

Central Information Commission, New Delhi
File No. CIC/VS/A/2013/002118/SH
Right to Information Act-2005-Under Section (19)

Name of the Appellant : **Shri Nanik Premchand Rajwani,**
Bhagat Nivas, Block No. C-22, Room No.
86, Ulhasnagar- 421 003, Distt. Thane

Name of the Public : **Central Public Information Officer,**
Authority/Respondent **Union Bank of India,**
Union Bank Bhawan, 14th Floor, 239,
Vidhan Bhawan Marg, Nariman Point,
Mumbai - 400 021

Date of hearing : **13th June 2016**

Date of decision : **28th June 2016**

This matter arises out of the interim order No. CIC/VS/A/2013/002118/SH dated 24.10.2014 issued by a single member bench, in which the constitution of a larger bench was recommended to hear this case. The Chief Information Commissioner constituted a division bench comprising the following members:-

1. Shri Sharat Sabharwal, Information Commissioner.
2. Shri Sudhir Bhargava, Information Commissioner.

2. The Appellant had filed an RTI application dated 16.5.2013 containing the following queries:-

- a) *Details business mix of the bank for the months March and April 2013. (Daily figures of total deposits, total advances and total business mix).*
- b) *Details of Restructured accounts which have subsequently turned NPA during three year period commencing from 1st April, 2011 to 31st March, 2013.*
- c) *Details of action initiated by the bank against Bank Officials who have indulged in window-dressing of the business mix parameters in past three years.*
- d) *Details of action initiated against Bank officials for classification of accounts as Standard subsequently classified into NPA by Statutory / RBI auditors.*
- e) *Details of action initiated against bank Officials/ Statutory Auditors classification of accounts as Standard subsequently classified into NPA by RBI Auditors.*

3. The CPIO responded on 26.6.2013 and with reference to point (a) of the application, stated that the information was exempted from disclosure under Section 8 (1) (a) of the RTI Act, since its disclosure would prejudicially affect the economic interest of the Respondent Bank which is a "State" within the meaning of article 12 of the Constitution of India. He claimed exemption from disclosure of information on point (a) under Section 8 (1) (d) also. The information on point (b) was provided, but with regard to points (c) to (e), the CPIO responded that the information sought was not available because it was not held in the form requested and required analysis of data for compilation. In his order dated 31.8.2013, the FAA stated that the available information had been provided and added that the information regarding details of the business mix of the bank, sought at point (a), was a matter of commercial confidence

under Section 8 (1) (d) and its disclosure would prejudicially affect the economic interest of the bank which is a “State” within the meaning of article 12 of the Constitution of India.

4. The matter was heard by the division bench on 13.6.2016. The Appellant was present at the NIC Studio, Thane. The Respondents were represented by Shri R. K. Gupta, AGM, who was present at the NIC Studio, Mumbai.

Submissions made during the hearing

5. The Appellant submitted that his request for information is three years old and he is yet to get it. The Respondents had submitted during the hearing before the single member bench that the information concerning the business mix of the bank as on 31.3.2013 was made public by them. The Appellant stated that if the above disclosure did not hurt the economic interest of the bank, it was not clear how disclosure of the information sought by him regarding the business mix for the months of March and April 2013 would hurt the said interest. The Appellant challenged invocation of Section 8 (1) (d) by the Respondents and stated that in his view, the information sought would reveal how the actions of the bank are prejudicially affecting the interests of its shareholders. He added that the bank sanctions credit facilities, which remain unutilised. On the last day of the quarter, the unutilised credit is disbursed to the borrowers and the amount so generated is transferred to their deposit

accounts, thereby artificially enhancing both the advances and the deposits of the bank for the purpose of disclosure to public. The bank is not furnishing the information of daily business mix because they are apprehensive that it would reveal the irregularities committed by them. They have computerised data of the daily business mix of the bank and, therefore, it can be easily disclosed. The Appellant claimed that the Head Office of the bank does not have to compile such data by getting it from different branches, but gets it from its Regional Offices. The Appellant maintained that the price of the shares of the bank is 50% below the market value because the market does not trust the business data put out by the bank. Therefore, disclosure of the information sought by him is also a matter of larger public interest because the shareholders of the bank would come to know the correct picture. The Appellant stated that as per RBI circulars, the bank has to report its business mix to the RBI on a fortnightly basis and in the event of their not doing so, they are liable to be penalised.

6. Regarding points (c) to (e) of the RTI application, the Appellant stated that the bank does not take action against the officers indulging in window-dressing. Further, no action is taken against those officers and statutory auditors, who classify certain loan accounts as Standard, even though subsequently the same have to be classified as NPA. At points (c) to (e), he sought the information concerning the action taken by the bank against officers / statutory auditors in above cases, but it has been denied on

the pretext that it is not held in the form requested. The Appellant claimed that such information is available with the management of the bank and should be disclosed.

7. The Respondents stated that they are a commercial bank listed with SEBI, with shareholding of the Government and public. SEBI requires them to publish their business figures at specified intervals and this is being done as per the statutory requirements. Disclosure of the daily business mix figures would have an adverse impact not only on the Respondent Bank, but the entire banking industry. Certain figures are reported by the bank to the RBI in keeping with their regulatory requirements in the context of cash reserve ratio etc., but these are not required to be made public. Since the Respondent Bank is a Government bank, disclosure of the daily business mix figures, which would hurt the interest of the bank, would also affect adversely the national interest. Revelation of daily business mix could lead to comparisons with the business of other banks and result in a run on the bank. The Respondents reiterated that they do not maintain compiled information regarding the action taken against officers / statutory auditors in respect of the specific misdemeanours listed at points (c) to (e) of the RTI application. The Respondents emphasised that they abide by the extant rules and regulations. In case the entire banking industry is required to put out the business mix figures on a daily basis, they would be willing to do so. However, they would not wish to be singled out by being made to disclose daily figures in response to RTI applications. The Respondents

submitted that the lower prices of their shares are because of the overall situation of the economy and not on account of the public not trusting the figures put out by them.

8. The Appellant stated that SEBI has not stipulated that daily figures of business mix cannot be revealed. The information is being hidden mainly to protect the bank's action in indulging in window-dressing. The hiding of this information hurts the economic interest of the bank and the country more than its disclosure.

Discussion and Decision

9. We have considered the submissions of both the parties. In the context of invocation of Section 8 (1) (d), we note that the Respondents make public their business mix figures on a quarterly basis and it can be argued that the comparison of the figures for a particular quarter with those of previous quarters could have the same adverse impact on the image of the Respondent Bank that they claim would result from disclosure of the daily figures. The bank is in any case abiding by the statutory regulations to make public its business mix figures on a quarterly basis. There is no reason to believe that disclosure of daily figures in response to an RTI application would make the situation any worse for them. It could not be the case of the Respondents that they would wish to retain the confidence of public and their shareholders by hiding certain information. On the contrary, it can be argued that disclosure of such information would enable citizens and shareholders to make informed decisions about their dealings with the bank.

10. The Respondents have also invoked Section 8 (1) (a) of the RTI Act to claim exemption from disclosure of the information sought at point (a) of the RTI application. This is not tenable. As per Section 42 (2) of the Reserve Bank of India Act, every scheduled bank has to send to the RBI, on a fortnightly basis, a return containing the amount of its demand and time liabilities, the amount of its borrowings from banks in India, the total amount of legal tender notes and coins held by it in India, the balance held by it at the Bank in India, the balance held by it at other banks, the investment in Central and State Government Securities, the amount of advances in India and the inland bills purchased and discounted in India. On the basis of the returns received from scheduled banks, the RBI makes public, on a fortnightly basis, consolidated figures in respect of business of all scheduled commercial banks, concerning liabilities to the banking system, liabilities to others, borrowings from Reserve Bank, cash in hand and balance with Reserve Bank, assets with the banking system, investments and bank credit. The information put out also covers variations over the previous fortnight, previous financial years; as well as comparison on a year to year basis. If publication of such consolidated information in respect of all the scheduled commercial banks in the country does not hurt the economic interests of the State, there is no reason why disclosure of the daily business mix of the Respondent Bank should end up doing so.

11. Any action that results in dissuading commercial entities from indulging in practices such as window-dressing would be in larger public interest. Disclosure of information concerning the daily business mix of a bank would be a worthwhile step in the above context. In this regard, we also reproduce below the observations made by the Supreme Court in judgment dated 16.12.2015 in Reserve Bank of India vs. Jayantilal N. Mistry (the Court was considering certain cases involving requests for information concerning reports of inspections of banks conducted by RBI, irregularities committed by banks, details of loan defaulters and NPA accounts etc.):-

“61. The baseless and unsubstantiated argument of the RBI that the disclosure would hurt the economic interest of the country is totally misconceived. In the impugned order, the CIC has given several reasons to state why the disclosure of the information sought by the respondents would hugely serve public interest, and non-disclosure would be significantly detrimental to public interest and not in the economic interest of India. RBI’s argument that if people, who are sovereign, are made aware of the irregularities being committed by the banks then the country’s economic security would be endangered, is not only absurd but is equally misconceived and baseless.

65. And in this case the RBI and the Banks have sidestepped the General public’s demand to give the requisite information on the pretext of “Fiduciary relationship” and “Economic Interest”. This attitude of the RBI will only attract more suspicion

and disbelief in them. RBI as a regulatory authority should work to make the Banks accountable to their actions.

73. Economic interest of a nation in most common parlance are the goals which a nation wants to attain to fulfil its national objectives. It is the part of our national interest, meaning thereby national interest can't be seen with the spectacles(glasses) devoid of economic interest.

74. It includes in its ambit a wide range of economic transactions or economic activities necessary and beneficial to attain the goals of a nation, which definitely includes as an objective economic empowerment of its citizens. It has been recognized and understood without any doubt now that one of the tool to attain this goal is to make information available to people. Because an informed citizen has the capacity to reasoned action and also to evaluate the actions of the legislature and executives, which is very important in a participative democracy and this will serve the nation's interest better which as stated above also includes its economic interests. Recognizing the significance of this tool it has not only been made one of the fundamental rights under Article 19 of the Constitution but also a Central Act has been brought into effect on 12th October 2005 as the Right to Information Act, 2005.

75. The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of information

about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy."

12. In view of the foregoing, we hold that disclosure of the information concerning the daily business mix of a bank does not attract the exemptions from disclosure available under Sections 8 (1) (a) and (d) of the RTI Act and is in larger public interest. At the same time, we are of the view that such information regarding daily business mix should be given to an RTI applicant only in respect of a quarter, the business figures for which have already been made public in keeping with the statutory requirements. This would ensure that even as the information of daily business mix is made public for a particular period through the RTI route, the public also has before it the figures for the end of the quarter, put out by the bank in fulfilment of its statutory obligations. Accordingly, the CPIO of the Respondent Bank is directed to provide to the Appellant the information in response to point (a) of his RTI application dated 16.5.2013. This information should be provided, free of charge, within thirty days of the receipt of this order.

13. With regard to the information sought at points (c) to (e) of the RTI application, we see no ground to question the submission of the Respondents that they do not maintain compiled information regarding action taken against their officers / statutory

auditors in respect of the specific misdemeanours mentioned at the above points.

Therefore, we would not interfere with the CPIO's response to these points.

14. The appeal is disposed of accordingly.

15. Copies of this order be given free of cost to the parties.

Sd/-

(Sudhir Bhargava)
Information Commissioner

Sd/-

(Sharat Sabharwal)
Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(Dr. M. K. Sharma)
Registrar