

# CENTRAL INFORMATION COMMISSION

Room No. 308, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066

File No.CIC/SM/A/2011/001687

Appellant : Bombay Stock Exchange Ltd (BSE)  
Respondent : Security and Exchange Board of India (SEBI)  
Date of Hearing : 26.8.2011  
Date of Decision : 10.10.2011

## **FACTS :**

This matter was heard by a Full Bench of this Commission on 26.8.2011. The Bench consisted of the following :-

- (i) Shri M.L. Sharma, Information Commissioner;
- (ii) Ms Annapurna Dixit, Information Commissioner; &
- (iii) Ms Sushma Singh, Information Commissioner.

2. The following were present :-

### **Bombay Stock Exchange :-**

- (i) Shri Shyam Divan, Sr Advocate;
- (ii) Shri Pratap Venugopal, Advocate;
- (iii) Ms Surekha Rama, Advocate;
- (iv) Shri Dileep P;
- (v) Shri Nirma Sharma
- (vi) Shri Shailesh Ja

### **SEBI :-**

Ms Jeny John, DGM, SEBI

### **RTI applicant :-**

- (i) Shri Yogesh B Mehta
- (ii) Shri Suresh Kabra

3. The matter, in short, is that vide RTI application dated 07.12.2010, Shri Yogesh B Mehta had sought information on 22 paras from SEBI requesting for copies of certain documents. The CPIO of SEBI had responded to it, para-wise, vide letter dated 5.1.2011. As regards paras 07, 08, 09 & 13 of the RTI application, the CPIO had observed as follows :-

“The information sought pertains to third party and hence in terms of section 11 of the RTI Act, 2005, third party procedure has been initiated. Upon receipt of reply from third party, our reply will be furnished to you.”

4. Vide subsequent letter dated 10.10.2011, the CPIO had informed the appellant that in view of objections filed by the 3<sup>rd</sup> party, the said information could not be disclosed to him Aggrieved with the decision of

CPIO, Shri Mehta had filed the first appeal which was decided by the AA through a cryptic order dated 1.3.2011. The said order is reproduced below :-

- “1. The appellant had filed application dated December 7, 2010 under the Right to Information Act, 2005 (RTI Act). The respondent, vide letters dated January 5, 2011 and January 10, 2011, January 14, 2011 and January 21, 2011, responded to the appellant. Aggrieved by the responses of the respondent, the appellant has filed this appeal dated February 11, 2011.**
- 2. I have carefully examined the application, the responses, and the appeal and find that the matter can be decided on merit based on the material available on record.**
- 3. The main argument in this appeal is that the respondent has not given the inspection as requested by the appellant. I find that the appellant had sought inspection of documents in his original application and thereafter vide letter dated January 14, 2011. If an applicant keeps demanding inspection of documents, it is better for the respondent to allow inspection of the documents after applying the provisions of section 10 of the RTI Act to avoid application after application and appeals alleging that not everything was disclosed, as was alleged by the appellant in this case. I feel that all other points raised by the appellant in this appeal would cover if he is allowed inspection of documents. I, therefore, direct the respondent to invite the appellant for inspection of relevant documents, in accordance with the RTI Act, within 15 days from receipt of this order.”**

A bare perusal of the above order would indicate that the AA had reversed the decision of CPIO in regard to these paras and allowed inspection of documents subject to the severability clause of section 10 of the RTI Act.

5. Aggrieved with the decision of the Appellate Authority, the BSE has filed the present appeal dated 18<sup>th</sup> May, 2011, before the Commission.

6. Shri Shyam Diwan, Sr Advocate appearing for the BSE, has assailed the order of the AA. Referring to para 01 of the said order, he submits that this para refers to letters dated 5.1.2011, 10.1.2011, 14.1.2011 and 21.1.2011 but the contents thereof have not been mentioned therein, making it difficult for the BSE to make any sense out of it. He also assails this order on the ground that no opportunity of hearing was given to BSE before passing the impugned order. According to him, this order also suffers from the vice of non-application of mind. It is also his submission that Shri Mehta has tried to get information generated by and relating to BSE through SEBI indirectly and unfairly.

7. In his brief submission, Shri Suresh Kabra appearing for Shri Yogesh Mehta (RTI applicant) would submit that SEBI is the regulator of the financial markets and is entitled to seek information from the entities such as BSE. He alleges that BSE has committed a fraud of about 90 crores and one of the Directors of BSE had to resign. He also alleges that BSE has shown fraudulent expenditure of Rs 60 crores on advertisements relating to Market Making Scheme (MMS) etc. In the circumstances, disclosure of requested information by SEBI would be in the larger public interest.

8. Ms Jeny John appearing for SEBI deflates the whole issue by submitting that the CPIO had sought objections from BSE and keeping in view the objections filed by BSE, no information objected to by BSE has been disclosed to Shri Mehta. She files a written representation dated 23.8.2011 before this Commission, duly signed by Dr Anil Kumar Sharma, CPIO, which is taken on record. She in particular, draws the Commission's attention the para 07 of the representation in this regard which is extracted below :-

**"7. Not being satisfied with the reply of Respondent 2, Respondent 1 preferred an appeal before SEBI Appellate Authority (Respondent 3) who passed an order dated March 1, 2011, directing Respondent 2 to provide an opportunity to Respondent 1 for inspection of documents after applying section 10 of RTI Act (Copy of order enclosed as Annexure R-3). The Respondent No 2, after invoking section 8 (1) (d) of RTI Act did not provide any of the documents objected by the appellant to Respondent No 1 for inspection. Subsequent to inspection copies of documents were furnished to Respondent 1 vide letter reference number CPIO/AKS/JR/AAO-1084-2011/12086 dated April 8, 2011 (Copy enclosed as Annexure R-4). In the said letter reference is made that those documents objected to by the appellant to disclose were not furnished to Respondent 1 citing exemption under the RTI Act."**

9. In the appeal memo filed before this Commission, the BSE has averred as follows :-

**"The Respondent No 1 thereafter filed an Appeal – No 1094 of 2011 dated February 11, 2011 against the aforesaid responses of the Respondent No 2 before the Appellate Authority, SEBI i.e. the Respondent No 3 herein. The Appellate Authority passed its order dated March 01, 2011 stating that the Respondent No 1 had sought inspection of documents in his original application and if he keeps demanding inspection of documents, it is better for the CPIO, SEBI to allow inspection of the documents after applying the provisions of s.10 of the RTI Act to avoid application after application and appeals alleging that not everything was disclosed, as was alleged by the Respondent No 1. The Appellate Authority also held that all the points raised by the Respondent No 1 in his appeal would be covered if he is allowed inspection of documents. Therefore, the Respondent No 3 directed the Respondent No 2 to invite the Respondent No 1 for inspection of relevant documents, in accordance with the RTI Act, within 15 days from the receipt of this order. The appellant was neither issued with any notice of hearing nor heard in the matter nor served with a copy of the letters/orders of the Respondent No 2 or a copy of the impugned order."**

10. Needless to say, BSE would be an aggrieved party only if SEBI discloses any information which is detrimental or injurious to its interest and which has been objected to by it. From the representation of SEBI extracted above, it is clear that it has not disclosed any information which was objected to by BSE. SEBI has also not used

the larger public interest doctrine in disclosing any information objected to by BSE.

11. A few day after the hearing, M/s K.J. John & Co, claiming to be the Advocates for appellant BSE, submitted a Short Note of Submissions which is taken on record. The contentions raised in the said Note may be summarised as follows :-

- (i) that the CPIO did not comply with the provisions of section 11 (3) of the RTI Act inasmuch as no written notice of his decision was given to the appellant;
- (ii) that the AA neither issued any notice nor granted an opportunity of hearing to the appellant;
- (iii) that the AA did not communicate his decision to the appellant;
- (iv) that the order dated 1.3.2011 passed by the AA is indicative of non-application of mind on his part;
- (v) that the contention of SEBI that the appeal has become infructuous on account of the fact that it has not furnished any documents objected to by appellant BSE is factually incorrect as explained in the additional affidavit filed on behalf of the appellant.
- (vi) that the SEBI has not followed the procedure laid down in section 11 of the RTI Act. Para 08 of the note is extracted below :-
  - “8. Even assuming, without admitting that the Respondent No 2 has not disclosed the documents objected to by the appellant, the present appeal ought not and cannot be disposed of without :**
  - (a) An undertaking of the Respondent No 2/Securities and Exchange Board of India that the documents objected to by the appellant would not be disclosed either by way of inspection or by way of photocopies to the Respondent No 1;**
  - (b) Appropriate orders/directions by this Hon’ble Commission with respect to the non compliance/non observation of the requirements of the RTI Act, 2005 by the Respondent No 2 and the CPIO of the Securities and Exchange Board of India.”**

12. An additional affidavit dated 29.8.2011 sworn by Shri Shantilal D. Jain, Manager Legal, BSE, has also been filed before this Commission which is taken on record. It is his allegation that despite SEBI’s averment before this Commission on 26.8.2011 that no documents objected to by BSE were disclosed to the information seeker, certain documents have been disclosed. Para 03 of his affidavit is extracted below :-

**“3. I say that on 26.8.2011, the Appellant has learnt from an order dated 30.6.2011 passed by the Appellate Authority (Respondent No 2) and obtained from the website of the Securities and Exchange Board of India, that part of the documents which from subject matter of the letter dated 4.1.2011 addressed by the CPIO of the Respondent No 2 to the Appellant (Annexure – A/2 at page 17 of the Appeal) and dealt with in the reply of the Appellant dated 5.1.2011 have been disclosed to the Respondent No 1, which is borne out by the said order of the Appellate Authority (Respondent No 2) dated 30.6.2011, which inter alia reads thus :-**

**The appellant paid Rs 64/- and SEBI vide letter dated January 14, 2011 furnished the following documents to the appellant.**

- i. ....**
- ii. ....**
- iii. ....**
- iv. ....**
- v. ....**
- vi. ....**
- vii. ....**
- viii. ....**
- ix. ....**
- x. ....**

**xi BSE letter dated July 2, 2004 addressed to Chairman, SEBI enclosing the proposal to introduce market making scheme. It may be pertinent to state that the document at serial No xi referred to herein above is the very document at point 13 of the letter of the Respondent No 2 dated 4.1.2011 (Annexure – A/2 at page 17 of the appeal) and dealt with in the reply of the Appellant dated 5.1.2011 (Annexure – A/3 at page 18-19 of the Appeal)**

**A copy of the aforesaid order of the Appellate Authority (Respondent No 2) dated 30.6.2011 is annexed hereto and marked as Exhibit –A.”**

13. Before dealing with the merits of the case, we would like to observe that appellant BSE did not file a copy of the RTI application filed by the information seeker Shri Yogesh Mehta alongwith its appeal as per standard practice. Nor did it file a copy of the order passed by the CPIO. On a query from the Commission, Sr Adv Diwan would submit that a copy of the CPIO’s order was not sent to the BSE.

14. Sr Adv Dewan has raised the following procedural issues in regard to the decisions of CPIO and AA :-

- (i) whether the CPIO is required to send a copy of his order to the third party from whom consent had been sought u/s 11 (1) of the RTI Act;
- (ii) whether the CPIO and FAA are required to give an opportunity of hearing to the third party; and

(iii) whether order dated 1.1.2011 passed by the FAA is self contained and self speaking and fulfills the requirements of the RTI Act.

15. Issue No (i), may be answered in unambiguous terms by referring to the express provisions of sub section (3) of section 11 which is reproduced below:-

**“(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.”**

From the above provision, it is clear that CPIO is required to send a copy of his decision to the 3<sup>rd</sup> party.

16. Coming to issue No (ii), needless to say that rendering an opportunity of hearing to the parties is a fundamental principle of jurisprudence. It is conducive to fairness and transparency and accords with the principles of natural justice. An opportunity of hearing to the parties also brings greater clarity to the adjudicating authorities. No wonder, an opportunity of hearing is given to the rival parties under our procedural laws-both criminal and civil. However, adjudication of the matters under the RTI Act is to be seen from a slightly different angle. Lakhs of cases are filed before the CPIOs and State Public Information Officers. The appeals arising therefrom filed before the Central Information Commission and the State Information Commissions run into hundreds of thousands. This Commission always gives an opportunity of hearing to the parties but this does not appear to be done by the CPIOs/SPIOs and FAAs as there are practical difficulties therein, partly arising out of the numbers involved and party due to the limited time frame in which the matters are required to be decided at the level of CPIOs & AAs. In view of this, we restrain ourselves from directing the CPIOs and AAs to always give an opportunity of hearing to the parties as an inflexible rule and leave the matter to their discretion. All that we would like to suggest is that an opportunity of hearing may be given to the parties, including the third party, if practicable, without forgetting that essence of RTI Act is adherence to the timelines prescribed in the Act.

17. Now, we come to Issue No (iii). It is note worthy that the RTI application filed by Shri Yogesh B Mehta runs into 22 paras. The CPIO dealt with the application para-wise in his order dated 5.1.2011 wherein information was denied to the appellant on paras 07, 08, 09

and 13 thereof. We would have expected the AA to deal with RTI application para-wise, in the context of the order of the CPIO and the appeal memo filed before him, particularly in respect of the paras regarding which information was denied. We, however, notice that the FAA has passed a bland order without dealing with the issues threadbare. We also would have expected the FAA to apply the provisions of section 10 to the information to be disclosed at his own level rather than leaving the entire matter to the discretion of the CPIO. In the premises, the order passed by the AA can not be said to be self contained and self speaking. We, however, are not inclined to remand the matter back to him as, in our opinion, no prejudice appears to have been caused to appellant BSE, as demonstrated hereinafter.

18. Now, we come to the most critical part of our inquiry i.e. the merits of the case. Para 08 of this order may be recalled wherein we had extracted para 07 of the affidavit filed by CPIO of SEBI wherein he has categorically averred that no information whatsoever has been disclosed which was objected to by appellant BSE. In the written material filed before this Commission extracted herein above, there is not even a whisper as to the information which was disclosed by the CPIO, disregarding the objections filed by the appellant herein. We may, however, mention that in para 03 of his affidavit extracted hereinabove, Shri Shanti Lal D. Jain, Manager Legal, BSE, has vaguely referred to disclosure of some information but in our understanding, he has not categorically alleged that information objected to by BSE was disclosed. In fact, we have carefully perused the order dated 30.6.2011 passed by the AA of SEBI and find that in para 08 thereof, he has categorically mentioned that 3<sup>rd</sup> party information is not to be disclosed. This para is extracted below for ready reference:-

“8. As regards the prayer at (7.A), I find from the chronology of events at Para 2 supra that the respondent has complied with the order of the AA and provided inspections and relevant information to the appellant except the third party information and the information which was offered to the appellant vide letter dated April 8, 2011 on payment of additional fee.”

19. From the above, it is clear that the apprehensions of appellant BSE in this regard are misplaced.

20. There is yet another issue that calls for our attention. In para 08 of the Note submitted on behalf of the appellant, we notice that the

appellant wants to have an undertaking from SEBI to the effect that the documents objected to by appellant BSE would not be disclosed either by way of inspection or by way of photocopies. By implication, the appellant is admitting that no documents objected to by the appellant have been disclosed so far. We may, however, observe that the objections filed by the appellant herein u/s 11 (1) are not binding on the CPIO. These objections are only to be kept in view by the CPIO while taking a decision regarding disclosure of information. We make it clear that this Commission can not fetter the discretion of the CPIO regarding the disclosure of 3<sup>rd</sup> party information. Thus, the relief sought is misconceived.

21. The findings of this Commission can be crystalised as follows:-

- (i) The CPIOs are mandated to send a copies of their orders to the 3<sup>rd</sup> party u/s 11 (3), from whom objections are sought u/s 11 (1).
- (ii) It is not practical to lay down an inflexible rule that PIOs and AAs will always offer an opportunity of hearing to the parties, let alone to the 3<sup>rd</sup> party. They may do so as per their discretion, keeping in view the complexity of legal and factual issues involved, without forgetting that timelines are to be adhered to, being the essence of the Act.
- (iii) The order passed by the AA is not self-contained and speaking and we advise him to pass speaking orders in future.
- (iv) In view of the averment of Dr Anil Kumar, CPIO of SEBI, extracted above, the appeal has become infructuous and is dismissed.

Order reserved & pronounced today dated 10<sup>th</sup> October, 2011.

(Sushma Singh)  
Information Commissioner

(Annapurna Dixit)  
Information Commissioner

(M.L. Sharma)  
Information Commissioner