

**CENTRAL PUBLIC INFORMATION OFFICER,**  
**SUPREME COURT V. SUBHASH CHANDRA AGRAWAL**  
**CIVIL APPEAL NO. 10044 OF 2010**

**FACTS OF THE CASE:**

1. The case is dealt with by Section 6(2)<sup>1</sup> of the Right to Information Act of 2005. He sought information on the collegium system to appoint judges and to bring judges to the High Court and the declaration of assets of Supreme Court judges, High Court, etc. They were also asked to provide details on this.
2. The whole starting of the case rests on a report made by the Times of India that the Union Minister through a lawyer Mr. R. Regupathi of the Madras High Court to put influence on the Chief Justice of India and to try and influence his judicial decisions as well. The CPIO and the Indian Supreme Court denied the information requested on the basis that it was neither handled nor maintained by the Indian Supreme Court Registry and, therefore, this information was not requested or kept in the registry.
3. The first appeal was done by one Mr. Subhash Chandra Agrawal. He took one heading of an article written by one Mr. Alberto Alemanno. The heading used says- “Heading of an article written by Alberto Alemanno: “How Transparent is Transparent enough?” This appeal was denied on 5<sup>th</sup> September 2009, on 24<sup>th</sup> November 2009, the Central Information Officer on an order dated 24<sup>th</sup> November 2009 had decided to disclose the sought information as it would not poach upon the constitutional status of the judges.
4. Civil appeal No. 10044 of 2010, which emerged out of a plea brought before the Central Information Public Officer and the Supreme Court of India by Mr. Subhash Chandra Agrawal, to have a copy for complete files/documents shared by and by the constitutional authority, with records concerning the appointment of one Judge H.L Dattu, Mr. Justice A.K Ganguly and Mr. Justice R.M Lodha who are junior to Mr. Justice A.P Shah, Mr. A.K Patnaik and Mr. Justice V.K Gupta.

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<sup>1</sup> An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

5. This sought after information was denied by the Central Public Information Officer (CPIO) and the Supreme Court of India and it was rejected on the ground that this information which was being sought was not handled or maintained by the Registry of the Supreme Court of India and because of this reason this information being sought is not maintained or available with the registry.
6. Mr. Subhash Chandra Agrawal's first appeal has been rejected. Mr. Subhash continued this, and in addition, the Central Information Commission has admitted the appeal, based on the judgment, and ordered the provision of information. Aggrieved, the CPIO Supreme Court of India preferred the appeal in question stating inter alia, that in LPA No. 501, 2009 video judgment, dated 12 January 2009, the decision of Writ Petition (Civil) No. 288 of 2009 was upheld by the full bench of the high court of Delhi.
7. The Appeals Authority issued an order of referral in respect of the first appeal, requesting that the CPIO, the Indian Supreme Court, follow the procedure referred to in Section 6(3)<sup>2</sup> of the RTI Act and inform Subhash Chandra Agarwal of the authority holding such information. The CPIO subsequently issued a video order on 7 February 2008, specifying that the petitioner would appear before the High Court's CPIO and presenting his appeal in breach of the terms of Article 6(3) of the RTI Act before the Supreme Court's CPIO.
8. Subhash Chandra Agrawal opted to lodge a petition before the CIC (Central Information Commission), without lodging a first appeal that resulted in the "Central Public Information Officer of the Supreme Court being requested by the claimant for details on whether such a declaration of assets, etc. was made by Hon'ble Judges of the SC or not in the 10 working terms of the appellant's RTI case.
9. To counter this, the Central Public Information Officer, Supreme Court had filed Writ Petition (Civil) No 288 of 2009 before the Delhi High Court, which was decided by the learned bench of Single Judge on the date of 2<sup>nd</sup> September 2009. The question of

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<sup>2</sup> Section 6(3) of Right to Information Act, 2005- Where an application is made to a public authority requesting for an 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, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer: Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

whether the Chief Justice of India is a public authority and is the Central Information Public Officer, Supreme Court is different from the CJI's office.

### **ISSUES RAISED:**

1. Whether the information sought for amounts to interference in the functioning of the judiciary?
2. Whether the information sought for is exempt under Section 8(10) of the Right to Information Act?

“A substantial question of law as to the interpretation of the Constitution is involved in the present case which is required to be heard by a Constitution Bench. The independence of the judiciary and the position of the Chief Justice of India are required to be balanced with the fundamental right to free speech and expression.”<sup>3</sup>

Supreme Court Advocates-on-Record Assn. v. Union of India<sup>4</sup>. **Referred to the Right to information is an integral part of the fundamental right to freedom of speech and expression guaranteed by the Constitution.** The Right to Information Act, 2005 merely recognizes the constitutional right of citizens to freedom of speech and expression. Independence of the judiciary forms part of the basic structure of the Constitution of India. Both are of great value and are required to be gone into.

### **RULE OF LAW WHICH APPLIES:**

1. **Section 8(1)(e), Exemption from disclosure of information**<sup>5</sup>

It states that information available to a person in his fiduciary relationship unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information

2. **Section 8(1)(j), Exemption from disclosure of information**<sup>6</sup>

<sup>3</sup> S.P. Gupta v. Union of India, 1981 Supp SCC 87

<sup>4</sup> (1993) 4 SCC 441

<sup>5</sup> Section 8(1)(e) of Right to Information Act, 2005

<sup>6</sup> Section 8(1)(j) of Right to Information Act, 2005

It states that information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

**3. Section 2(j), Interpretation Clause<sup>7</sup>**

It states that "information" means any material in any form, including records, documents, memos, e-mails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

**4. Section 2(h), Interpretation Clause<sup>8</sup>**

Public Authority: Any authority or body or an institution of self-government established by the Constitution or under the Constitution.

The appointment of Judges is essentially a discharge of constitutional trust as laid down by this Court in *Subhash Sharma v. Union of India*<sup>9</sup>. The submission was that the information made available to the Chief Justice of India in respect of appointment of Judges of the High Courts and as well as the Supreme Court is held by him in trust and in a fiduciary capacity. This submission of the learned Attorney General received considerable support from the various High Courts of the country except for the High Court of Guwahati as is evident from the response filed pursuant to the notices issued by this Court.

The Court was mainly dealing with the question as to whether any immunity could be claimed from the production of the records in respect of the C correspondence between the Law Minister and the Chief Justice of India and the relevant noting made by them in regard to the transfer of a High Court Judge including the Chief Justices of the High Court which were extremely material for deciding whether there was full and effective consultation? It is

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<sup>7</sup> Section 2(j) of Right to Information, 2005

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<sup>9</sup> 1991 AIR 631

observed at more than one place that the non-disclosure of the said documents would seriously handicap the petitioner therein in showing that there was no full and effective consultation with the Chief Justice of India or that the transfer was by way of punishment and not in the public interest. It is observed: (S.P. Gupta case, SCC p. 208, para 83)

The Court felt that (S.P. Gupta case, SCC p. 298, para 83) “all relevant documents should be produced before the court so that the full facts may come before the people, who in a democracy are the ultimate arbiters?”

The Court further observed: (S.P. Gupta case SCC pp. 300 & 302, para 85)

"We do not see any reason why, if the correspondence between the Law Minister, the Chief Justice of the High Court and the Chief Justice of India and the relevant notes made by them, in regard to the discontinuance of an Additional Judge is relevant to the issues arising in a judicial proceeding, they should not be disclosed. Where it becomes relevant in a judicial proceeding, why should the Court and the opposite party and through them, the people not know what are the reasons for which a particular appointment is made or a particular Additional Judge is discontinued or a particular transfer is affected. We fail to see what harm can be caused by the disclosure of true facts when they become relevant in a judicial proceeding."<sup>10</sup>

Referring to Article 124 of the Constitution of India, which established the Supreme Court of India, the Court concluded that the Court is a “public authority” as defined in the RTI Act. The Chief Justice of India is the competent authority under Section 2(2)(ii) of the RTI Act. Accordingly, the Chief Justice of India is empowered to frame rules, which have to be notified in the Official Gazette, to carry out the provisions of the RTI Act (Section 28, RTI Act).

The Court further observed that the Supreme Court will necessarily include the office of the Chief Justice and the judges. Hence, the Court concluded that the office of the Chief Justice or the judges is not separate from the Supreme Court. In other words, the Chief Justice and other judges constitute the “public authority,” that is, the Supreme Court.

The Court contemplated “Reading the definition of “information” and “right to information” under the RTI Act, the Court affirmed that information is understood broadly to mean “material in any form” which is accessible by the public authority and “held by or under the control of

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<sup>10</sup> SCC Online

any public authority.” [p.16] The Court relied on the Black’s Law Dictionary for interpreting the word ‘hold’ broadly to mean: “to keep, to retain, to maintain possession of or authority over.” [p. 18] The Court observed that any information on a private body, accessible by a public authority under any law, subject to applicable restrictions, will come within its purview. Further, validating the interpretation by the Full Judge Bench of the Delhi High Court, the Court held that the word “hold” is not purely a physical concept but refers to the appropriate connection between the information and the authority so that it can properly be said that the information is held by the public authority.

Additionally, the Court observed that the expressions “held by or under the control of any public authority” and “information accessible under this Act” are restrictive and reflect the limits to the “right to information” granted under Section 3 of the RTI Act. Hence, the right to information is not an absolute right. Such restriction might be applied in a situation when personal information is asked for, which has no relationship to any public activity or interest and would cause invasion of privacy of the individual. Highlighting the situation, the Court referred to the *Thalappalam Service Cooperative Bank Limited v. State of Kerala and others*<sup>11</sup> in which it was held that the competent authority is not bound to disclose such information unless he is satisfied that the larger public interest justifies the disclosure of such information”<sup>12</sup>

The Court noted that the “RTI Act sets out a practical and pragmatic regime to enable citizens to secure greater access to information available with public authorities by balancing diverse interests including efficient governance, optimum use of limited fiscal operations and preservation of confidentiality of sensitive information.” [p. 24] “the balancing has been done by providing for exceptions and conditions on access to information stated in Sections 8-11 of the Act. The Court further classified the exemption into two categories; those which incorporate absolute exemptions and others which incorporate qualified prohibitions and exemptions.”<sup>13</sup>

### **CONCURRING OPINIONS**

Justice Dhananjaya Y. Chandrachud delivered a concurring opinion. He stated that “judicial independence does not mean the insulation of judges from the rule of law. He further observed

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<sup>11</sup> (2013) 16 SCC 82

<sup>12</sup> SCC Online

<sup>13</sup> SCC Online

that judges are not elected representatives and are accountable to the trust which is vested in them as independent decision-makers.”

Justice Nuthalapati Venkata Ramana delivered a concurring opinion. He agreed with the Khanna J.’s judgment, he stated that: “We may note that right to information should not be allowed to be used as a tool of surveillance to scuttle effective functioning of the judiciary.”

### **CONCLUSION**

The public interest test would be applied to weigh the scales and on balance determine whether information should be furnished or would be exempt. In this case, the Court’s reasoning that the furnishing of such information in no way would violate the right to privacy of the judges and therefore there would be no need to distinguish whether the information asked for is in the public interest or not. Although the judgment raised several questions in the mind of scholars and retired judges regarding the use of RTI Act for matters such as this. Although much protested, this may be beneficial for the larger public of a democratic country where the citizens have been equipped with such Acts and provisions and have a medium to exercise their Fundamental Rights.



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