SUPREME COURT OF INDIA

Union of India

Vs.

Namit Sharma

(A.K. Patnaik and A.K. Sikri JJ.)

03.09.2013

JUDGMENT

A. K. PATNAIK, J.

1. These are petitions filed under Article 137 of the Constitution of India for review of the judgment dated 13.09.2012 of this Court in Writ Petition (C) No.210 of 2012 (hereinafter referred to as 'the judgment under review').

Background Facts:

2. In Writ Petition (C) No.210 of 2012 filed under Article 32 of the Constitution of India, Namit Sharma, the respondent herein, had prayed for declaring the provisions of Sections 12(5), 12(6), 15(5) and 15(6) of the Right to Information Act, 2005 (for short 'the Act') as ultra vires the Constitution. Sections 12(5), 12(6), 15(5) and 15(6) of the Act are extracted hereinbelow:

> "12(5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance."
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> "12(6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession."

"15(5) The State Chief Information Commissioner and State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance."

"15(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession."

The grounds taken in the writ petition were that the provisions of Sections 12(5), 12(6), 15(5) and 15(6) of the Act laying down the eligibility criteria for appointment of Central Information Commissioners and State Information Commissioners were vague and had no nexus with the object of the Act and were violative of Article 14 of the Constitution of India and while enacting these provisions, Parliament had not exercised legislative power in consonance with the constitutional principles and guarantees.

3. After hearing the learned counsel for the respondent-writ petitioner and the learned Additional Solicitor General for Union of India, this Court held in the judgment under review that the provisions of Sections 12(5) and 15(5) of the Act did not specify the basic qualifications of the persons to be appointed as Information Commissioners and only mentioned that the Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. This Court held that the knowledge and experience in the different fields mentioned in Section 12(5) and Section 15(5) of the Act would presuppose a graduate who possesses basic qualification in the concerned field. This Court also held that Sections 12(6) and 15(6) of the Act, which provide that the Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory or hold any other office of profit or be connected with any political party or carry on any business or pursue any profession, do not disqualify such persons for consideration for appointment as Chief Information Commissioner or Information Commissioner, but these disqualifications will come into play after a person is appointed as Chief Election Commissioner or Information Commissioner. In other words, after a Chief Election Commissioner or Information Commissioner is appointed, he cannot continue to be a Member of

Parliament or Member of the Legislature of any State or hold any other office of profit or remain connected with any political party or carry on any business or pursue any profession.

4. In the judgment under review, this Court also held that the Information Commission, as a body, performs functions of wide magnitude, through its members, including adjudicatory, supervisory as well as penal functions. This Court held that access to information is a statutory right, subject to certain constitutional and statutory limitations and the Information Commissioners have been vested with the power to decline furnishing of information under certain circumstances and in the specified situations. This Court held that disclosure of information under the Act may also involve the question of prejudice to a third party, unlike in some countries where information involving a third party cannot be disclosed without the consent of that party. This Court held that considering all these functions to be performed by the Information Commission, the exercise of powers and passing of the orders by the Information Commission cannot be arbitrary and have to be in consonance with the principles of natural justice, namely, notice to a party, grant of hearing and passing of reasoned orders, and, therefore, the Information Commission is a Tribunal discharging quasi-judicial functions. This Court held that there is a lis to be decided by the Information Commission inasmuch as the request of a party seeking information is to be allowed or to be disallowed and the decisions rendered by the Information Commission on such a lis may prejudicially affect a third party. For these reasons, this Court further held that the Information Commission possesses the essential attributes and trappings of a Court as the adjudicatory powers performed by the Information Commission are akin to the Court system and the adjudicatory matters that they decide can have serious consequences on various rights including the right to privacy protected under Article 21 of the Constitution.

5. In the judgment under review, this Court also expressed the opinion that for effectively performing the functions and exercising the powers of the Information Commission, there is a requirement of a judicial mind. For holding this opinion, the Court relied on the judgments of this Court in Bharat Bank Ltd., Delhi v. Employees of Bharat Bank & Ors. [AIR 1950 SC 188], S.P. Sampath Kumar v. Union of India and Others [(1987) 1 SCC 124], Union of India v. R. Gandhi, President Madras Bar Association [(2010) 11 SCC 1] and L. Chandra Kumar v. Union of India and Others [(1997) 3 SCC 261]. This Court also held that separation of powers and the independence of judiciary are fundamental constitutional values in the structure of our Constitution as without these two constitutional values, impartiality cannot thrive as has been held by this Court

in Union of India v. R. Gandhi, President, Madras Bar Association (supra). This Court, thus, held that though the independence of judiciary stricto sensu applied to the Court system, by necessary implication, it would also apply to Tribunals whose functioning is quasi-judicial and akin to the Court system and the entire administration of justice has to be so independent and managed by persons of legal acumen, expertise and experience that persons demanding justice must not only receive justice, but should also have the faith that justice would be done. This Court accordingly held that the persons eligible for appointment should be of public eminence, with knowledge and experience in the specified fields and should preferably have some judicial background and they should possess judicial acumen and experience to fairly and effectively deal with the intricate questions of law that would come up for determination before the Information Commission in its day-to-day working. This Court held that the Information Commission is a judicial tribunal having the essential trappings of a Court and, as an irresistible corollary, it will follow that the appointments to the Information Commission are made in consultation with the judiciary. The Court, however, observed that in the event, the Government is of the opinion and desires to appoint not only judicial members but also experts from other fields to the Commission in terms of Section 12(5) of the Act, to ensure judicial independence, effective adjudicatory process and public confidence in the administration of justice by the Commission, it would be necessary that the Commission is required to work in Benches comprising one judicial member and one other member from the specified fields mentioned in Sections 12(5) and 15(5) of the Act.

6. On the appointment procedure, this Court also held in the judgment under review that the appointments to the post of judicial member has to be made in consultation with the Chief Justice of India in case of Chief Information Commissioner and members of the Central Information Commission, and the Chief Justices of the High Courts of the respective States, in the case of State Chief Information Commissioner and State Information Commissioners of that State Commission. This Court further held that in the case of appointment of members to the respective Commissions from other specified fields, the DoPT in the Centre and the concerned Ministry in the States should prepare a panel, after due publicity. Empanelling the names proposed should be at least three times the number of vacancies existing in the Commission and the names so empanelled, with the relevant record should be placed before the High Powered Committee mentioned in Section 12(3) and 15(3) of the Act and in furtherance of the recommendations of the High Powered Committee, appointments to the Central and State Information Commissions should be made by the competent authority.

7. For the reasons recorded in the judgment under review, this Court disposed of the writ petition of the respondent-writ petitioner with the following directions/declarations:

> "1. The writ petition is partly allowed.
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> 2. The provisions of Sections 12(5) and 15(5) of the Act of 2005 are held to be constitutionally valid, but with the rider that, to give it a meaningful and purposive interpretation, it is necessary for the Court to 'read into' these provisions some aspects without which these provisions are bound to offend the doctrine of equality. Thus, we hold and declare that the expression 'knowledge and experience' appearing in these provisions would mean and include a basic degree in the respective field and the experience gained thereafter. Further, without any peradventure and veritably, we state that appointments of legally qualified, judicially trained and experienced persons would certainly manifest in more effective serving of the ends of justice as well as ensuring better administration of justice by the Commission. It would render the adjudicatory process which involves critical legal questions and nuances of law, more adherent to justice and shall enhance the public confidence in the working of the Commission. This is the obvious interpretation of the language of these provisions and, in fact, is the essence thereof.
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> 3. As opposed to declaring the provisions of Section 12(6) and 15(6) unconstitutional, we would prefer to read these provisions as having effect 'post-appointment'. In other words, cessation/termination of holding of office of profit, pursuing any profession or carrying any business is a condition precedent to the appointment of a person as Chief Information Commissioner or Information Commissioner at the Centre or State levels.
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> 4. There is an absolute necessity for the legislature to reword or amend the provisions of Section 12(5), 12(6) and 15(5), 15(6) of the Act. We observe and hope that these provisions would be amended at the earliest by the legislature to avoid any ambiguity or impracticability and to make it in consonance with the constitutional mandates.
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> 5. We also direct that the Central Government and/or the competent authority shall frame all practice and procedure related rules to make working of the Information Commissions effective and in consonance with

the basic rule of law. Such rules should be framed with particular reference to Section 27 and 28 of the Act within a period of six months from today.

6. We are of the considered view that it is an unquestionable proposition of law that the Commission is a 'judicial tribunal' performing functions of 'judicial' as well as 'quasi-judicial' nature and having the trappings of a Court. It is an important cog and is part of the court attached system of administration of justice, unlike a ministerial tribunal which is more influenced and controlled and performs functions akin to the machinery of administration.

7. It will be just, fair and proper that the first appellate authority (i.e. the senior officers to be nominated in terms of Section 5 of the Act of 2005) preferably should be the persons possessing a degree in law or having adequate knowledge and experience in the field of law.

8. The Information Commissions at the respective levels shall henceforth work in Benches of two members each. One of them being a 'judicial member', while the other an 'expert member'. The judicial member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. A law officer or a lawyer may also be eligible provided he is a person who has practiced law at least for a period of twenty years as on the date of the advertisement. Such lawyer should also have experience in social work. We are of the considered view that the competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioners. The Chief Information Commissioner at the Centre or State level shall only be a person who is or has been a Chief Justice of the High Court or a Judge of the Supreme Court of India.

9. The appointment of the judicial members to any of these posts shall be made 'in consultation' with the Chief Justice of India and Chief Justices of the High Courts of the respective States, as the case may be.

10. The appointment of the Information Commissioners at both levels should be made from amongst the persons empanelled by the DoPT in the case of Centre and the concerned Ministry in the case of a State. The panel has to be prepared upon due advertisement and on a rational basis as afore-recorded.

11. The panel so prepared by the DoPT or the concerned Ministry ought to be placed before the High-powered Committee in terms of Section 12(3), for final recommendation to the President of India. Needless to repeat that the High Powered Committee at the Centre and the State levels is expected to adopt a fair and transparent method of recommending the names for appointment to the competent authority.

12. The selection process should be commenced at least three months prior to the occurrence of vacancy.

13. This judgment shall have effect only prospectively.

14. Under the scheme of the Act of 2005, it is clear that the orders of the Commissions are subject to judicial review before the High Court and then before the Supreme Court of India. In terms of Article 141 of the Constitution, the judgments of the Supreme Court are law of the land and are binding on all courts and tribunals. Thus, it is abundantly clear that the Information Commission is bound by the law of precedent, i.e., judgments of the High Court and the Supreme Court of India. In order to maintain judicial discipline and consistency in the functioning of the Commission, we direct that the Commission shall give appropriate attention to the doctrine of precedent and shall not overlook the judgments of the courts dealing with the subject and principles applicable, in a given case.

It is not only the higher court's judgments that are binding precedents for the Information Commission, but even those of the larger Benches of the Commission should be given due acceptance and enforcement by the smaller Benches of the Commission. The rule of precedence is equally applicable to intra-court appeals or references in the hierarchy of the Commission."

Contentions of the learned counsel for the parties:

8. Mr. A.S. Chandhiok, learned ASG appearing for the Union of India, submitted that under the Constitution it is only the Legislature which has the power to make law and amend the law and the Court cannot in exercise of its judicial power encroach into the field of legislation. In support of this submission, he relied on the decision of a seven-Judge Bench of this Court in P. Ramachandra Rao v. State of Karnataka [(2002) 4 SCC 578] in which this Court has recognised the limits of judicial power in a constitutional democracy. He also cited the decision of a three-Judge Bench in Union of India and Another v. Deoki Nandan Aggarwal [1992

Supp. (1) SCC 323] for the proposition that courts cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. He submitted that this being the position of law, this Court could not have held in the judgment under review that the knowledge and experience in different fields mentioned in Sections 12(5) and 15(5) of the Act would presuppose a graduate or basic degree in the concerned field when Parliament has not provided in Sections 12(5) and 15(5) of the Act that only persons with basic degree in law, science and technology, social science, management, journalism, mass media, etc. would be eligible for appointment as Chief Information Commissioner and Information Commissioners. He submitted that directions nos. 2 and 7 of the judgment under review that persons possessing basic degree in the respective fields can be Information Commissioners amount to amendment of Sections 12(5) and 15(5) of the Act.

9. Mr. Chandhiok next submitted that the view taken by this Court in the judgment under review that the Information Commissioners should possess the essential attributes of a court and that for effectively performing the functions and powers of the Information Commission there is requirement of a judicial mind and hence persons eligible for appointment as Information Commissioners should preferably have some judicial background and possess judicial acumen, is a patent error of law. He submitted that Information Commissioners have a duty to act judicially and perform quasi-judicial functions, but this does not mean that they must have the experience and acumen of judicial officers. In support of this submission, he cited the observations of Hidayatullah, J in Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala and Others (AIR 1961 SC 1669) that an officer who is required to decide the matters judicially does not make him a Court or even a Tribunal because that only establishes that he is following the standards of conduct and is free from bias and interest. He submitted that as Information Commissions are not really exercising judicial powers, and are not courts, Parliament has not provided in Sections 12(5) and 15(5) of the Act that Information Commissioners have to have judicial experience and acumen. He argued that direction no. 8 that Information Commissions at the respective levels shall work in Benches of two members each and one of them has to be a judicial member possessing a degree in law and having judicially trained mind and experience in performing judicial functions and the direction that competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioners and that the Chief Information Commissioner shall only be a person who is or has been a Chief Justice of a High Court or a Judge of the Supreme Court of India is a palpable error which needs to be corrected in this review. He further submitted that consequently direction no.9 in the judgment

under review that the appointment of judicial members as Information Commissioners shall be in consultation with the Chief Justice of India and Chief Justice of High Court of the respective States, as the case may be, should be deleted.

10. Mr. Chandhiok finally submitted that in direction no.5 of the judgment under review, this Court has further directed the Central Government to frame all practice and procedure related rules to make working of the Information Commissions effective and in consonance with the basic rule of law under Sections 27 and 28 of the Act within a period of 6 months but law is well settled that the Court cannot direct a rule making authority to make rules in a particular fashion. He relied on the decision of this Court in Mallikarjuna Rao and Others v. State of Andhra Pradesh and Others [(1990) 2 SCC 707] in support of this submission. He argued that direction no.5 of the judgment under review is, therefore, a patent error which needs to be corrected in this review.

11. Dr. Manish Singhvi, Additional Advocate General for the State of Rajasthan, submitted that the Information Commissioners do not perform functions which prior to the Act were vested in courts and therefore they need not be persons having judicial background/judicial training/judicial experience. He submitted that in Union of India v. R. Gandhi, Madras Bar Association (supra), this Court took the view that only if functions which have been dealt with by civil courts are transferred to tribunals, such tribunals should be manned by persons having judicial background/judicial training/judicial experience. He submitted that the view taken by this Court in the judgment under review that persons having judicial background/judicial training/judicial experience should be preferred while appointing Information Commissioners is an apparent error which should be corrected in this review.

12. Mr. M.S. Ganesh, learned senior counsel appearing for the intervener, Commonwealth Human Rights Initiative, submitted that the Information Commission is not vested with sovereign judicial powers and discharges only administrative functions under the provisions of the Act and the view taken by this Court in the judgment under review that Information Commissioners should be persons having judicial background, judicial experience and judicial acumen is not a correct view. He cited the opinion of Lord Greene, M.R. in B. Johnson & Co. (Builders), Ltd. v. Minister of Health [(1947) 2 All England Law Reports 395] as well as the opinion of Lord Diplock in Bushell v. Secretary of State for the Environment [(1980) 2 All ER 608 HL] that Information Commissioners arrive at administrative decisions and do not decide litigations and therefore they need not

have judicial background, judicial experience and judicial acumen. Mr. Ganesh next submitted that persons who have been appointed as Chief Information Commissioners and Information Commissioners under Sections 12(5) and 15(5) of the Act, have been persons without any eminence in public life. He submitted that mostly retired IAS Officers and IPS Officers without any experience in public life but only experience in administration have been appointed as Information Commissioners. He submitted that in this review, the Court should issue appropriate directions to ensure that appointment of Chief information Commissioners and Information Commissioners are made in accordance with Sections 12(5) and 15(5) of the Act.

13. Mr. Prashant Bhushan, learned senior counsel appearing for the interveners, Mr. Shailesh Gandhi and Mrs. Aruna Roy, submitted that as the Information Commissions do not perform judicial work, they need not be manned by judicial officers and Justices of High Courts and Supreme Court and, therefore, directions No.8 and 9 of the judgment under review need to be deleted. He further submitted that directions No.10 and 11 of the judgment under review regarding the procedure to be followed for appointment of Information Commissioners may not ensure transparency in the matter of appointment of Information Commissioners. He submitted that this Court in Centre for PIL and Another v. Union of India & Another [(2011) 4 SCC] has laid down a procedure in para 88 for selecting and appointing the Central Vigilance Commissioner and Vigilance Commissioners under Section 3 (3) of the Central Vigilance Commission Act, 2003 and has laid down therein that the empanelment of persons to be considered for appointment of Central Vigilance Commissioner and Vigilance Commissioner shall be carried out on the basis of rational criteria, which is to be reflected by recording of reasons and/or noting akin to reasons by the empanelling authority. He submitted that similar procedure should be followed for short listing persons for appointment as Information Commissioners and some reasons should be indicated as to why the person has been empanelled for appointment as Information Commissioner. He further submitted that the direction No.8 in the judgment under review that Information Commissioners at the respective levels shall henceforth work in benches of two members and one of them should be a judicial member would result in very few Division Benches of the Information Commission taking up matters and the working of the Information Commission in dealing with matters will slow down. He submitted that instead legal training can be given to Information Commissioners to decide matters involving intricate questions of law.

14. Learned counsel for the respondent- writ petitioner Mr. Amit Sharma, on the other hand, supported the judgment under review. According to him, this Court has rightly held that the Information Commission functions as an adjudicatory authority and decides issues relating to the fundamental right of a citizen to be informed about the Government policies and information. He submitted that to ensure proper adjudication of the fundamental right to information of every citizen, it is absolutely necessary that an independent person who does not have a political agenda is appointed as Information Commissioner. He further submitted that Information Commissioners also have to adjudicate issues relating to right of privacy of the citizens of India, which is part of their personal liberty under Article 21 of the Constitution and for this reason also a person with judicial experience and training is best suited and therefore this Court has rightly held that persons with judicial experience and training and judicial acumen should be preferred for appointment as Information Commissioners. He finally submitted that it will be evident from Sections 7, 8, 9 and 11 of the Act that a lis between the parties will have to be decided by the Central Public Information Officer or State Public Information Officer and this Court has rightly held in judgment under review that Information Commissions which decide appeals under Section 20 of the Act against the decisions of the Central Public Information Officer or State Public Information Officer are akin to courts. He referred to Section 18 of the Act to show that Information Commissions have been vested with the powers of a civil court and, therefore, are in the nature of courts which have to be manned by judicial officers.

15. Mr. Sharma vehemently argued that in the event this Court holds in this review that the persons with judicial experience and training need not be appointed as Information Commissioners, then the provisions of Section 12(5) and 15(5) of the Act have to be struck down as ultra vires Article 14 of the Constitution. He cited the decision of this Court in Indra Das v. State of Assam[(2011) 3 SCC 380] in which it has been held that ordinarily the literal rule of interpretation while construing a statutory provision should be followed, but where such interpretation makes the provision unconstitutional it can be departed from and the statute should be read down to make it constitutional. He submitted that in the judgment under review, this Court has saved the provisions of Section 12(5) and 15(5) of the Act by reading down the said provisions.

16. Mr. Sharma referred to the chart at page 40 of the writ petition to show qualifications of persons appointed equivalent to Information Commissioners in Australia, Canada, Scotland, England and United States and argued that they are

required to obtain a degree in the field of law. He cited the observations of this Court in the case of Union of India v. R. Gandhi, President, Madras Bar Association (supra) that the assumption that members of the civil services will have the judicial experience or expertise in company law to be appointed either as judicial member or technical member is an erroneous assumption. He submitted that in that case, this Court therefore issued directions that only High Court Judges or District Judges of 5 years experience or lawyers having practice of 10 years can be considered for appointment as judicial members of the National Company Law Tribunal. He also relied on the decision of this Court in Pareena Swarup v. Union of India [(2008) 14 SCC 107] in which this Court observed that while creating new avenue of judicial forums, it is the duty of the Government to see that they are not in breach of basic constitutional scheme of separation of powers and independence of judiciary and held that the provisions of the Prevention of Money-Laundering Act, 2002 as enacted may not ensure an independent judiciary to decide the cases under the Act and accordingly directed the Union of India to incorporate the proposed provisions to ensure independence of judiciary.
Findings of the Court:

17. Review of a judgment or order of this Court under Article 137 of the Constitution is confined to only errors apparent on the face of the record as provided in Order XL Rule 1 of the Supreme Court Rules, 1966. A three Judge Bench of this Court has held in Commissioner of Sales Tax, J & K and Others v. Pine Chemicals Ltd. and Others [(1995) 1 SCC 58] that if a reasoning in the judgment under review is at variance with the clear and simple language in a statute, the judgment under review suffers from a manifest error of law, an error apparent on the face of the record, and is liable to be rectified. Hence, in these Review Petitions, we have to decide whether the reasoning and directions in the judgment under review is at variance with the clear and simple language employed in the different provisions of the Act and accordingly whether the judgment under review suffers from manifest errors of law apparent on the face of the record.

18. As we have noticed, Sections 12(5) and 15(5) of the Act provide that Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. These provisions of the Act do not provide that the Chief Information Commissioner and Information Commissioners shall be persons having judicial experience, training and acumen and yet this Court has held in the judgment under review that for effectively performing the functions and exercising

the powers of the Information Commission, there is a requirement of a judicial mind and therefore persons eligible for appointment should preferably have judicial background and possess judicial acumen and experience. We may now examine the bare provisions of the Act, whether this finding that there is requirement of a judicial mind to discharge the functions of Information Commission is an error apparent on the face of the record.

19. Sections 18, 19 and 20 of the Act, which confer powers on the Information Commission, are extracted hereinbelow:

> "18. Powers and 'Functions of Information Commissions.—(1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,—
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> (a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;
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> (b) who has been refused access to any information requested under this Act;
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> (c) who has not been given a response to a request for information or access to information within the time limit specified under this Act;
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> (d) who has been required to pay an amount of fee which he or she considers unreasonable;
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> (e) who believes that he or she has been given incomplete, misleading or false information under this Act; and
>
> (f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

19. Appeal.—

(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public

Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period

not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

20. Penalties.—

(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or, obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the

State Public Information Officer, as the case may be, under the service rules applicable to him.

20. It will be clear from the plain and simple language of Sections 18, 19 and 20 of the Act that, under Section 18 the Information Commission has the power and function to receive and inquire into a complaint from any person who is not able to secure information from a public authority, under Section 19 it decides appeals against the decisions of the Central Public Information Officer or the State Public Information Officer relating to information sought by a person, and under Section 20 it can impose a penalty only for the purpose of ensuring that the correct information is furnished to a person seeking information from a public authority. Hence, the functions of the Information Commissions are limited to ensuring that a person who has sought information from a public authority in accordance with his right to information conferred under Section 3 of the Act is not denied such information except in accordance with the provisions of the Act. Section 2(j) defines "Right to Information" conferred on all citizens under Section 3 of the Act to mean the right to information accessible under the Act, "which is held by or under the control of any public authority". While deciding whether a citizen should or should not get a particular information "which is held by or under the control of any public authority", the Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get information in possession of a public authority. This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions.

21. In the judgment under review, this Court after examining the provisions of the Act, however, has held that there is a lis to be decided by the Information Commission inasmuch as the request of a party seeking information is to be allowed or to be disallowed and hence requires a judicial mind. But we find that the lis that the Information Commission has to decide was only with regard to the information in possession of a public authority and the Information Commission was required to decide whether the information could be given to the person asking for it or should be withheld in public interest or any other interest protected by the provisions of the Act. The Information Commission, therefore, while deciding this lis does not really perform a judicial function, but performs an administrative function in accordance with the provisions of the Act. As has been held by Lord Greene, M.R. in B. Johnson & Co. (Builders), Ltd. v. Minister of Health (supra):

> "Lis, of course, implies the conception of an issue joined between two parties. The decision of a lis, in the ordinary use of legal language, is the decision of that issue. The What is described here as a lis – the raising of the objections to the order, the consideration of the matters so raised and the representations of the local authority and the objectors – is merely a stage in the process of arriving at an administrative decision. It is a stage which the courts have always said requires a certain method of approach and method of conduct, but it is not a lis inter partes, and for the simple reason that the local authority and the objectors are not parties to anything that resembles litigation."

22. In the judgment under review, this Court has also held after examining the provisions of the Act that the Information Commission decides matters which may affect the rights of third parties and hence there is requirement of judicial mind. For example, under Section 8(1)(d) of the Act, there is no obligation to furnish information including commercial confidence, trade secrets, or intellectual property, the disclosure of which would harm the competitive position of the third party, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information. Similarly, the right to privacy of a third party, which is part of his personal liberty under Article 21 of the Constitution, may be breached if a particular kind of information, purely of personal nature may be directed to be furnished by the concerned authority. To protect the rights of third parties, Section 11 of the Act provides that where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record or part thereof, may on a request made under the Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, a written notice will have to be given to such third party inviting such party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party can be kept in view while taking a decision about disclosure of the information. The decision taken by the Central Public Information Officer or the State Public Information Officer, as the case may be, under Section 11 of the Act is appealable under Section 19 of the Act before the Information Commission and when the Information Commission decides such an appeal, it decides only whether or not the information should be furnished to the citizen in view of the objection of the third party. Here also the Information Commission does not decide the rights of a third party but only whether the information which is held by or under the control of a public authority in relation to or supplied by that third party could be furnished to a citizen under the provisions of the Act.

Hence, the Information Commission discharges administrative functions, not judicial functions.

23. While performing these administrative functions, however, the Information Commissions are required to act in a fair and just manner following the procedure laid down in Sections 18, 19 and 20 of the Act. But this does not mean that the Information Commissioners are like Judges or Justices who must have judicial experience, training and acumen. In Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala and Others (supra), Hidayatullah, J, explained:

> "33. In my opinion, a Court in 'the strict sense is a tribunal which is a part of the ordinary hierarchy of Courts of Civil Judicature maintained by the State under its constitution to exercise the judicial power of the State. These Courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction. The word "judicial", be it noted, is itself capable of two meanings. They were admirably stated by Lopes, L.J. in Royal Aquarium and Summer and Winter Garden Society v. Parkinson (1892) 1 QB 431(452) in these words:
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> "The word 'judicial' has two meanings. It may refer to the discharge of duties exercisable by a judge or by justices in court, or to administrative duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind - that is, a mind to determine what is fair and just in respect of the matters under consideration."
>
> That an officer is required to decide matters before him "judicially" in the second sense does not make him a Court or even a tribunal, because that only establishes that he is following a standard of conduct, and is free from bias or interest."

24. Once the Court is clear that Information Commissions do not exercise judicial powers and actually discharge administrative functions, the Court cannot rely on the constitutional principles of separation of powers and independence of judiciary to direct that Information Commissions must be manned by persons with judicial training, experience and acumen or former Judges of the High Court or the Supreme Court. The principles of separation of powers and independence of judiciary embodied in our Constitution no doubt require that judicial power should be exercised by persons with judicial experience, training and acumen. For this reason, when judicial powers vested in the High Court were sought to be

transferred to tribunals or judicial powers are vested in tribunals by an Act of the legislature, this Court has insisted that such tribunals be manned by persons with judicial experience and training, such as High Court Judges and District Judges of some experience. Accordingly, when the powers of the High Court under Companies Act, 1956 were sought to be transferred to Tribunals by the Companies (Amendment) Act, 2002, a Constitution Bench of this Court has held in Union of India v. R. Gandhi, President Madras Bar Association (supra):

> "When the legislature proposes to substitute a tribunal in place of the High Court to exercise the jurisdiction which the High Court is exercising, it goes without saying that the standards expected from the judicial members of the Tribunal and standards applied for appointing such members, should be as nearly as possible as applicable to High Court Judges, which are apart from a basic degree in law, rich experience in the practice of law, independent outlook, integrity, character and good reputation. It is also implied that only men of standing who have special expertise in the field to which the Tribunal relates, will be eligible for appointment as technical members. Therefore, only persons with a judicial background, that is, those who have been or are Judges of the High Court and lawyers with the prescribed experience, who are eligible for appointment as High Court Judges, can be considered for appointment as judicial members."
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> In Pareena Swarup v. Union of India (supra), having found that judicial powers were to be exercised by the Appellate Tribunals under the Prevention of Money- Laundering Act, 2002 this Court held that to protect the constitutional guarantee of independence of judiciary, persons who are qualified to be judges be appointed as members of the Appellate Tribunal. But, as we have seen, the powers exercised by the Information Commissions under the Act were not earlier vested in the High Court or subordinate court or any other court and are not in any case judicial powers and therefore the Legislature need not provide for appointment of judicial members in the Information Commissions.

25. Perhaps for this reason, Parliament has not provided in Sections 12(5) and 15(5) of the Act for appointment of persons with judicial experience and acumen and retired Judges of the High Court as Information Commissioners and retired Judges of the Supreme Court and Chief Justice of the High Court as Chief Information Commissioner and any direction by this Court for appointment of persons with judicial experience, training and acumen and Judges as Information

Commissioners and Chief Information Commissioner would amount to encroachment in the field of legislation. To quote from the judgment of the seven-Judge Bench in P. Ramachandra Rao v. State of Karnataka(supra):

> "Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature."

26. Moreover, Sections 12(5) and 15(5) of the Act while providing that Chief Information Commissioner and Information Commissioners shall be persons with eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance, also does not prescribe any basic qualification which such persons must have in the respective fields in which they work. In the judgment under review, however, this Court has "read into" Sections 12(5) and 15(5) of the Act missing words and held that such persons must have a basic degree in the respective field as otherwise Sections 12(5) and 15(5) of the Act are bound to offend the doctrine of equality. This "reading into" the provisions of Sections 12(5) and 15(5) of the Act, words which Parliament has not intended is contrary to the principles of statutory interpretation recognised by this Court. In Union of India and Another v. Deoki Nandan Aggarwal (supra) this Court has held that the court could not correct or make up for any deficiencies or omissions in the language of the statute. V. Ramaswami, J. writing the judgment on behalf of a three Judge Bench says:

> "It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities."

27. In the judgment under review, this Court has also held that if Sections 12(5) and 15(5) of the Act are not read in the manner suggested in the judgment, these Sections would offend the doctrine of equality. But on reading Sections 12(5) and 15(5) of the Act, we find that it does not discriminate against any person in the matter of appointment as Chief Information Commissioner and Information Commissioners and so long as one is a person of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance, he is eligible to be considered for appointment as Chief Information Commissioner or Information Commissioner. However, to ensure that the equality clause in Article 14 is not offended, the persons to be considered for appointment as Chief Information Commissioner or Information Commissioner should be from different fields, namely, law, science and technology, social service, management, journalism, mass media or administration and governance and not just from one field.

28. Sections 12(6) and 15(6) of the Act, however, provide that the Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or hold any other office of profit or connected with any political party or carry on any business or pursue any profession. There could be two interpretations of Sections 12(6) and 15(6) of the Act. One interpretation could be that a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or a person holding any other office of profit or connected with any political party or carrying on any business or pursuing any profession will not be eligible to be considered for appointment as a Chief Information Commissioner and Information Commissioner. If this interpretation is given to Sections 12(6) and 15(6) of the Act, then it will obviously offend the equality clause in Article 14 of the Constitution as it debars such persons from being considered for appointment as Chief Information Commissioner and Information Commissioners. The second interpretation of Sections 12(6) and 15(6) of the Act could be that once a person is appointed as a Chief Information Commissioner or Information Commissioner, he cannot continue to be a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or hold any other office of profit or remain connected with any political party or carry on any business or pursue any profession. If this interpretation is given to Sections 12(6) and 15(6) of the Act then the interpretation would effectuate the object of the Act inasmuch as Chief Information Commissioner and Information Commissioners would be able to perform their

functions in the Information Commission without being influenced by their political, business, professional or other interests. It is this second interpretation of Sections 12(6) and 15(6) of the Act which has been rightly given in the judgment under review and Sections 12(6) and 15(6) of the Act have been held as not to be violative of Article 14 of the Constitution. Therefore, the argument of Mr. Sharma, learned counsel for the respondent- writ petitioner, that if we do not read Sections 12(5) and 15(5) of the Act in the manner suggested in the judgment under review, the provisions of Sections 12(5) and 15(5) of the Act would be ultra vires the Article 14 of the Constitution, is misconceived.

29. In the judgment under review, in direction no.5, the Central Government and/or the competent authority have been directed to frame all practice and procedure related rules to make working of the Information Commissions effective and in consonance with the basic rule of law and with particular reference to Sections 27 and 28 of the Act within a period of six months. Sections 27(1) and 28(1) of the Act are extracted hereinbelow:

> "27. Power to make rules by appropriate Government.—(1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.
>
> 28. Power to make rules by competent authority.—(1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act."
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> The use of word "may" in Sections 27 and 28 of the Act make it clear that Parliament has left it to the discretion of the rule making authority to make rules to carry out the provisions of the Act. Hence, no mandamus can be issued to the rule making authority to make the rules either within a specific time or in a particular manner. If, however, the rules are made by the rule making authority and the rules are not in accordance with the provisions of the Act, the Court can strike down such rules as ultra vires the Act, but the Court cannot direct the rule making authority to make the rules where the Legislature confers discretion on the rule making authority to make rules. In the judgment under review, therefore, this Court made a patent error in directing the rule making authority to make rules within a period of six months.

30. Nonetheless, the selection and appointment of Chief Information Commissioner and Information Commissioners has not been left entirely to the discretion of the Central Government and the State Government under Sections 12 and 15 of the Act. Sections 12(3) and 15(3) provide that the Chief Information Commissioner and Information Commissioners shall be appointed by the President or the Governor, as the case may be, on the recommendation of the Committee named therein. Sections 12(5) and 15(5) provide that Chief Information Commissioner and Information Commissioners have to be persons of eminence in public life with wide knowledge and experience in the different fields mentioned therein, namely, law, science and technology, social service, management, journalism, mass media or administration and governance. Thus, the basic requirement for a person to be appointed as a Chief Information Commissioner or Information Commissioner is that he should be a person of eminence in public life with wide knowledge and experience in a particular field. Parliament has insisted on this basic requirement having regard to the functions that the Chief Information Commissioner and Information Commissioners are required to perform under the Act. As the preamble of the Act states, democracy requires an informed citizenry and transparency of information which are vital to its functioning and also requires that corruption is contained and Governments and their instrumentalities are held accountable to the governed. The preamble of the Act, however, cautions that revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. Moreover, under the Act, a citizen has the right to information held or under the control of public authority and hence Information Commissioners are to ensure that the right to privacy of person protected under Article 21 of the Constitution is not affected by furnishing any particular information.

31. Unfortunately, experience over the years has shown that the orders passed by Information Commissions have at times gone beyond the provisions of the Act and that Information Commissions have not been able to harmonise the conflicting interests indicated in the preamble and other provisions of the Act. The reasons for this experience about the functioning of the Information Commissions could be either that persons who do not answer the criteria mentioned in Sections 12(5) and 15(5) have been appointed as Chief Information Commissioner or Information Commissioners or that the persons appointed answer the criteria laid down in Sections 12(5) and 15(5) of the Act but they do not have the required mind to balance the interests indicated in the Act and to restrain themselves from acting beyond the provisions of the Act. This experience of the functioning of the

Information Commissions prompted this Court to issue the directions in the judgment under review to appoint judicial members in the Information Commissions. But it is for Parliament to consider whether appointment of judicial members in the Information Commissions will improve the functioning of the Information Commissions and as Sections 12(5) and 15(5) of the Act do not provide for appointment of judicial members in the Information Commissions, this direction was an apparent error. Sections 12(5) and 15(5) of the Act, however, provide for appointment of persons with wide knowledge and experience in law. We hope that persons with wide knowledge and experience in law will be appointed in the Information Commissions at the Centre and the States. Accordingly, wherever Chief Information Commissioner is of the opinion that intricate questions of law will have to be decided in a matter coming before the Information Commissions, he will ensure that the matter is heard by an Information Commissioner who has such knowledge and experience in law.

32. Under Order XL of the Supreme Court Rules, 1966 this Court can review its judgment or order on the ground of error apparent on the face of record and on an application for review can reverse or modify its decision on the ground of mistake of law or fact. As the judgment under review suffers from mistake of law, we allow the Review Petitions, recall the directions and declarations in the judgment under review and dispose of Writ Petition (C) No. 210 of 2012 with the following declarations and directions:

> i) We declare that Sections 12(5) and 15(5) of the Act are not ultra vires the Constitution.
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> ii) We declare that Sections 12(6) and 15(6) of the Act do not debar a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or a person holding any other office of profit or connected with any political party or carrying on any business or pursuing any profession from being considered for appointment as Chief Information Commissioner or Information Commissioner, but after such person is appointed as Chief Information Commissioner or Information Commissioner, he has to discontinue as Member of Parliament or Member of the Legislature of any State or Union Territory, or discontinue to hold any other office of profit or remain connected with any political party or carry on any business or pursue any profession during the period he functions as Chief Information Commissioner or Information Commissioner.

iii) We direct that only persons of eminence in public life with wide knowledge and experience in the fields mentioned in Sections 12(5) and 15(5) of the Act be considered for appointment as Information Commissioner and Chief Information Commissioner.

iv) We further direct that persons of eminence in public life with wide knowledge and experience in all the fields mentioned in Sections 12(5) and 15(5) of the Act, namely, law, science and technology, social service, management, journalism, mass media or administration and governance, be considered by the Committees under Sections 12(3) and 15(3) of the Act for appointment as Chief Information Commissioner or Information Commissioners.

v) We further direct that the Committees under Sections 12(3) and 15(3) of the Act while making recommendations to the President or to the Governor, as the case may be, for appointment of Chief Information Commissioner and Information Commissioners must mention against the name of each candidate recommended, the facts to indicate his eminence in public life, his knowledge in the particular field and his experience in the particular field and these facts must be accessible to the citizens as part of their right to information under the Act after the appointment is made.

vi) We also direct that wherever Chief Information Commissioner is of the opinion that intricate questions of law will have to be decided in a matter coming up before the Information Commission, he will ensure that the matter is heard by an Information Commissioner who has wide knowledge and experience in the field of law.

33. There shall be no order as to costs.