* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 22.05.2012

% Judgment delivered on: 01.06.2012

\+ **W.P.(C) 11271/2009**

REGISTRAR OF COMPANIES & ORS ..... Petitioners

Through: Mr. Pankaj Batra, Advocate.

versus

DHARMENDRA KUMAR GARG & ANR ..... Respondents

Through: Mr. Rajeshwar Kumar Gupta and Ms. Shikha Soni, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petition has been preferred by the Registrar of Companies, NCT of Delhi & Haryana (ROC) and its CPIOs Sh. Raj Kumar Shah and Sh. Atma Shah to assail two similar orders dated 14.07.2009 passed by the Central Information Commission (CIC) in complaint case Nos. CIC/SG/C/2009/000702 and CIC/SG/C/2009/000753. By these similar orders, the appeals preferred by the same respondent- querist were allowed, rejecting the defence of the petitioners founded upon

Section 610 of the Companies Act, 1956, and it was directed that the complete information sought by the respondent-querist in his two applications under the Right to Information Act (RTI Act) be provided to him before 25.07.2009. The CIC has also directed issuance of show-cause notice to the petitioner-PIOs under Section 20(1) of the RTI Act asking them to show-cause as to why penalty should not be imposed upon them for not furnishing information as sought by the querist within thirty days.

2. The querist-Shri Dharmendra Kumar Garg filed an application under the RTI Act on 28.05.2009 requiring the PIO of the ROC to provide the following information in relation to company No. 056045 M/s Bloom Financial Services Limited:

> *"1. Who are the directors of this company? Please provide their name, address, date of appointment and copies of consent filed at ROC alongwith F-32 filed.*
>
> *2. After incorporation of above company, how many times directors were changed? Please provide the details of documents files and copies of Form 32 filed at ROC.*
>
> *3. Please provide the copies of Annual Returns filed at ROC since incorporation to 1998*
>
> *4. On what ground prosecution has been filed. Please provide the details of prosecution and persons included for prosecution. Please provide the copies of Order Sheets and related documents.*
>
> *5. On what ground the name of Dharmender Kumar Garg has been included for prosecution?*
>
> *6. Please provide the copies of Form No 5 and other documents filed for increase of capital?*

7. How much fee was paid for increase of Capital of above company? Please provide the details of payment of fee at ROC.

8. Please provide the copies of Statutory Report and Special Leave Petition (Statement in lieu of prospectus) filed at ROC."

3. The PIO-Sh. Atma Shah responded to the said queries on 29.05.2009. In respect of queries No. 1, 2, 3, 6, 7 & 8, the stand taken by the PIO was as follows:

"that in view of the provisions of Section 610 of the Companies Act, 1956 read with Companies (Central Government's) General Rules and Forms, 1956 framed in exercise of powers conferred by clauses (a) & (b) of sub-section (1) of Section 642 of the Companies Act, 1956, the documents filed by companies pursuant to various provisions of the Companies Act, 1956 with the ROCs are to be treated as 'information in public domain' and such information is accessible by public pursuant to the provisions of Section 610 of the Companies Act, 1956. There is an in built mechanism under the provisions of the Companies Act, 1956 for accessing information relating to documents filed which are in the public domain on payment of fees prescribed under the provisions of the Companies Act, 1956 and the Rules made there under. Hence you can obtain the desired information by inspecting the documents filed by the company in this office before filing of documents online i.e. prior to 8/03/2006 at O/o Registrar of Companies, NCT of Delhi & Haryana, 131, Sector-5, IMT Manesar, Haryana and after 18/3/06 on the Ministry's website www.mca.gov.in. Further certified copies of the desired documents can also be obtained on payment of fees prescribed thereof. In view of this, the information already available in the public domain would not be treated as 'information held by or under the control of public authority' pursuant to Section 2(j) of the Right to Information Act, 2005. Therefore, the provisions of RTI Act, 2005 would not be applicable for providing inspection/copies of such documents/information to the

public."

4. The queries at serial Nos. 4 & 5, as aforesaid, were also responded to by the PIO. However, I am not concerned with the answers given in response to the said queries, as the legal issue raised in the present petition by the petitioners relates to the interplay between Section 610 of the Companies Act on the one hand, and the provisions of the RTI Act on the other hand. Not satisfied with the response given by the PIO Sh. Atma Shah, as aforesaid, the respondent-querist, without preferring a first appeal, straightway preferred an appeal before the CIC, which has been disposed of vide impugned order dated 14.07.2009 in complaint case No. CIC/SG/C/2009/000702.

5. The respondent-querist raised further queries in respect of the same company vide an RTI application dated 06.06.2009. This application was also responded to by the PIO Sh. Atma Shah on 23.06.2009. In this reply as well, in respect of certain queries, the PIO responded by placing reliance on Section 610 of the Companies Act and gave more or less the same reply, as extracted above. Since the respondent-querist was not satisfied with the said response, he preferred a petition before the CIC, once again by-passing the statutory first appeal provided under the RTI Act. This appeal was registered as complaint case No. CIC/SG/C/2009/000753.

6. Before the CIC, the petitioners contended that the information which could be accessed by any person by resort to Section 610 of the Companies Act is information which is already placed in the public domain, and it cannot be said that the said information is "held by" or is "under the control" of the public authority. It was contended that such information, as has already been placed in the public domain, does not fall within the scope of the RTI Act and a citizen cannot by-pass the procedure, and avoid paying the charges prescribed for accessing the information placed in the public domain, by resort to provisions of the RTI Act.

7. In support of their submissions, before the CIC the petitioners placed reliance on a departmental circular No. 1/2006 issued by the Ministry of Company Affairs, wherein the view taken by the Director, Inspection & Investigation was that in the light of the provisions of Section 610 of the Companies Act read with Companies (Central Government's) General Rules & Forms, 1956 (Rules), framed in exercise of powers conferred under clauses (a) & (b) of sub-Section 1 of Section 642 of the Companies Act, the documents filed by the Companies pursuant to various provisions of the Companies Act with the ROC are to be treated as information in the public domain. It was also his view that there being a complete mechanism provided under the provisions of the Companies Act for accessing information relating to documents filed, which are in public domain, on payment of fees

prescribed under the Companies Act and the Rules made thereunder, such information could not be treated as information held by, or under the control of, the public authority. His view was that the provisions of RTI Act could not be invoked for seeking copies of such information by the public.

8. The petitioners also placed reliance on various earlier orders passed by the different CICs, upholding the aforesaid stand of the ROC and, in particular, reliance was placed on the decision of Sh. A.N. Tiwari, Central Information Commissioner in F.No. CIC/80/A/2007/000112 decided on 12.04.2007. Reference was also made to various orders of Prof. M.M. Ansari, Central Information Commissioner taking the same view. The petitioner has placed all these orders before this Court as well, as Annexure A-7(Colly.)

9. The first submission of learned counsel for the petitioners is that, while passing the impugned orders, the Central Information Commissioner Sh. Shailesh Gandhi has acted with impropriety. Despite the earlier orders of two Central Information Commissioners – taking the view that the information placed by the petitioner-ROC in the public domain and accessible under Section 610 of the Companies Act are out of the purview of the RTI Act, being specifically brought to his notice, he has simply brushed them aside after noticing them by observing that he differs with these decisions. It is submitted that

even if Sh. Shailesh Gandhi, Central Information Commissioner, was of the opinion that the earlier views taken by two other learned CICs were not correct, the proper course of action for him to adopt would have been to record his reasons for not agreeing with the earlier views of the Central Information Commissioners, and to refer the said issue for determination by a larger bench of the Central Information Commission. Sitting singly, Sh. Shailesh Gandhi, Central Information Commissioner, could not have taken a contrary view by merely observing that he disagrees with the earlier views.

10. The further submission of learned counsel for the petitioners is that, even on merits, the view taken by the CIC in the impugned orders is illegal and not correct. It is argued that Clause (a) of Section 610 (1) of the Companies Act, inter alia, entitles “any person” to inspect any document kept by the Registrar, which may have been filed or registered by him in pursuance of the Companies Act, or may inspect any document, wherein the Registrar has made a record of any fact required or authorized to be recorded to be registered in pursuance of the Companies Act, on payment for each inspection of such fee, as may be prescribed.

11. Further, by virtue of Clause (b) of Section 610 (1) any person can require the Registrar to provide certified copies of the Certificate of Registration of any company, or a copy or extract of any other

document, or any part of any other document, on payment in advance of such fee, as may be prescribed. It is submitted that the Registrar of Companies has placed all its records pertaining to, and in relation to the companies registered with it in the public domain. They have either been placed on the website of the ROC, or are available for inspection at the facility of the ROC. Any person can inspect such records either on-line, or at the facility of the petitioner-ROC and if the person so desires, can also obtain copies of all or any of such documents on payment of charges, as prescribed under the Rules.

12. Learned counsel for the petitioners submits that the Companies (Central Government's) General Rules & Forms, 1956, which have been framed in exercise of the power conferred upon the Central Government by clauses (a) & (b) of sub-Section (1) of Section 642 of the Companies Act, prescribe the fees for inspection of document and for obtaining certified copies thereof in Rule 21 A, which reads as follows:

> *"21A. Fees for inspection of documents etc.—The fee payable in pursuance of the following provisions of the Act, shall be—*
>
> | | | |
> |---|---|---|
> | *(1)* | *Clause (a) of sub-section (1) of section 118* | *rupees ten.* |
> | *(2)* | *Clause (b) of sub-section (1) of section 118* | *rupee one.* |
> | *(3)* | *Sub-section (2) of section 144* | *rupees ten.* |
> | *(4)* | *Clause (b) of sub-section (2) of section 163* | *rupees ten.* |

(5)	*Clause (b) of sub-section (3) of section 163*	*rupee one.*
(6)	*Sub-section (2) of section 196*	*rupee one.*
(7)	*Clause (a) of sub-section (1) of section 610*	*rupees fifty.*
(8)	*Clause (b) of sub-section (1) of section 610—*	
	(i) For copy of certificate of incorporation	*rupees fifty.*
	(ii) For copy of extracts of other documents including hard copy of such documents on computer readable media	*rupees twenty five per page."*

13. Learned counsel submits that there are two kinds of information available with the ROC. The first is the information/ documents, which the ROC is obliged to receive, record and maintain under the provisions of the Companies Act, and the second kind of information relates to the administration and functioning of the office of the ROC. The first kind of information, i.e., the returns, forms, statements, etc. received, recorded and maintained by the ROC in relation to the companies registered with it, is all available for inspection, and the certified copies thereof can be obtained by resort to Section 610 of the Companies Act and the aforesaid Rules. He submits that since this information is already in the public domain, same cannot be said to be information held by, or in the control of the public authority, i.e., ROC. He submits that it is the second kind of information, as aforesaid, which a citizen can seek by invoking provisions of the RTI Act from the ROC, and not the first kind of information which, in any event, is already available in

the public domain, and accessible to one and all, including non-citizens.

14. He submits that the right to information vested by Section 3 of the RTI Act is available only to citizens. However, the right vested by virtue of Section 610 of the Companies Act can be exercised by any person, whether, or not, he is a citizen of India. Therefore, the right vested by Section 610 of the Companies Act is much wider in its scope than the right vested by Section 3 of the RTI Act. It is argued that the object of the RTI Act is to enable the citizens to access information so as to bring about transparency in the functioning of public authorities, which is considered vital to the functioning of democracy and is also essential to contain corruption and to hold governments and their instrumentalities accountable to those who are governed, i.e., the citizens. The information accessible under Section 610 is, in any event, freely available and all that the person desirous of accessing such information is required to do, is to make the application in terms of the said provision and the Rules, to become entitled to receive the information.

15. Learned counsel submits that the fees prescribed for provision of information under the RTI Act is nominal and much less compared to the fees prescribed under Rule 21 A. Learned counsel for the petitioners submits that the petitioners have consciously prescribed

the fees under the RTI Act as a nominal amount of Rs.10/- per application since the petitioner-ROC does not wish to make it inconvenient or difficult for the citizens to obtain information held by or under the control of the ROC under the said Act. However, the said provision cannot be exploited or misused by a citizen for the purpose of seeking information, which is available in the public domain and is accessible under Section 610 of the Companies Act by payment of prescribed fee under Rule 21 A of the aforesaid Rules.

16. On the other hand, the submission of learned counsel for the respondent-querist is that the provisions of the RTI Act have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act itself. In this respect reference is made to Section 22 of the RTI Act. It is, therefore, argued that a citizen has an option to seek information from the ROC, either by resort to Section 610 of the Companies Act or by resort to the provisions of the RTI Act. Merely because Section 610 exists on the Statute Book, it does not mean that the right available under the RTI Act to seek information can be curtailed or denied.

17. Learned counsel for the respondent further submits that under Section 610 of the Companies Act, a person can access only such

information which has been filed or registered by him (i.e., the person seeking the information), in pursuance of the Companies Act. He submits that the expression *"being documents filed or registered by him in pursuance of this Act"* used in Section 610(1)(a) of the Companies Act connect with the words *"any person"* and not with the words *"inspect any documents kept by the Registrar"*.

18. Section 610 of the Companies Act, 1956 reads as follows:

> "*610. Inspection, production and evidence of documents kept by Registrar.*
>
> *(1) [Save as otherwise provided elsewhere in this Act, any person may]-*
>
> *(a) inspect any documents kept by the Registrar [in accordance with the rules made under the Destruction of Records Act, 1917] being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection, of [such fees as may be prescribed];*
>
> *(b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, [on payment in advance of [such fees as may be prescribed:]*
>
> *Provided that the rights conferred by this sub-section shall be exercisable-*
>
> *(i) in relation to documents delivered to the Registrar with a prospectus in pursuance of sub-clause (i) of clause (b) of sub-section (1) of section 60, only during the fourteen days beginning with the date of publication of the prospectus; and at other times, only with the permission of the Central Government; and*

(ii) in relation to documents so delivered in pursuance of clause (b) of sub-section (1) of section 605, only during the fourteen days beginning with the date of the prospectus; and at other times, only with the permission of the Central Government.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any Court [or the [Tribunal]] except with the leave of that Court [or the [Tribunal]] and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the Court [or the [Tribunal]].

(3) A copy of, or extract from, any document kept and registered at any of the officers for the registration of companies under this Act, certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document".

19. The submission of learned counsel for the respondent that only the person who has filed documents with the Registrar of Companies is entitled to inspect the same is wholly fallacious and deserves to be outrightly rejected. This interpretation is clearly not borne out either from the plain language of section 610 or upon a scrutiny of the object and purpose of the said provision. Section 610 enables "any person" to inspect any documents kept by the registrar, being documents "filed or registered by him in pursuance of this Act". The obligation to file and register the documents, which may be submitted by a company registered, or seeking registration with the Registrar of Companies, is that of the Registrar of Companies. It is the Registrar, who makes a

record of any fact required or authorized to be recoded or registered in pursuance of the Companies Act, and not “any person”.

20. If the submission of learned counsel for the respondent were to be accepted, it would mean that it is the applicant under section 610, who is obliged to make a record of any fact required, or authorized to be recorded or registered in pursuance of the Companies Act, which is not the case. It is also not the obligation of “any person” either to file, or to receive and put on record, or to register, the documents lodged by him in the office of the ROC. That is the obligation of the Registrar of Companies. The whole purpose of section 610 is to bring about full and complete transparency in the matter of registration of companies and in the matter of their accounts and directorship, so that any person can obtain all the relevant information in relation to any registered company.

21. Pertinently, the language used in clause (b) does not support the submission of the respondent at all. If the submission of learned counsel for the respondent were to be accepted, it would mean that while a person can inspect only those documents which he has lodged in the office of the Registrar of Companies (by virtue of clause (a)), at the same time, under clause (b) of section 610(1), he can obtain the certificate of incorporation of any company, or a copy or extract of any other document or any part of any other document duly certified by

the Registrar.

22. Section 610(2) puts a check on issuance of a process for compelling the production of any document by the Registrar, by any Court or Tribunal. It requires that such process would not be issued except with the leave of the Court or the Tribunal. This check has been placed, since any person can obtain information either through inspection, or by obtaining certified copies of documents filed by any company, by following the procedure prescribed, and a certified true copies of any such documents or extracts is admissible in evidence in all legal proceedings, and has the same efficacy and validity as the original documents filed and registered by the Registrar of Companies (see section 610(3)).

23. There can be no doubt that the documents kept by the Registrar, which are filed or registered by him, as well as the record of any fact required or authorized to be recorded by the Registrar or registered in pursuance of the Companies Act qualifies as "information" within the meaning of that expression as used in Section 2(f) of the RTI Act. However, the question is — whether the mere fact that the said documents/record constitutes "information", is sufficient to entitle a citizen to invoke the provisions of the RTI Act to access the same?

24. The Parliament has defined the expression "right to information" under Section 2(j). The same reads as follows:

> *"2. (j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—*
>
> *(i) Inspection of work, documents, records;*
>
> *(ii) Taking notes, extracts, or certified copies of documents or records;*
>
> *(iii) Taking certified samples of material;*
>
> *(iv) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"*

25. The right to information is conferred by section 3 of the RTI Act, which reads as follows:

> *"3. Right to information.—Subject to the provisions of this Act, all citizens shall have the right to information."*

26. Pertinently, the Parliament did not use the language in Section 3: *"Subject to the provisions of this Act, citizens shall have a right to access all information",* or the like. Therefore, the right conferred by Section 3 of the RTI Act, which is the substantive provision, means the right to information "*accessible under the Act which is held by or under the control of any public authority and includes ....".*

27. It is not without any purpose that the Parliament took the trouble of defining "right to information". Parliament does not undertake a casual or purposeless legislative exercise. The definition of "right to information" specifically qualifies the said right with the words:

(1) "*accessible under this Act*", and;

(2) *"which is held by or under the control of any public authority"*.

28. The information should, firstly, be accessible under this Act. This means that if there is information which is not accessible under this Act, there is no "right to information" in respect thereof. Consequently, there is no right to information in respect of information, which is exempted from disclosure under Section 8 or Section 9 of the RTI Act.

29. A particular information may not be held by, or may not be under the control of the public authority concerned. There would be no right in a citizen to seek such information from that particular public authority, though he may have the right to seek the same information from another public authority who holds or under whose control the desired information resides. That is why Section 6(3) provides that an application to seek information:

(i) Which is held by another public authority; or

(ii) The subject matter of which is more closely connected with the functions of another public authority, shall be transferred to that other public authority.

30. But is that all to the expression "*held by or under the control of any public authority*" used in the definition of "Right to information" in

Section 2(j) of the RTI Act?

31. In the context of the object of the RTI Act, and the various provisions thereof, in my view, the said expression "*held by or under the control of any public authority*" used in section 2(j) of the RTI Act deserves a wider and a more meaningful interpretation. The expression "Hold" is defined in the Black's Law dictionary, 6th Edition, inter alia, in the same way as "*to keep*" i.e. to retain, to maintain possession of, or authority over.

32. The expression "held" is also defined in the Shorter Oxford Dictionary, inter alia, as "*prevent from getting away; keep fast, grasp, have a grip on*". It is also defined, inter alia, as "*not let go; keep, retain".*

33. The expression "control" is defined in the Advanced Law Lexicon by P.N. Ramanatha Aiyar 3rd Edition Reprint 2009 and it reads as follows:

> *"(As a verb) To restrain; to check; to regulate; to govern; to keep under check; to hold in restraint; to dominate; to rule and direct; to counteract; to exercise a directing, restraining or governing influence over; to govern with reference thereto; to subject to authority; to have under command, and authority over, to have authority over the particular matter. (Ame. Cyc)"*

34. From the above, it appears that the expression "held by" or "under the control of any public authority", in relation to "information",

means that information which is held by the public authority under its control to the exclusion of others. It cannot mean that information which the public authority has already "let go", i.e. shared generally with the citizens, and also that information, in respect of which there is a statutory mechanism evolved, (independent of the RTI Act) which obliges the public authority to share the same with the citizenry by following the prescribed procedure, and upon fulfillment of the prescribed conditions. This is so, because in respect of such information, which the public authority is statutorily obliged to disseminate, it cannot be said that the public authority "holds" or "controls" the same. There is no exclusivity in such holding or control. In fact, the control vests in the seeker of the information who has only to operate the statutorily prescribed mechanism to access the information. It is not this kind of information, which appears to fall within the meaning of the expression "right to information", as the information in relation to which the "right to information" is specifically conferred by the RTI Act is that information which *"is held by or under the control of any public authority"*.

35. The mere prescription of a higher charge in the other statutory mechanism (in this case Section 610 of the Companies Act), than that prescribed under the RTI Act does not make any difference whatsoever. The right available to any person to seek inspection/copies of documents under Section 610 of the Companies

Act is governed by the Companies (Central Government's) General Rules & Forms, 1956, which are statutory rules and prescribe the fees for inspection of documents, etc. in Rule 21A. The said rules being statutory in nature and specific in their application, do not get overridden by the rules framed under the RTI Act with regard to prescription of fee for supply of information, which is general in nature, and apply to all kinds of applications made under the RTI Act to seek information. It would also be complete waste of public funds to require the creation and maintenance of two parallel machineries by the ROC – one under Section 610 of the Companies Act, and the other under the RTI Act to provide the same information to an applicant. It would lead to unnecessary and avoidable duplication of work and consequent expenditure.

36. The right to information is required to be balanced with the need to optimize use of limited fiscal resources. In this context I may refer to the relevant extract of the Preamble to the RTI Act which, inter alia, provides:-

> *"AND WHEREAS 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 confidentially of sensitive information;*
>
> *AND WHEREAS* ***it is necessary to harmonise these conflicting interests*** *while preserving the paramountancy of the democratic ideal;"* (emphasis supplied).

37. Section 4(1)(a) also lays emphasis on availability of recourses, when it talks about computerization of the records. Therefore, in the exploitation and implementation of the RTI Act, a delicate and reasonable balance is required to be maintained. Nobody can go overboard or loose ones equilibrium and sway in one direction or assume an extreme position either in favour of upholding the right to information granted by the RTI Act, or to deny the said right.

38. The Supreme Court in ***The Institute of Chartered Accountants of India Vs. Shaunak H. Satya & Others,*** *Civil Appeal No. 7571/2011 decided on 02.09.2011,* observed that:

> *"it is necessary to make a distinction in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under section 4(1)(b) and (c) and other information which may not have a bearing on accountability or reducing corruption.* ***The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities and government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources.****"*(emphasis supplied).

39. Therefore, if another statutory provision, created under any other law, vests the right to seek information and provides the mechanism for invoking the said right (which is also statutory, as in this case) that mechanism should be preserved and operated, and not destroyed

merely because another general law created to empower the citizens to access information has subsequently been framed.

40. Section 4 of the RTI Act obliges every public authority, inter alia, to publish on its own, information described in clause (b) of sub-Section (1) of Section 4. Sub-clause (xv) of clause (b) obliges the public authority to publish *"the particulars of facilities available to citizens for obtaining information ...."*. In the present case, the facility is made available – not just to citizens but to any person, for obtaining information from the ROC, under Section 610 of the Companies Act, and the Rules framed thereunder above referred to. Section 4(2) of the RTI Act itself postulates that in respect of information provided by the public authority *suo moto*, there should be minimum resort to use of the RTI Act to obtain information.

41. The submission of learned counsel for the respondent founded upon Section 22 of the RTI Act also has no merit. Section 22 of the RTI Act reads as follows:

> *"22. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."*

42. Firstly, I may notice that I do not find anything inconsistent between the scheme provided under Section 610 of the Companies Act

and the provisions of the RTI Act. Merely because a different charge is collected for providing information under Section 610 of the Companies Act than that prescribed as the fee for providing information under the RTI Act does not lead to an inconsistency in the provisions of these two enactments. Even otherwise, the provisions of the RTI Act would not override the provision contained in Section 610 of the Companies Act. Section 610 of the Companies Act is an earlier piece of legislation. The said provision was introduced in the Companies Act, 1956 at the time of its enactment in the year 1956 itself. On the other hand, the RTI Act is a much later enactment, enacted in the year 2005. The RTI Act is a general law/enactment which deals with the right of a citizen to access information available with a public authority, subject to the conditions and limitations prescribed in the said Act. On the other hand, Section 610 of the Companies Act is a piece of special legislation, which deals specifically with the right of any person to inspect and obtain records i.e. information from the ROC. Therefore, the later general law cannot be read or understood to have abrogated the earlier special law.

43. The Supreme Court in ***Ashoka Marketing Limited and Another Vs. Punjab National Bank and Others****, (1990) 4 SCC 406,* applied and explained the legal maxim: *leges posteriors priores conterarias abrogant*, (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: *generalia specialibus non derogant*, (a general provision does not derogate from

a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34). One of the principles of statutory interpretation is that the later law abrogates earlier contrary laws. This principle is subject to the exception embodied in the second latin maxim mentioned above. The Supreme Court in paragraphs 50-52 of this decision held as follows:

> *"50. One such principle of statutory interpretation which is applied is contained in the latin maxim: leges posteriors priores conterarias abrogant, (later laws abrogate earlier contrary. laws). This principle is subject to the exception embodied in the maxim: generalia specialibus non derogant, (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34).*
>
> *51. The rationale of this rule is thus explained by this Court in the J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. The State of Uttar Pradesh & Others, [1961] 3 SCR 185:*
>
> > *"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as*

regards all the rest the earlier directions should have effect."

52. In U.P. State Electricity Board v. Hari Shankar Jain, [1979] 1 SCR 355 this Court has observed:

"*In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament.*" *"*

44. Justice G.P. Singh in his well-known work *"Principles of Statutory Interpretation 12th Edition 2010"* has dealt with the principles of interpretation applicable while examining the interplay between a prior special law and a later general law. While doing so, he quotes Lord Philimore from ***Nicolle Vs. Nicolle,*** *(1922) 1 AC 284,* where he observed:

"it is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases, of which the particular law is but one. This, as a matter of jurisprudence, as understood in England, has been laid down in a great number of cases, whether the prior law be an express statute, or be the underlying common or customary law of the country. Where general words in a later Act are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so."

45. The Supreme Court in ***R.S. Raghunath Vs. State of Karnataka & Another,*** *(1992) 3 SCC 335,* quotes from Maxwell on The Interpretation of Statutes, the following passage:

> "*A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words, where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act.*"

46. This principle has been applied in ***Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Dey & Others,*** *AIR 1996 SC 1931* as well. Therefore, Section 22 of the RTI Act, in any event, does not come in the way of application of Section 610 of the Companies Act, 1956.

47. Now, I turn to consider the submission of learned counsel for the petitioner that the Central Information Commissioner Sh. Shailesh Gandhi has acted with impropriety while passing the impugned order, by disregarding the earlier orders of the other Central Information Commissioners and by taking a decision contrary to them without even referring the matter to a larger bench.

48. In ***Sh. K. Lall Vs. Sh. M.K. Bagri, Assistant Registrar of Companies & CPIO,*** *F. No. CIC/AT/A/2007/00112,* the Central Information Commissioner Sh. A.N. Tiwari squarely considered the very same issue with regard to the interplay between Section 610 of the Companies Act and the rights of a citizen to obtain information under the RTI Act. Sh. A.N. Tiwari by a detailed and considered decision held that information which can be accessed by resort to Section 610 of the Companies Act cannot be accessed by resort to the provisions of the RTI Act. The discussion found in his aforesaid order on this legal issue reads as follows:

> *"9. It shall be interesting to examine this proposition. Section 2(j) of the RTI Act speaks of "the right to information accessible under this Act which is held by or under the control of any public authority……". The use of the words "accessible under this Act"; "held by" and "under the control of" are crucial in this regard. The inference from the text of this sub-section and, especially the three expressions quoted above, is that an information to which a citizen will have a right should be shown to be a) an information which is accessible under the RTI Act and b) that it is held or is under the control of a certain public authority. This should mean that unless an information is exclusively held and controlled by a public authority, that information cannot be said to be an information accessible under the RTI Act. Inferentially it would mean that once a certain information is placed in the public domain accessible to the citizens either freely, or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control of' the public authority and, thus would cease to be an information accessible under the RTI Act. This interpretation is further strengthened by the provisions of the RTI Act in Sections 4(2), 4(3) and 4(4), which oblige the public authority to constantly endeavour "to take steps in accordance with the requirement of clause b of subsection 1 of the Section 4 to provide as*

much information suo-motu to the public at regular intervals through various means of communication including internet, so that the public have minimum resort to the use of this Act to obtain information." (Section 4 sub-section 2). This Section further elaborates the position. It states that "All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed." The explanation to the subsection 4 section 4 goes on to further clarify that the word "disseminated" used in this Section would mean the medium of communicating the information to the public which include, among others, the internet or any other means including inspection of office of any public authority.

10. It is significant that the direction regarding dissemination of information through free or priced documents, or free or priced access to information stored on internet, electronic means, or held manually; free or on payment of predetermined cost for inspection of such documents or records held by public authorities, appear in a chapter on 'obligations of public authorities'. The inference from these sections is a) it is the obligation of the public authorities to voluntarily disseminate information so that "the public have minimum resort to the use of this Act to obtain information", b) once an information is voluntarily disseminated it is excluded from the purview of the RTI Act and, to that extant, contributes to minimizing the resort to the use of this Act, c) there is no obligation cast on the public authority to disseminate all such information free of cost. The Act authorizes the public authorities to disclose such information suo-motu "at such cost of a medium or the print cost price as may be prescribed", d) the RTI Act authorizes the public authority to price access to the information which it places in the public domain suo-motu.

11. These provisions are in consonance with the wording of the Section 2(j) which clearly demarcates the boundary between an information held or under the control of the public authority and, an information not so held, or under the control of that public authority who suo-motu places

that information in public domain. It is only the former which shall be "accessible under this Act" — viz. the RTI Act and, not the latter. This latter category of information forms the burden of sub-section 2, 3 and 4 of Section 4 of this Act.

12. The RTI Act very clearly sets the course for the evolution of the RTI regime, which is that less and less information should be progressively held by public authorities, which would be accessed under the RTI Act and more and more of such held information should be brought into the public domain suo-motu by such public authority. Once the information is brought into the public domain it is excluded from the purview of the RTI Act and, the right to access this category of information shall be on the basis of whether the public authority discloses it free, or at such cost of the medium or the print cost price "as may be prescribed". The Act therefore vests in the public authority the power and the right to prescribe the mode of access to voluntarily disclosed information, i.e. either free or at a prescribed cost / price.

13. The respondents are right therefore in arguing that since they had placed in the public domain a large part of the information requested by the appellant and prescribed the price of accessing that information either on the internet or through inspection of documents, the ground rules of accessing this information shall be determined by the decision of the public authority and not the RTI Act and the Rules. That is to say, such information shall not be covered by the provisions about fee and cost of supply of information as laid down in Section 7 of the RTI Act and the Rules thereof.

14. It is, therefore, my view that it should not only be the endeavour of every public authority, but its sacred duty, to suo-motu bring into public domain information held in its control. The public authority will have the power and the right to decide the price at which all such voluntarily disclosed information shall be allowed to be accessed.

15. There is one additional point which also needs to be considered in this matter. The appellant had brought up the issue of the overarching power of the RTI Act under Section 22. This Section of the Act states that the provisions of the Act shall have effect notwithstanding

anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. In his view, the pricing of the access to the records and information by the public authority at a scale different from the rates / fees for accessing the information prescribed under the Act amounts to inconsistency. A closer look at the provision shows that this is not so. As has been explained in the preceding paragraphs, the fees prescribed for access to information under the RTI Act applies only to information 'held' or 'under the control of' the public authority. It does not apply inferentially to the information not held or not under the control of the public authority having been brought into the public domain suo-motu in terms of sub-section 3 of Section 4. The price and the cost of access of information determined by the public authority applies to the latter category. As such, there is no inconsistency between the two provisions which are actually parallel and independent of each other. I therefore hold that no ground to annul the provision of pricing the information which the public authority in this case has done, exists.

16. In my considered view, therefore, the CPIO and the AA were acting in consonance with the provision of this Act when they called upon the appellant to access the information requested and not otherwise supplied to him by the CPIO, by paying the price / cost as determined by the public authority."

49. This view was followed by Sh. A.N. Tiwari in a subsequent order dated 29.08.2007 in ***"Shri Shriram (Dada) Tichkule Vs. Shri P.K. Galchor, Assistant Registrar of Companies & PIO".*** The same view was taken by another Central Information Commissioner namely, Prof. M.M. Ansari in his orders dated 29.03.2006 in ***Arun Verma Vs. Department of Company Affairs***, *Appeal No. 21/IC(A)/2006,* and in the case of ***Sh. Sonal Amit Shah Vs. Registrar of Companies***, *Decision No. 2146/IC(A)/2008 dated 31.03.2008,* and various others,

copies of which have been placed on record. It appears that all these decisions were cited before learned Central Information Commissioner Sh. Shailesh Gandhi. In fact, in the impugned order, he also refers to these decisions and states that *"I would respectfully beg to differ from this decision"*.

50. The Central Information Commission while functioning under the provisions of the RTI Act, no doubt, do not constitute a Court. However, there can be no doubt about the fact that Central Information Commission functions as a quasi-judicial authority, as he determines inter se rights and obligations of the parties in relation to the grant of information, which may entail civil and other consequences for the parties.

51. This Court in ***Union Public Service Commission Vs. Shiv Shambhu & Others,*** *L.P.A. No. 313/2007 decided on 03.09.2008*, while dealing with the issue whether the Central Information Commissioner should be impleaded as a party respondent in proceedings challenging its order and whether the Central Information Commission has a right of audience to defend its order before this Court in writ proceedings, observed as follows:

> *"2. At the outset this Court directs the deletion of the CIC which has been arrayed as Respondent No. 1 to this appeal, consequent upon it being arrayed as such in the writ petition. This Court has repeatedly issued practice directions stressing that a judicial or quasi-judicial body or Tribunal whose order is challenged in a writ petition (and*

thereafter possibly in appeal) ought not to itself be impleaded as a party respondent. The only exception would be if malafides are alleged against any individual member of such authority or Tribunal in which case again it would be such member, and not the authority/Tribunal, who may be impleaded as a respondent. Accordingly the cause title of the present appeal will read as ***Union Public Service Commission v. Shiv Shambhu & Ors.****"*

52. This decision has subsequently been followed in ***State Bank of India Vs. Mohd. Shahjahan****, W.P.(C.) No. 9810/2009*, wherein the Court held as follows:

"12. This Court is unable to accept the above submission. There is no question of making the CIC, whose order is under challenge in this writ petition, a party to this petition. Like any other quasi-judicial authority, the CIC is not expected to defend its own orders. Likewise, the CIC cannot be called upon to explain why it did not follow any of its earlier orders. That the CIC should not be made a party in such proceedings is settled by the judgment of the Division Bench in this Court in ***Union Public Service Commission v. Shiv Shambu 2008 IX (Del) 289.****"*

53. It is, therefore, a well-recognised position that the CIC discharges quasi-judicial functions while deciding complaints/appeals preferred by one or the other party before it.

54. It is a well-settled canon of judicial discipline that a bench dealing with a matter respects an earlier decision rendered by a coordinate bench (i.e., a bench of same strength), and is bound by the decision of a larger bench. If this discipline is breached, the same would lead to complete chaos and confusion in the minds of the

litigating public, as well as in the minds of others such as lawyers, other members/judges of quasi-judicial/judicial bodies, and the like. Breach of such discipline would result in discrimination and would shake the confidence of the consumers of justice. There can be no greater source of discomfiture to a litigant and his counsel, than to have to deal with diametrically opposite views of coordinate benches of the same judicial /quasi-judicial body. If the emergence of contradictory views is innocent i.e. due to ignorance of an earlier view, it is pardonable, but when such a situation is created consciously, with open eyes, and after having been put to notice, the judge/authority responsible for the later view should take the blame for creating confusion and for breaching judicial discipline.

55. The Supreme Court in ***Dr. Vijay Laxmi Sadho Vs. Jagdish***, *(2001) 2 SCC 247*, deprecated such lack of judicial discipline by observing as follows:

> *"33. As the learned Single Judge was not in agreement with the view expressed in Devilal's case, Election Petition No. 9 of 1980, it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed.* ***It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of***

law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs." (emphasis supplied)

56. In the present case, the Central Information Commissioner Mr.Shailesh Gandhi has also demonstrated complete lack of judicial discipline while rendering the impugned decisions. By no stretch of imagination, it cannot be said that the earlier decisions were not on the point. Particularly, the decision rendered by Sh. A.N. Tiwari in F. CIC/T/A/2007/0012 dated 12.04.2007 directly deals with the very same issue, and is an exhaustive, and detailed and considered decision. If the Central Information Commissioner Sh. Shailesh Gandhi had a different view in the matter – which he was entitled to hold, judicial discipline demanded that he should have recorded his disagreement with the view of Sh. A.N. Tiwari, Central Information Commissioner, and, for reasons to be recorded by him, required the constitution of a larger bench to re-examine the issue. He could not have ridden rough shot over the earlier decisions of Sh. A.N. Tiwari and Prof. M.M. Ansari, particularly when he was sitting singly to consider the same issue of law.

57. The consequence of the improper conduct of Sh. Shailesh Gandhi, Central Information Commissioner, is that there are now two sets of conflicting orders- taking diametrically opposite views, on the issue aforesaid. Therefore, unless the said legal issue is settled one

way or the other by a higher judicial forum, it would be open to any other Information Commissioner to choose to follow one or the other view. This would certainly lead to confusion and chaos. It would also lead to discrimination between the querists/public authority, who are either seeking information or are defending the action under the RTI Act. One such instance, cited by learned counsel for the petitioner is in the case of ***Smt. Dayawati Vs. Office of Registrar of Companies****, in CIC/SS/C/2011/000607 decided on 23.03.2012*. In this case, once again the same issue had been raised. The Central Information Commissioner Smt. Sushma Singh has preferred to follow the view of Sh. A.N. Tiwari in the case of ***K. Lall Vs. Ministry of Company Affairs****, Appeal No. CIC/AT/A/2007/00112 dated 14.04.2007*.

58. On this short ground alone, the impugned orders of the learned Central Information Commissioner deserve to be quashed and set aside.

59. The reasoning adopted by Shri Shailesh Gandhi, the learned Central Information Commissioner for taking a view contrary to that taken by Sh. A.N. Tiwari in his order dated 12.04.2007 (which has been extracted hereinabove), does not appeal to me. The view taken by Sh.A.N. Tiwari, Central Information Commissioner appeals to this Court in preference to the view taken by Sh. Shailesh Gandhi, Central Information Commissioner in the impugned orders. The impugned

orders do not discuss, analyse or interpret the expression "right to information" as defined in Section 2(j) of the RTI Act. They do not even address the aspect of Section 610 of the Companies Act being a special law as opposed to the RTI Act.

60. I may also observe that the approach of the Central Information Commission in seeking to invoke Section 20 of the RTI Act in the facts of the present case is wholly unjustified. By no stretch of imagination could it have been said that PIOs of the ROC had acted "*without any reasonable cause*" or "*malafidely denied the request for information or knowingly* gave incorrect, incomplete or misleading information, or destroyed information, which was the subject of the request, or obstructed in any manner the furnishing of information". The PIOs were guided by the departmental circular No. 1/2006 dated 24.01.2006 in the view that they communicate to the respondent-querist. This view was taken by none other than the Director Inspection & Investigation in the Ministry of Company Affairs, Government of India and circulated to all Regional Directors of Registrar of Companies and all Official Liquidators. There was nothing before the PIOs to suggest that the said view had been disproved by any judicial or quasi-judicial authority. Clearly, the PIOs acted bonafide and without any malice.

61. Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a show-cause notice under Section 20 of the RTI Act and the imposition of penalty. The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with

objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.

62. For all the aforesaid reasons, I allow the present petition and quash the impugned orders passed by Sh. Shailesh Gandhi, Central Information Commissioner. The parties are left to bear their respective costs.

(VIPIN SANGHI)
JUDGE

JUNE 01, 2012
'BSR'/sr