

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No. CIC/NHBNK/A/2022/619652

Housing Development Finance
Corporation

... अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO:
National Housing Bank,
Lodhi Road, New Delhi

...प्रतिवादीगण/Respondent

Relevant dates emerging from the appeal:

RTI : 29.07.2021	FA : 13.10.2021 & 13.12.2021	SA : 04.04.2022
CPIO : 16.09.2021 & 23.11.2021	FAO : 09.11.2021 & 12.01.22	Hearing : 30.05.2024

Note: The Appellant is a third-party Bank and has filed the instant appeal against the order of disclosure issued by the FAA, RBI.

Date of Decision: 03.06.2024

CORAM:

Hon'ble Commissioner

ANANDI RAMALINGAM

ORDER

1. The RTI Applicant, Brajesh Kumar filed an RTI application dated 29.07.2021 seeking information as under:

- (i) *“Request for annual inspection report of
IL & FS for FY
2015-16*

2016-17

2017-18

2018-19

(ii) *IndiaBulls Housing Finance for FY*

2015-16

2016-17

2017-18

2018-19

(iii) *HDFC Limited for FY*

2015-16

2016-17

2017-18

2018-19”

2. The CPIO replied vide letter dated 16.09.2021 and the same is reproduced as under:-

i. “*Housing Development Finance Corporation Limited (HDFC) in response to National Housing Bank's Third-Party Notice No. NHB (ND)/RTI 0125/TPN/OUT004718/2021 dated August 27, 2021 issued under Section 11(1) of the RTI Act, submitted its responses vide letters dated September 03, 2021 and September 10, 2021 and made personal hearing on September 09, 2021 in respect of RTI application filed by Shri Brijesh Kumar dated July 29, 2021, requesting annual inspection report of HDFC Ltd. for the Financial Years 2015-16, 2016-17, 2017-18 and 2018-19.*

ii. *After examining the submissions made by HDFC, it has been decided to disclose the major observations of the inspections undertaken for the Financial Years ended on 31.03.2016, 31.03.2017, 31.03.2018 and 31.03.2019, after masking/redacting the HDFC's Borrower's/Depositor's personal information, to protect the privacy of such individuals.*

iii. *This notice of the decision taken under section 11(3) is being issued to the third party. As per section 11(4) of the RTI Act, HDFC is entitled to prefer an appeal under Section 19 (1) against the above decision. In the absence of first appeal filed within prescribed period of thirty days, the information as mentioned in para 2 above will be disclosed.”*

3. Dissatisfied with the response received from the CPIO, the Appellant filed a First Appeal dated 13.10.2021. The FAA vide order dated 09.11.2021 observed that the CPIO has not passed a speaking order and directed the CPIO to pass a reasoned order and convey its decision within 15 days from the date of the order of FAA to the Appellant.

In compliance with the FAA’s order, the CPIO provided a reply to the RTI Applicant on 23.11.2021 stating as under:

“(i) On the issue of Statutory Confidentiality under Section 35A of the National Housing Bank Act, 1987; reliance has been placed on the Hon'ble Supreme Court's judgement in Reserve Bank of India Vs Jayantilal Mistry [Transferred Case (Civil) No.91 of 2015) dated 16-12-2015 ("Jayantilal Case"), wherein the Hon'ble Supreme Court while dealing with similar provision in Reserve Bank of India Act, 1934 has held that RTI Act, 2005 contains a clear provision (Section 22) by virtue of which it overrides all other Acts including Official Secrets Act. The Hon'ble Court observed that RTI Act 2005, being a later law, specifically brought into 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. And the only exceptions to access to information are contained in RTI Act itself in Section 8. In view of the above, the contention of the Third Party is not tenable.

On the issue that Confidential Information pertaining to Borrowers/Depositors Cannot be Divulged In absence of Notice to Such Borrowers/ Depositors, reliance has been placed on the observation of the Hon'ble Supreme Court in Jayantilal Case that public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it not have the potential of taking over the

public interest having an impact in be socio-economic drive of the country. Therefore, in the public interest, the formation relating to the borrowers/depositors of the Third Party can be disclosed. However, the personal information of such third parties will be masked/redacted to protect the privacy of such individuals, as such the apprehension on disclosure of personal information is unfounded

On the contention that public interest in Non- Disclosure outweighs public interest in Disclosure and the public interest has not been pleaded by the Applicant: reliance is placed on the observations of Hon'ble Supreme Court in Jayantilal Case regarding the public interest in disclosure of inspection reports to the public wherein the Hon'ble Supreme Court held that it is important that the general public, particularly, share-holders and the depositors of public institutions, both in the banking and non-banking sector are kept aware of appraisal of the functioning of such institutions and taken into confidence about the remedial actions initiated in specific cases; this will serve the public interest. The Hon'ble Supreme Court held that RBI would therefore be well advised to be proactive in disclosing information to the public in general and the information seekers under the RTI Act, in particular." In view of the above, the contention of Third Party does not hold water.

(iv) It is pertinent to note that the Central Information Commission in case of Mr. Chayan Ghosh Chowdhury (Decision No. CIC/WB/A/2010/ 000712/SG/18370) held that under Section 11 (1), submission of third party shall be kept in view while taking a decision about disclosure of information. Section 11 does not give a third party an unrestrained veto to refuse disclosing information. It only gives the third party an opportunity to voice its objections to disclosing information. The PIO will keep these in mind and denial of information can only be on the basis of exemption under Section 8 (1) of the RTI Act.

The RTI mechanism is meant for providing available information which is not exempted under the provisions of Right to Information Act, 2005. In the instant case, the CPIO has examined the aspects and circumstances of the case in terms of the provisions of the Right to Information Act, 2005 and considering the similarities of the present case with the Jayantilal Case regarding disclosure of inspection reports of the Third Party for

Financial Years ended 31-03-2016, 31- 03-2017, 31-03-2018 & 31-03-2019 and keeping in view the larger public interest in disclosure along with the need to protect the privacy of the Borrowers/Depositors of the Third Party, it has been decided to disclose the major observations of the inspections undertaken for Financial Years ended 31- 03-2016, 31-03-2017, 31-03-2018 & 31-03-2019, after masking/redacting the Third Party's Borrowers'/Depositors' personal information.”

4. Aggrieved with the compliance reply of the CPIO, the Appellant filed a fresh First Appeal dated 13.12.2021, against which, the FAA issued an order dated 12.01.2022 observing *inter alia* as under:

“6. It is further observed that the CPIO has considered the contentions raised by the Appellant and framed the following broad issues while arriving at the decision namely:

(i) The Statutory Confidentiality under section 35A of NIIB Act;

(ii) Confidential Information pertaining to Borrowers/ Depositors Cannot be Divulged In absence of Notice to Such Borrowers/ Depositors, and

(ii) Public interest in Non-Disclosure outweighs public interest in Disclosure & the public interest has not been pleaded by the Applicant.

7. With respect to grounds raised by the Appellant in point (1) to (111) above, it is observed that the main contention of the Appellant is that the CPIO has either not taken into consideration his submissions or erred in the dealing with the same while arriving at the decision to disclose major observations of the inspections undertaken for Financial Years ended 31-03-2016, 31- 03-2017, 31-03-2018 & 31-03-2019, after masking/redacting the Third Party's Borrowers Depositors' personal information. In this regard, the CIC in various decisions has observed that Suction 11 only gives the third party an opportunity to voice its objections to disclose information and does not give un unrestrained veto to refuse disclosing information. The CIC has observed that Section 11 anticipates situations where the Public Information Officer will not agree with the claim for non-disclosure by a third party and provides for an appeal to be made by the third party against disclosure, which would have been unnecessary, if the third party had been

given a veto against disclosure. The PIO will weigh the situation and make his own decision keeping the objections in mind and denial of information can only be on the basis of exemption under Section 8 (1) of the RTI Act. Therefore, I do not find any merit in the contention of the Appellant.

8. With respect to grounds raised in the point (IV), it is observed that as per Section 6(2) of the RTI Act, an applicant making a request for information is not required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. The Hon'ble Supreme Court and various High Courts have ruled that motives or reasons for seeking information have no relevance in the decision-making process of a CPIO or an appellate authority or even the Information Commission. The Hon'ble Supreme Court in the case of Common Cause vs High Court of Allahabad has held that no motive needs to be disclosed in view of the scheme of the RTI Act. In view of the above, I do not find any merit in the contention of the Appellant.

9. With regard to grounds raised in point (V), it is observed that the CPIO while relying on the judgment of Hon'ble Supreme Court in Jayantilal Case has ordered to disclose the major observations of the inspections conducted for the mentioned period after redacting/masking the personal information of the third-party borrowers of the Appellant. It is further observed that in Jayantilal Case, the Hon'ble Supreme Court has emphasized on the role and impact of the banks/ financial institutions like the Appellant on the economy while considering the disclosure of inspection reports in public interest. The Hon'ble Supreme Court has placed reliance on the observations made in the case of Mardia Chemicals Ltd. Vs Union of India observations made in the case of Mardia Chemicals Ltd. Union of India that though the transaction may have a character of a private contract yet the question of great importance behind such transactions as a whole having far reaching effect on the economy of the country cannot be ignored, purely restricting it to individual transactions more particularly when financing is through banks and financial institutions utilizing the money of the people in general namely, the depositors and public money at the disposal of the financial institutions. Therefore, wherever public interest to such a large extent is involved and it may become necessary to

achieve an object, which serves the public purposes, individual rights may have to give way. Further, HFCs hold the information of their borrower(s)/depositor(s) in fiduciary capacity, whereas the information of HFCs held by NHB as the supervisor/regulator, as the case may be, is under the statutory requirement and not under any fiduciary capacity, as already discussed in Jayantilal Case.

10. Therefore, I am of the view that the decision of the CPIO does not create any hierarchy between the right of privacy of its borrowers/depositors and the Appellant's right of confidentiality, as contended by the Appellant. The CPIO order "to disclose the information after redacting/masking the personal information" is itself a testimony to the fact that the CPIO is cognizant of the fact that what can be disclosed in public interest and what should not to avoid unwarranted invasion of the privacy of the individual.

11. With regard to grounds raised in point (VI), it is observed that the CPIO has already informed that on the issue of Statutory Confidentiality under section 35A of NHB Act, reliance has been placed on the Jayantilal Case, wherein the Hon'ble Supreme Court while dealing with similar provision in RBI Act, 1934 has held that RTI Act, 2005 contains a clear provision (Section 22) by virtue of which it overrides all other Acts including Official Secrets Act. The Hon'ble Court observed that 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. Hence, I do not find any reason to interfere with the decision of the CPIO in this regard.

12. Further, it is observed that the CPIO considering the similarities of the present case with the issues involved in the Jayantilal Case has relied upon the Hon'ble Supreme Court's judgment in Jayantilal Case. Since, the Hon'ble Supreme Court in the Jayantilal Case has dealt the issues raised by the Appellant in relation to statutory confidentiality, confidential information pertaining to borrowers and the existence of overwhelming public interest warranting disclosure, it does not call for any further examination by this Appellate Authority..."

5. Aggrieved with FAA's order, the Appellant approached the Commission with the instant Second Appeal dated 04.04.2022 stating inter alia as under:

"f) The Appellant submits that both the Respondent No. 1 and Respondent No. 2 have committed a grave error of law in ignoring the following dicta enunciated by Hon'ble Supreme Court in Subhash Chandra Agarwal (supra):

(i) The right of a private body to oppose disclosure on the ground of confidentiality under Section 11 of the Act is separate and distinct from the claim of exemption under the provisions of the Section 8(1) of the Act.

"47. If one's right to know is absolute, then the same may invade another's right to privacy and breach confidentiality, and, therefore, the former right has to be harmonised with the need for personal privacy, confidentiality of information and effective governance. The RTI Act captures this interplay of the competing rights under clause (1) to Section 8(1) and Section 11. While clause (J) to Section 8(1) refers to personal information as distinct from information relating to public activity or interest and seeks to exempt disclosure of such information, as well as such information which, if disclosed, would cause unwarranted invasion of privacy of an individual, unless public interest warrants its disclosure. Section 11 exempts the disclosure of "information or record ... which relates to or has been supplied by a third party and has been treated as confidential by that third party". By differently wording and inditing the challenge that privacy and confidentiality throw to information rights, the RTI Act also recognises the interconnectedness, yet distinctiveness between the breach of confidentiality and invasion of privacy, as the former is broader than the latter, as will be noticed below. "- Subhash Chandra Agarwal (supra)

(Emphasis Supplied)

(a) Therefore, the right to oppose disclosure under a claim of confidentiality is not circumscribed to mean that such claim must fall within the four corners of various exemptions specified in the Section 8(1) of the Act. Accordingly, the finding of Respondent

No. 2 that the denial of Information under the Act can only be on the basis of the exemptions under Section 8(1) if the Act is perverse and illegal.

(b) The Appellant further submits that Respondent No. 1 has misdirected itself by, at the one hand, accepting that the information pertaining to borrowers/depositors of the Appellant needs to be redacted on account of protecting their rights since the information pertaining to such customers would be confidential under the provisions of Section 11 of the Act (and would infringe their privacy as reflected in the Impugned Order), while on the other hand, Respondent No. 1 has decided to disclose the confidential information of the Appellant (which enjoys statutory confidentiality) without showing any overwhelming public interest. Such approach of Respondent No. 1 creates an artificial hierarchy between the right to privacy and right of confidentiality which is nowhere contemplated under the Act and are instead at par in context of the provisions of the Act. The Appellant submits that once Respondent No. 1 found that the details or information pertaining to the borrowers/depositors of the Appellant cannot be disclosed on account of it being confidential in nature, the same yardstick ought to have been applied to the Appellant also. In not doing so, Respondents have created a class within a class without having any rationale basis. However, in respect of this contention, Respondent No. 2 has noted that "the CPIO Order to disclose information after redacting/ masking the personal information is itself a testimony to the fact that the CPI is cognizant of the fact that what can be disclosed in public interest and what should not to avoid unwarranted Invasion of privacy of individual". It is clear that Respondent No. 2 has failed to appreciate the contention of the Appellant in respect of creation of hierarchy of rights which has neither been stated nor envisaged under the Act.

(c) While wrongly concluding that denial of information can only be on the basis (c) While wrongly concluding that denial of information can only be on the basis of exemption under Section 8(1) of the Act. Respondent No. 2 has placed reliance on the CIC order of *Aseem Takyar vs. Central Information Commission (CIC/SG/A/2012/0000764)*. It is submitted that the reliance of the said order in respect of the aforesaid conclusion of Respondent No. 2 is misguided and irrelevant. Further, the said order only states "Section

11 does not give a third party an unrestrained veto to refuse disclosing information Thus, the PIO is expected to follow the procedure of Section 11, when he intends to disclose the information but has some reason to believe that the third party treats it as confidential. If the third party sends an objection, the PIO has to determine whether the information is exempt under the provisions of the Act. Therefore, the said order instead states that the Public Information Officer ("PIO") is expected to follow the procedure of Section 11 as per which the PIO is required to apply the public interest test and analyse which public interest (i.e. the right to confidentiality and right to privacy) outweighs the other in the facts of the case at hand. 'Public interest test' has been further substantiated in the following paragraph.

(ii) A PIO, while dealing with a case under Section 11 of the Act must apply the 'public interest test' and where he finds that the public interest in disclosure 'outweighs' the public interest for non-disclosure, only then should such officer at all disclose the third party's confidential information. Section 11 of the Act provides inherent recognition to the harm/damage to the third party by stating that "disclosing such confidential information of a third party in all likelihood will result into harm or damage to such third party." Therefore, the section provides that a disclosure in such a case should be made only when the public interest in disclosure outweighs in importance any possible harm or injury to such third party.

'72. In all other cases where the information relates to or has been supplied by the third party and treated as confidential by that third party, disclosure in terms of the proviso may be allowed where the public interest in disclosure outweighs in importance any possible harm or injury to the interest of the third party.....'- Subhash Chandra Agarwal (supra)'

In the facts of the present case, the Respondent No.1 has completely failed to undertake such exercise and has failed to determine whether or not the need for disclosure 'outweighs' the right to confidentiality. Such failure is a contravention of the mandate of Subhash Chandra Agarwal (supra).

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In the facts of the present case, the RTI Applicant is connected to / employed by a media house. The address given in the RTI Application is also the official address of the media house and therefore, the form and manner in which an unqualified report may be used by such media houses may do a larger disservice than addressing any public interest. Clearly, the 'motive' and 'purpose' behind the RTI Application is not public welfare, which by itself is sufficient to deny disclosure. The reliance on the judgment of Hon'ble Supreme Court reported in 2018 (14) SCC 39 in the matter of Common Cause vs. High Court of Allahabad by Respondent No. 2 is completely unwarranted and misleading in light of the Constitution Bench judgment in the matter of Subhash Chandra Agarwal (supra) [relevant extracts referred above]

(v) The provisions of Section 22 of the Act do not override the prohibitions or limitations with which a public authority accesses the information sought by an applicant under the Act. Further, confidentiality can arise not only in a contract but also in a statute.

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(g) Respondents have grossly erred in not appreciating that by virtue of provisions of Section 35A of the NHB Act, any information relating to a housing finance institution, contained, inter alia, in any statement or return submitted under the provisions of Chapter V of NHB Act or obtained through audit or inspection or otherwise by NHB or RBI is treated as confidential and cannot be disclosed (either in part or in full). The exceptions to such confidentiality, contained in Section 35A (2) and (3) of the NIIB Act, also do not authorise disclosure of the inspection reports under the provisions of the Act. Further, in terms of Section 35A (2) (b) of the NHB Act even when NHB in public interest intends to disclose information protected under Section 35A (1) of the NIHB Act, it can be done only without disclosing the name of the housing finance institution....

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The Appellant submits that on a plain reading of the Preamble to the Act, it is apparent that the provisions thereof are not intended to, as held by Hon'ble Supreme Court

in Aditya Bandopadhyay (supra) and Jayantilal N. Mistry (supra) to give an indiscriminate right to the citizens to make repetitive applicants and conduct fishing and roving inquiry. The objective of the Act is clearly to promote transparency and accountability in the working of every public authority and to hold governments and their instrumentalities accountable to the governed. A citizen may validly be entitled to know whether or not the National Housing Bank has undertaken the functions and duties envisaged under the NHB Act. However, such entitlement cannot be extended to the Information sought by the RTI Applicant, which, apart from being confidential, pertains to the functioning of the Appellant which is a private body and not an instrumentality of the State. In the circumstances, upon noticing the facts pertaining to the RTI Applicant, Respondent No. 1 ought to have refused the disclosure of the Information which is liable to be misused and/or sensationalized, contrary to the objectives sought to be achieved under the Act....”

6. The Appellant was represented in person by Advocate Vijay Nair, Advocate Sirat Singh, Annindya Banerjee and Arpita Chanana and on behalf of the Respondent, Aditya Sharma, CPIO & GM along with P V Naidu, DGM (Law) and Rahul K Meena, AM (NHB) attended the hearing in person while the original RTI Applicant remained absent.

7. The Rep. of the Appellant stated at the outset that since the notice of hearing was not addressed to the Advocates representing the case, the same was received through their Appellant client shortly before the hearing and therefore advance submissions could not be filed in the matter. Further, the Rep. of the Appellant invited the attention of the bench to the grounds of the second appeal emphasizing at length on the argument that the Respondent did not pay attention to their objections against the disclosure of the information and the lack of any public interest in such disclosure while also harping on the pendency of a related matter in W.P (C) 1159 of 2019 before the Hon’ble Supreme Court of India challenging the disclosure of vital information of the banks/financial institutions including inspection reports/ risk assessment reports by the RBI under the RTI Act.

8. The Respondent also reiterated the contents of the FAA’s order of 12.01.2022.

9. Upon hearing the parties at length, the cumulative pulse of the parties was urging the Commission to take note of the pendency of the averred Writ Petition before the Supreme Court while relying on certain recent decisions of this bench wherein due consideration was accorded to the same and it was urged that following the earlier decisions, the instant matter may also be kept in abeyance until the final outcome in W.P (C) 1159 of 2019.

10. The Commission based on a perusal of the facts on record observes that the issues for consideration in the instant matter, i.e. relating to the disclosure of information of the banks/financial institutions, including inspection reports/risk assessment reports is *sub-judice* before the Hon'ble Supreme Court in Writ Petition Nos. 1159/2019 and 768/2021 and other tagged matters with respect to RBI. While the Respondent authority in the instant matter is different from RBI, the substantial question of law remains the same in both these instances. It is apparent that the decision in these Writ Petitions pending adjudication before the Apex Court will provide clarity and guidance to the concerned public authorities on the averred issue. At this stage, any decision by the Public Authority will amount to pre-judging the issues pending admitted in the said Writ Petitions before the Hon'ble Supreme Court. The Commission also takes note of the observations passed by the Hon'ble Supreme Court while dismissing I.A. No. 68597/2021 and I.A. No. 51632/2022 in WP (Civil) No. 1159 of 2019, in its order dated September 30, 2022, reproduced as under:

“42. Without expressing any final opinion, prima facie, we find that the judgment of this Court in the case of Jayantilal N. Mistry (supra) did not take into consideration the aspect of balancing the right to information and the right to privacy. The petitioners have challenged the action of the respondent – RBI, vide which the RBI issued directions to the petitioners/Banks to disclose certain information, which according to the petitioners is not only contrary to the provisions contained in the RTI Act, the RBI Act and the Banking Regulation Act, 1949, but also adversely affects the right to privacy of such Banks and their consumers. The RBI has issued such directions in view of the decision of this Court in the case of Jayantilal N. Mistry (Supra) and Girish Mittal (Supra).”

11. Having observed as above, it would be judicious to await the final outcome of the Hon'ble Supreme Court in Writ Petition Nos. 1159/2019 and other tagged matters. However, upon finality of the said matter, the Appellant shall be at liberty to file a second appeal afresh, if so desired.

12. **The Appeal is disposed of accordingly.**

Copy of the decision be provided free of cost to the parties.

(Anandi Ramalingam) (आनंदी रामलिंगम)
Information Commissioner (सूचना आयुक्त)

दिनांक/Date: 03.06.2024

Authenticated true copy

Col S S Chhikara (Retd) कर्नल एस एस छिकारा, (रिटायर्ड)

Dy. Registrar (उप पंजीयक)

011-26180514

Addresses of the parties:

1. The CPIO

National Housing Bank,

GM & CPIO,

Core 5-A, 3rd to 5th Floor,

India Habitat Centre, Lodhi Road,

New Delhi- 110 003

2. Brajesh Kumar (RTI Applicant)

3. Housing Development Finance Corporation

Aju Ashok,

Recomendation(s) to PA under section 25(5) of the RTI Act, 2005:-

Nil