quashed. Similarly, appellant also wanted to challenge the legality of the sanction. He also made it clear that the draft sanction sent by CBI to Competent Authority was sought only to strengthen the merits of the case as well as to establish that the discretion of the Competent authority was taken away by CBI and even the drafting of sanction was not by Competent Authority but by CBI, thereby violating the principles of natural justice and that his Competent Authority has buckled under pressure. Thus the appellant has a strong case based on the facts also. Appellant alleged that initially sanction was declined and later there was pressure from CBI to include him. He has a reason to doubt whether Competent Authority has exercised its own discretion independently.

It is the right of the accused to challenge the legality of the 'sanction' on sufficient grounds. This Commission cannot decide legality of the sanction, but need to understand the prima facie case to do so to examine the interests of justice. Even according to CBI the investigation was over, charge sheet was filed and the trial commenced. Hence, apprehension of impeding the prosecution is baseless. As accused, he is legally entitled to challenge the validity of sanction of prosecution, but denial of information about details of sanction will obstruct him from exercising the legal right. The Commission has a duty to analyse whether denial to sanction related information on the ground of impeding the trial is impeding the fair trial. Can information be denied at the cost of fair trial? Is it in public interest? No.

Constitutional & Human Right of the Accused

15. Basic tenet of Criminal Justice system tested over a period of time is that accused should be given every bit of information/evidence and nothing should be heard on his back. That is the reason behind open trial. In fact open trial is the original right to information of accused and people in general. Especially, when sanction of prosecution was basic requirement for launching prosecution, it cannot be withheld. Withholding such crucial information from the accused will result not only in breach of his right to information, but also his right to fair trial and access to justice, which are, undoubtedly, the human rights guaranteed by law. Any information pertaining to corruption or human rights cannot be withheld as per the proviso to Section 24 of RTI Act even by the exempted organizations such as CBI and much less by the Government offices or public authorities which received information from exempted organizations. As far as Bank is concerned, the information sought pertains to corruption in the bank. Appellant is obviously seeking these notes to challenge the sanction in court of law. It is his right to access to justice, if he is wrongfully implicated it would be breach of his human right. Hence the information sought by him pertains to either corruption in the organization or violation of human rights. Thus, even if the CBI advised Bank not to give, the Bank is expected toapply its judicious mind, exercise its own discretion and decide based on the provisions of RTI Act, especially the proviso to Section 24, 8(1)(h) and 8(2).

IV. Disclosure under proviso of Section 24:

16. The CBI stonewalled the demand for information under Section 24 of RTI Act. Section 24 of RTI Act states as follow:

> 24. **Act not to apply to certain organisation:**(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:
>
> **Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:**
>
> Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.
>
> (2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.

How Bank decided?

17. First let us analyse the decision of the Bank, which is the appropriate authority in this case that gave sanction to prosecute appellant. Sole basis of bank's refusal is that information given by exempted CBI is also exempted as per first part of Section 24. Being an investigating agency CBI has to give inputs based on their investigation. The inputs given by the CBI could be one of the many bases for the Bank to decide on sanction. The public authority has held and having control over the file, in which the reasons for sanction are expected to have been recorded. Just because some inputs are used to take a final decision, and that inputs coming from an exempted organization, public authority cannot prohibit its disclosure, especially when such sanction was not given in the first instance, but granted at a later stage. The appellant wanted to know what kind of new material was found by the Bank to accuse him and permit the prosecution. The apprehension of the accused that about the process of sanction is not

baseless. If the file is not disclosed to accused-appellant, and also not produced by the competent authority in the court of law, it is not possible for accused to defend and for court to decide validity of sanction. The disclosure will not impede the prosecution of appellant, but the non-disclosure by the public authority, the Bank, will totally prevent the accused from exercising his right to challenge the legality of sanction of prosecution and deprive his chance to prove his innocence. The Bank that sanctioned it and CBI that investigated also will lose an opportunity to prove that prosecution of accused was proper and legal. There is public interest from both the sides. The accused and court should be assisted in arriving at proper decision about guilt or innocence by disclosure. Hence the Bank has to provide the information sought as its disclosure will not impede prosecution. There are no grounds to invoke Section 8(1)(h) ignoring a significant Section 8(2), which mandates judicious examination of comparative public interest.

18. Surprisingly both the public authorities have not considered the proviso to Section 24.

"Pertaining to allegation of corruption"

a) There are number of judgments explaining what is 'pertaining to allegation of corruption'. A division Bench of Punjab & Haryana Court has explained that if information sought is 'pertaining to allegation of corruption" even exempted organization has to give that information. Dismissing the LPA 744 and 755 of 2011, ***First Appellate Authority and Addl DGP v CSIC, Haryana***, the bench of Hemant Gupta, AN Jindal, JJ on 28-4-2011 observed:

The information sought in the present case is in respect of the *number* ***of vacancies which have fallen to the share of the specified category and whether such posts have been filled up from amongst the eligible candidates. If such information is disclosed, it will lead to transparent administration which is anti-thesis of corruption. If organization has nothing to hide or to cover a corrupt practice, the information should be made available.***

The information sought may help in dispelling favoritism, nepotism or arbitrariness. Such information is necessary for establishing the transparent administration.

The Act is to step-in-aid to establish the society governed by law in which corruption has no place. The Act envisages a transparent public office. ***Therefore, even in organizations which are exempt from the provisions of the Act, in terms of the notification issued under Section 24(4) of the Act, still information which relates to corruption or the information which excludes the allegation of corruption would be relevant information and cannot be denied for the reasons that the organization is exempted under the Act.***

b) In an earlier case ***FAA, Addl DGP CID of Haryana v CIC*** CWP No. 12904/2009 decided by Mehinder Singh Sullur J., on 27th Jan 2011, explained that ***all information sought not concerned with security and intelligence shall be given***. Justice Sullur said:

A combined reading of these provisions would reveal, only that information is exempted, which is **directly effecting and co-related to the "Intelligence" and "Security" of that organization of the State and not otherwise**.

c) The judgment and order dated 13-10-2015 in W.P. (C) No. 880 of 2014 ***Abid Husssain v State of Manipur*** High Court of Manipur observed:

This Court is of the view that if any information sought for does not relate to any of these areas referred to in the Preamble which the Act seeks to protect and preserve and thus keep away from public domain but are also relatable to any allegation of corruption and violence of human rights, there is no reason why such an information should be withheld, if sought for. (Para 11)

This issue can be viewed from another perspective. The legislature in their anxiety to keep certain organisations which are engaged in activities involving sensitive information, secrecy of the State, have sought to keep these organisations away from the purview of the Act by including such organisations in the Second Schedule of the Act as far as Central Organisations are concerned and in the official gazette in respect of State organisations. ***It does not, however, mean that all information relating to these organisations are completely out of bound of the public.*** For example, even though the **Central Bureau of Investigations** is one of the organisations included in the Second Schedule to the Act, it does not mean that all information relating to it are out of bound of the public. If one looks at the website of the Central Bureau of Investigation which is in the public domain, there are so many information about the organisation which are already voluntarily made open to the public. This is for the simple reason that disclosure of these information does not in any way compromise with the integrity of the organisation or confidentiality of the sensitive nature of works undertaken by this organisation. The purpose of excluding all these organisations from the purview of the Act as provided under Section 24 is to merely protect and ensure the confidentiality of the sensitive works and activities undertaken by these organisations. ***Therefore, if there are any information which do not impinge upon the confidentiality of the sensitive activities of the organisation and if such information is also relatable to the issues of corruption or violation of human rights, disclosure of such information cannot be withheld.***Para 12

d) The Manipur High Court in W.P.(C) No. 642 of 2015 ***Sri Phairemban Sudhesh Singh v State of Manipur***, reiterated their decision about the scope of S 24. In this case, the information sought for by the petitioner was regarding his service - the initial appointment, suspension order, documents relating to departmental proceedings, termination order etc. It was held:

To comprehend the intent of the Legislature while enacting the RTI Act specially as regards the said expression, the provisions of the Act, as a whole, are to be read keeping in mind the purpose for which the RTI Act is enacted and it may further be noted that the exemptions cannot be construed so as to defeat the very objective sought to be achieved in the RTI Act, 2005.
It may be noted that the right to information is a facet of "freedom of speech and expression", as contained in Article 19(1)(a) of the Constitution, which are the foundation of all democratic organisations. Fundamental rights should not be cut down by too restricted an approach. Even prior to the enactment of RTI Act, 2005, the expression "freedom of speech and expression" has been construed by the Hon'ble Supreme Court, in a catena of decisions, to include not only liberty to propagate one's views, ideas, opinions and thoughts but also the right to acquire information. In other words, the right to information can be said to be a fundamental right subject to the exemptions as contained in Section 8 and 24 of the RTI Act.
....Article 19 of the Universal Declaration of Human Rights, 1948 provides that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

e) In ***Superintendent of Police, Central Range, Office of Directorate of Vigilance & Anti Corruption v. R Karthikeyan*** W.P. No. 23507 and 23508 of 2009, ***Division Bench, Madras High Court*** held on 12.1.2010 [AIR 2012 Mad 84],

In terms of Section 24(4), the State Government is empowered to notify in the Official Gazette that nothing contained in the Right to Information Act shall apply to such intelligence and security organization being organizations established by the State Government. Nevertheless, in the light of the first proviso, such power being conferred on the State Government to notify exempting such intelligence and security organizations, it cannot notify in respect of the information pertaining to the allegations of corruption and human rights violations. As a necessary corollary, the power to exempt from the provisions of the Act is not available to the State Government even in case of intelligence and security organizations in respect of the information pertaining to the allegations of corruption and human rights violations. .... As all these particulars (sought by RTI applicant) would certainly relate to corruption, the Government Order has no application to the facts of this case.

Thereafter, the Division Bench upheld the order of the learned single Judge dismissing the writ petitions preferred by the Public Information Officer, the petitioner herein in refusing to furnish the information.

f) Referring to above division bench judgment, the Madras High Court in another case stated that exempted organization shall comply with Section 4(1)(b)(v) in ***Superintendent of Police v. M. Kannappan***, WP No 805/2012, D Hariparandhaman, J of the Hon'ble High Court of Madras, [2013(292) ELT 24 (Mad)]. Information claimed in this case is sanction for prosecution relating to charges of corruption. Information pertains to corruption, disclosure of which will enable appellant to challenge the validity of the order. This information does not relate to security or intelligence aspects of the CBI. Hence CBI cannot refuse it under Section 24, but has to give it under proviso to section 24. However it is subject to section 8 of RTI Act.

Six Legal Dilemmas

19. While deciding case, the IC is confronted with six legal dilemmas.

i) *When two alternative routes of access, which one is appropriate?*

ii) *If a similar matter is pending adjudication in higher court, should CIC defer matter until final conclusion?*

iii) *When two public authorities are asked to give information, can one direct the citizen to the other?*

iv) *Whether file-notings about sanction of prosecution is 'information' or 'evidence'?*

v) *Whether right to seek remedy for his breached right is 'self interest' or 'public interest'?*

vi) *Whether CIC should follow the decisions of Delhi High Court only because CIC is located in territorial limits of Delhi and need not follow the decisions of other Constitutional Courts, i.e., other High Courts in other States?*

i) Foremost dilemma is if there are two alternative routes of access available, the public authority has a tendency to guide appellant to other source. In ***KPSC vs State Information Commission*** (WP(C).No. 33718 of 2010)decided on March 9, 2011, (https://indiankanoon.org/doc/164104221/), the Kerala High Court has settled the frequently raised challenge that when they have their own procedure to give information, only such procedure should be adopted and information need not be given

under RTI Act, saying: *"One of the issues that arise for consideration is the plea of the PSC that it having made rules for issuance of copies and dissemination of information to candidates; it ought not to be compelled to issue such information, also under the provisions of the RTI Act. This argument appears to be quite appealing because public institutions like PSC meet their expenses from public funds. Necessarily, it has to be the endeavour of all concerned to ensure that expenditure from such funds is confined to actual requirements. At the same time, the mode and provision for access to information under the provisions of the rules made by the PSC, as also, the cost factor, if any, involved, may be relevant considerations to ultimately conclude as to whether there could be any exclusion of access to such information under the provisions of the RTI Act and the rules framed there-under, on the premise that alternate, efficacious and cost-friendly modes of access to information are otherwise provided for by the statutory rules and other provisions that govern the working of the public authority from which, information could be sought under the RTI Act. But, as the law now stands, there is no scope for any judicial recognition of such a plea and a favourable decision on that issue through a judicial order. This is because Section 22 of the RTI Act provides that the provisions of that 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 that Act. Such statutory provision having been made by the legislature, within its competence, it cannot be watered down or modified except by recourse to legislative procedures. (Paragraph 21)".*It is not legal and proper for the public authority to guide the appellant to a different procedure, here under Cr.P.C., and seek the trial court's indulgence to secure the information sought under RTI. Neither the Bank nor the CBI can dilute or water down the RTI and deny the information on this ground.

ii) Second legal dilemma is whether the Commission should adjudicate or adjourn the proceedings when the similar matter is pending before the higher courts. Recently Division Bench of Gujarat High Court in ***Kyori Oremin Ltd v Chief Commissioner of Customs*** (Special Civil Application no. 12438 of 2015, with SCA No 16047 of 2015)

considered this point and held on 27.4.2016: *"Mere pendency of appeal in higher forums is no ground for keeping adjudication of proceeding in abeyance in all cases.....Keeping all adjudications pending till finalization of appeal proceedings would lead to absurd situation. High Court is barred from entertaining normal appeal..... under what circumstances a certain proceeding should be kept in abeyance awaiting finalization of a similar issue must depend on facts and circumstances of each case.... What is the material brought on record and evidence ... need not necessarily be common in all cases".* Because prosecution is pending or writ petition is being entertained in a high court, or an alternative access to information is provided, the Commission cannot adjourn all similar proceedings or drive the appellant to courts to seek information as contended by public authorities in this case and deny the right to information.

iii) Third dilemma is which public authority has to decide disclosure question among Indian Overseas Bank or CBI? I quote following observation of the Hon'ble Delhi High Court in Col V K Shad's case decided on 9.11.2012 WPC No 499/2012 wherein based on the decisions of the Apex Court in ***CBSE v Aditya Bandhopadhyay*** and ***Shounak Satya***: *"....As a matter of fact, the person who generates note or renders an opinion is presumed to be a person who is objective and not conflicted by virtue of his interest in the matter on which he is called upon to deliberate.....A denial of access to such information to the information seeker, especially in the circumstances that the said information is used admittedly in coming to the conclusion that the delinquent officers were guilty, and determining the punishment to be accorded to them, would involve a serious breach of principles of natural justice, as non-communication would entail civil consequences and would render such a decision vulnerable to challenge under Article 14 of the Constitution of India provided information is sought and was not given..."*

The CVC document on Prosecution in paragraph 2.2 made it clear: The sanctioning authority has an absolute discretion to grant or to withhold sanction

after satisfying itself whether the material placed before it discloses a prima facie case against the person sought to be prosecuted. It is the sole judge of the material that is placed before it. If the facts placed before it are not sufficient to enable to exercise its discretion properly, it may ask for more particulars. It may refuse sanction on any ground which commends itself to it if it considers prosecution as inexpedient. (http://cvc.nic.in/vigman/chaptervii.pdf)

The respondent Bank is expected to be objective in arriving at a conclusion on prosecution of accused public servant, and when such information is sought, its denial would be a breach of principles of natural justice and also violate equality.

iv) Dilemma number 4 is whether information relating to 'sanction of prosecution' is evidence? It is contended that 'sanction of prosecution' is not just information, but it is evidence, hence its admission or otherwise has to be left to be decided by the trial court. If it is only the information, disclosure should be decided as per RTI Act, which overrides all other legislations with the power of S 22. If it is evidence, it must have been collected by the investigator and should form part of the documents relied upon in charge sheet, which need to be shared with accused. The question before CIC is not admissibility of evidence but disclosure of information only. Disclosure by itself does not mean anything about its admissibility, validity and weightage, which has to be decided only by trial court. Disclosure will help the accused to prepare his defence. Though sanction is administrative decision by the competent authority, it is contended that it will depend upon the 'evidence' collected by the CBI. If it is administrative decision, the sanction should form the basis of prosecution, and if it is evidence as contended, the accused has every right to know in detail so that he can defend himself before the trial court which has complete authority to admit or not. The Commission has a legitimate duty and authority to examine the 'impeding' factor and decide, without going into the question of validity of 'sanction', which remains exclusive domain of trail court, even after the disclosure.

v) Fifth Dilemma is whether an applicant's right to seek remedy for his breached right is a matter of self interest or public interest. When rights are recognized by law, the citizens are entitled to enforce them legally. Though it is an individual right, every citizen has such right and thus it reflects 'public interest'. The most significant of the Human Rights is the exclusive right to Constitutional remedies under Articles 32 and 226 of the Constitution of India. Those persons whose rights have been violated have right to directly approach the High Courts and the Supreme Court for judicial rectification, redressal of grievances and enforcement of Fundamental Rights. This remedial Fundamental Right has been described as "the Cornerstone of the Democratic Edifice" as the protector and guarantor of the Fundamentals Rights. It has been described as an integral part of the Basic Structure of the Constitution. Under Article 226 of the Constitution of India, the High Courts have concurrent jurisdiction with the Supreme Court in the matter granting relief in cases of violation of the Fundamental Rights, though the High Court's exercise jurisdiction in case of any other rights also.

The Constitution of India does not expressly provide the Right to Legal Aid, but the judiciary favoured poor prisoners. The 42nd Amendment Act, 1976 has included Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in the Constitution.

> *Article 39-A provides that "the state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall in particular, provides Free Legal Aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.*

This directive is not an enforceable right, the principle laid down therein are fundamental in the governance of the country. Article 37 of the Constitution casts a duty on the state to apply these principles in making laws.

Article 37 of the Constitution of India reads as "the provisions contained in part IV shall not be enforceable by any court but the principles there in laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.

While Article 38 imposes a duty on the state to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The parliament has enacted Legal Services Authorities Act, 1987 under which legal Aid is guaranteed and various state governments had established legal Aid and Advice Board and framed schemes for Free Legal Aid and incidental matter to give effect to the Constitutional mandate of Article 39-A. Under the Indian Human Rights jurisprudence, Legal Aid is of wider amplitude and it is not only available in criminal cases but also in civil, revenue and administrative cases. In ***Maneka Gandhi vs. Union of India (***AIR 1978 SC P597***)*** the Supreme Court held that procedure established by law in Article 21 means fair, just and reasonable procedure.

In ***Madhav Hayawadan Rao Hosket vs. State of Maharashtra*** (AIR 1978 SC 1548), a three judges bench (V.R.Krishnalyer, D.A.Desai and O.Chinnappa Reddy, JJ) of the Supreme Court reading Articles 21 and 39-A, along with Article 142 and section 304 of Cr.P.C. together declared that the Government was under duty to provide legal services to the accused persons. "If a prisoner sentenced to imprisonment is virtually unable to exercise his Constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit, in the court under Article 142 read with Articles 21 and 39 A of the Constitution, power to assign counsel for such imprisoned

individual for doing complete justice". The court further added that legal Aid in such cases is state's duty and not Government's charity.

In ***Hussainara Khatoon and others vs. Home Secretary, State of Bihar*** (AIR 1979 SC 1360), the main observations of the Supreme Court declared the speedy trial as a constituent of Legal Aid and directed the Government to provide Free Legal Aid service in deserving cases. This case reinforces the principles laid down in M.H Hoskot‟s case. Justice Bhagwati observed that Article 39-A of the Constitution also emphasizes that free legal service is an unalienable component of reasonable, fair and just procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice.

In ***Khatri (I) vs. State of Bihar*** (AIR 1981 SC 928), a division bench of the Supreme Court held that the state is under Constitutional mandate to provide Free Legal Aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for this purpose has to be done by the state.

The new input into this 'legal aid' is the 'information' that could help accused to defend its case, which was guaranteed by Right to Information Act, 2005 which provided access to the public records and right to secure certified copy of documents. Under Legal Services Authority, the state or court has to provide the counsel and other legal aid to the accused or prisoner, while RTI enables him to secure the required information.

In ***Indian Bank's Association, Bombay and ors v M/s Devkala Consultancy Service and ors*** J.T. 2004 (4) SC 587, the apex court explained that a private interest case can also be treated as public interest case. The

Supreme Court said: “Where the petitioner might have moved a court in her private interest and for redressal of the personal grievance, the court in furtherance of Public Interest may treat it a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus a private interest case can also be treated as public interest case”.

The classic case of ***SP Gupa v Union of India***, 1981 (Supp) SCC 87 is regarded as great judicial initiative of transparency in executive functioning. This is landmark on public interest litigation also. It has explained how trampling of rights of an individual person by the constitutional authority, reflect the plight of persons similarly situated like the specific victim will be considered as public interest and anybody can bring that issue to the court of law for judicial redress. Great judicial departure from ‘locus standi’, a technical obstruction to enforcement of justice, explains that public interest emanates from individual rights guaranteed by law. Paragraph 13 onwards, the Supreme Court explained the concept of public interest arising out of breach of individual rights.

Initiating legally provided process to enforce a legal right is a matter of public interest. If not, no individual right can be enforced. His right to information is supplementary human right that supports the accused to secure a chance to prove his case where he is criminally charged. In my view such ‘information’ like noting details of sanction for prosecution will be real legal aid the state is under an obligation to provide. Disclosing detailed file-notings information to accused to challenge the validity of sanction is in the public interest of protecting human rights of citizens or persons in general and appellant in particular. Not the disclosure but holding such information will impede the prosecution.

vii) This question whether CIC should follow the decisions of Delhi High Court only because CIC is located in territorial limits of Delhi and not follow the decisions of other Constitutional Courts, i.e., other High Courts in other States, is against the

principle of equality of all Constitutional Courts, the High Courts in different states. Such a view is totally against the judicial review power, which is one of aspects of the basic structure of the Constitution. As the Central Government agencies are spread over all states the CIC will have a jurisdiction over all those agencies and bodies. The constitutional power of judicial review is available to all High Courts. In fact, the Centre does not have specific territory like states because all the states constitute the centre. Any High Court can review the orders of any tribunal including CIC, which fact is proved by dozens of writ petitions in different High Courts and their orders. The Constitution holds that Supreme Court and High Courts are Courts of Records, whose decisions have precedential value according to accepted norms of jurisprudence. It is unconstitutional to ignore the decisions of the other High Courts on the ground that CIC is located in Delhi limits.

What is 'sanction' for prosecution?

20. Looking at the meaning of expression 'sanction' for prosecution also, the argument of CBI cannot stand. The primary meaning of sanction for prosecution is that the prosecution of the accused is permitted in pursuance of which prosecution can be commenced. Without the sanction there cannot be any prosecution of public servant under Prevention of Corruption Act. When public authority has decided that its officer should be made accused, it has to justify the same. The edifice of criminal justice has its foundation in the presumption that accused is innocent. This is referred to a Latin expression "*eiincumbit probation qui dicit, non qui negat"* which means the burden of proof is on the one who declares, not on one who denies. This is the principle that one is considered innocent unless proved guilty. Presumption of innocence is a legal right of the accused in a criminal trial. It is also regarded as an international human right under the Universal Declaration of Human Rights, Article 11. The burden of proof is on prosecution to collect and present enough compelling evidence to convince the trier of fact, who is restrained and ordered by law to consider only actual evidence and testimony that is legally admissible, and in most cases lawfully obtained, that the accused is guilty beyond reasonable doubt. This right is recognized by almost all systems of justice prevalent in different countries. In Justinian Codes and English common law the accused is presumed innocent in

criminal proceedings and in civil proceedings like breach of contract both sides must issue proof. Under Anglo-American common law, in both civil and criminal proceedings accused is always presumed innocent, whoever claims or accuses has to prove. This principle is recognized by Islamic law.

21. The expanded form of Latin maxim is: *Eiincumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probation nulla sit,* which *means* "the proof lies upon him who affirms, not upon him who denies; since, by the nature of things, he who denies a fact cannot produce any proof". (F. Nan Wagoner (1917-06-01). "Wagoner's Legal Quotes web page".Wagonerlaw.com) The original form is: *Eiincumbit probatio qui dicit, non qui negat*—", which means "the proof lies upon the one who affirms, not the one who denies." (*Bouvier's Maxims* (1856), citing Roman law and then various treatises, *q.v. and "Just Quotes web site". Just-quotes.com.*) Then, shortened from the original, it is: *Eiincumbit probatio qui*—"the onus of proving a fact rests upon the man who". (Glossary". Clickdocs.co.uk.) All this means that any objective observer in the position of the juror must reasonably conclude that the accused almost committed the crime. (Rembar, Charles (1980). *The Law of the Land*. New York: Simon & Schuster.)

Due Process & Rule of Law

22. Presumption of innocence and access to information are parts of due process. Due process is the legal requirement that the state must respect all legal rights including right to information that are owed to a person. Due process balances powers of rulers and law of the land and protects the person from it. When public authorities harm a person without following the exact course of the law, it constitutes the violation of due process, which offends rule of law. It is unfortunate that Bank and CBI chose to offend rule of law by denying the access. CPIO is an authority under RTI Act who is expected to understand the objective of the Act and the act accordingly instead of taking a hyper-technical view.

23. Thus in India, which adopted Anglo-Saxon criminal justice system, the standard of proof is not equal among accused and prosecutor. While it is enough for accused to raise reasonable doubts, the prosecution has to prove every declaration beyond reasonable doubt. When prosecutor and the employer Bank have declared the appellant as accused, it has to explain and justify it.

Article 21, procedure established by law

24. Article 21 of Indian Constitution lays down a greater safeguard of 'procedure established by law' to the accused and restrains 'state' from depriving the life or liberty of a person. The law that has to be followed is presumption of innocence of accused and strict burden on prosecution. The Right to Information Act fortifies these basic aspects of criminal justice system. Let me pose a question here, if the officer-appellant is innocent or honest but implicated by some people who are disposed against him for some illegal motive, what is the safeguard for him? The principles of criminal justice discussed above are the safeguards and in addition, the executive decision to foist a charge against him should also be explained as ordained under Right to Information Act. Both Bank and CBI should anyway have to explain this either before the trial court or Constitutional court if 'sanction' is challenged. But most unfortunate is that they are not inclined to even inform the accused and share the file notings of their decision to make him accused. It is not only breach of RTI of the appellant but also the violation of Article 21 and international human right recognized under Universal Declaration of Human Rights.

Due process and public interest

25. In different contexts, the Hon'ble Supreme Court explained purpose, context, time, conditions and necessity to accord sanction for prosecution of public servant, in ***Parkash Singh Badal v. State of Punjab and Ors.*** [(2007) 1 SCC 1], at paragraph-20, saying: "*The principle of immunity protects all acts which the public servant has to perform in the exercise of the functions of the Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant's own*

pleasure or benefit then such acts shall not be protected under the doctrine of State immunity", and in Paragraph 38: "The question relating to the need of sanction Under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage".

26. In another decision in ***Rajib Ranjan and Ors. v. R. Vijaykumar*** [(2015) 1 SCC 513], at paragraph-18, this Court has taken the view that...*"even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted".*

27. Public servants have been treated as special category Under Section 197 Code of Criminal Procedure, to protect them from malicious or vexatious prosecution. Such protection from harassment is given in public interest; and the same cannot be treated as shield to protect corrupt officials. In ***Subramanian Swamy v. Manmohan Singh and Anr***.[(2012) 3 SCC 64], at paragraph-74, it has been held that the provisions dealing with Section 197 Code of Criminal Procedure must be construed in such a manner as to advance the cause of honesty, justice and good governance. To quote: "…*Public servants are treated as a special class of persons enjoying the said protection so that they can perform their duties without fear and favour and without threats of malicious prosecution. However, the said protection against malicious prosecution which was extended in public interest cannot become a shield to protect corrupt officials. These provisions being exceptions to the equality provision of Article 14 are analogous to the provisions of protective discrimination and these protections must be construed very narrowly. These procedural provisions relating to sanction must be construed in such a manner as to advance the causes of honesty and justice and good governance as opposed to escalation of corruption".*

28. It is clear that the protection to public servants is given in public interest and if the sanction is accorded, the detailed reasoning shall be given to the public servant in public interest. The Hon'ble Supreme Court of India in ***Inspector of Police and ors vs Battenapatka Venkata***

Ratnam and ors [2015 (5) SCALE 253] have dealt with the question that whether sanction under section 197 of Cr.P.C. is required to initiate criminal proceedings against the public servant and can a public servant take shield to protect himself when the criminal proceeding is initiated against the public servant for fraud, criminal conspiracy etc. The Supreme Court viewed: "No doubt, while the Respondents indulged in the alleged criminal conduct, they had been working as public servants. The question is not whether they were in service or on duty or not but whether the alleged offences have been committed by them "while acting or purporting to act in discharge of their official duty" and that question is no more *res integra"*.

29. Apex court quoted its own judgment in ***Shambhoo Nath Misra v. State of U.P. and Ors.*** [(1997) 5 SCC 326], at paragraph-5, wherein it was held that: "*The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained".* Supreme Court concluded in ***Battenapatka Venkata Ratnam*** (2015) case: "*The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue. Unfortunately, the High Court missed these crucial aspects. The learned Magistrate has correctly taken the view that if at all the said view of sanction is to be considered, it could be done at the stage of trial only. Discussing the need to sanction, the Supreme Court held that sanction is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage".*

30. Section 197 of Cr.P.C., requiring the sanction, has been created so that public servants can be prevented from frivolous prosecution and in cases where the prosecution of these persons is not in public interest. The public authority has to explain that the sanctioning authority has examined the public interest in according sanction. This cannot be denied under RTI Act.

Absolute Discretion of sanctioning authority

31. The CVC document on Prosecution in paragraph 2.2 made it clear: The sanctioning authority has an absolute discretion to grant or to withhold sanction after satisfying itself whether the material placed before it discloses a prima facie case against the person sought to be prosecuted. It is the sole judge of the material that is placed before it. If the facts placed before it are not sufficient to enable to exercise its discretion properly, it may ask for more particulars. It may refuse sanction on any ground which commends itself to it if it considers prosecution as inexpedient. (http://cvc.nic.in/vigman/chaptervii.pdf)

32. Indian Overseas Bank in this case is thus expected to exercise its independent discretion in deciding whether accused-appellant should be permitted to be prosecuted or not. Once they did so, 'sanction' becomes their document, which they have held and controlled. Hence, IOB, being a sanctioning authority, should apply its mind to sanction and decide whether that information should be given to the accused or not as per RTI Act, without depending upon the advice of the others.

33. This explains how the sanction has to be a reasoned decision of the public authority, which, if has reasons, need to disclose them. The ratio in these judgments read with RTI Act, accords accused an additional right to information to secure the details of conclusion of public authority to sanction his prosecution, such at what stage the sanction was given and why. The public authorities need to understand that the RTI has added value to due process, rule of law and principles of fair trial in criminal justice system.

32. Respondents are legitimately expected to know these principles along with the new law added another 'detail' to this presumptive principle with passage of Right to Information Act,

giving an opportunity to the accused to know why he was made accused. The public authority has a duty to inform why the appellant was not made accused at first instance and chose to do so at a later stage, on its own, but in this case it was refused even when demanded under RTI Act. It should have exercised its own independent discretion instead of depending totally on advice of blocking entire information. It is more a problem of mindset than the lack of knowledge of law. They should reform their attitude and should not hesitate to share the information. If not, it leads, naturally, to an adverse inference that there is something seriously wrong or mala fide behind the decision to prosecute their manager-ranked officer.

33. It is the duty of prosecution to file sanction along with the charge-sheet. They have to explain why it was not done, if not filed. It is in the most general and common practice in every ACB case and is within the knowledge of every police officer associated with prosecution. The CBI had nothing to show that disclosure of sanction related information 'impedes' the prosecution. Their contention depended upon a possibility that the public servant would challenge 'sanction' on the grounds of 'mala fides', which might delay the prosecution. This argument cannot be accepted as the accused has a legal right to challenge the 'sanction' of prosecution, and also legal right to each & every information that is adverse to him, according to fundamental principles of criminal justice as explained above. To say that if accused exercises that right, the prosecution will be delayed, is against the law. This aspect has been completely answered by the Delhi High Court in ***Sudhir Ranjan*** case.

34. Regarding section 24 contentions, respondents have to understand that information sought is not 'security' or 'intelligence' related information, but only about sanction for prosecution, which is part of administrative decision by the concerned authority, disclosure of which would not harm anybody- nation, government or the organization, while its denial could prevent accused from exercising his right to challenging it. Delhi High Court granted stay against implementation of disclosure order by this Commission in Sanjay Chaturvedi's Second Appeal against IB and Ministry of Environment. Whether this interim direction will necessitate the Commission to adjourn adjudication of all similar matters until the Delhi High Court finally decided the case? This question sufficiently discussed and answered above. One respondent

cannot advise the other independent respondent institution in contradiction to clear text of law under Right to Information Act, 2005 which was emphatically established and reiterated as a ratio from the judgments referred above. The CBI has no legal authority to violate the fundamental right of appellant under Article 19(1)(a) which in its rubric included right to information as guaranteed by RTI Act and his human right to life and liberty under Article 21, which includes his right to appeal against sanction for prosecution besides acting against basic tenets of criminal justice system and also the rule of law. The Indian Overseas Bank is expected to apply its mind and act independently in deciding on sanction to prosecute the appellant. The proviso to s 24 will be surely attracted here, however, it is also subject to Section 8. The Bank could have denied the information under section 8(1)(h) had they established that disclosure would in fact, impede the prosecution, but it failed to discharge this burden imposed by Section 19 of RTI Act. The decision of IOB to deny the information to accused-appellant is illegal, unconstitutional and in serious violation of appellant's internationally recognized human rights besides the RTI Act. The investigating agency, CBI, performing police functions, was a contributor of investigative inputs, while the IOB as sanctioning authority has complete decision making power. It is established that Section 24 was illegally invoked ignoring its proviso.

Direction:

35. I direct the Indian Overseas Bank to provide the point-wise information sought by appellant along with relevant certified copies within 15 days from the date of receipt of this order.

M Sridhar Acharyulu
Central Information Commissioner