केन्द्रीयसूचनाआयोग
Central Information Commission
बाबागंगनाथमार्ग,मुनिरका
Baba Gangnath Marg, Munirka
नईदिल्ली, New Delhi – 110067

द्वितीय अपील संख्या/ Second Appeal No. CIC/POSTS/A/2019/600581

In the matter of:

Chandrakant Mohanlal Bhansali … अपीलकर्ता/Appellant

VERSUS
बनाम

CPIO, …प्रतिवादीगण /Respondent
& Sr. Supdt of Post Offices,
Department of Posts,
Office of the Sr. Supdt. of Post
Offices, Navi Mumbai Division,
Panvel, Dist. Raigad,
Maharashtra – 410 206

Relevant dates emerging from the appeal:

RTI : 11.09.2018	FA : 23.10.2018	SA : Nil
CPIO : 09.10.2018	FAO : 20.11.2018	Hearing : 03.12.2020

The following were present:

Appellant: Shri Chandrakant Mohanlal Bhansali and Advocate Sachin Bhosle, Representative, heard through video conferencing.

Respondent: Dr. Abhijeet Ichake, SSP, Department of Posts, Office of the Sr. Supdt. of Post Offices, Navi Mumbai Division, Panvel, Maharashtra, heard through video conferencing.

O R D E R

Information Sought:

The appellant filed an RTI application on 11.09.2018 seeking information on two points pertaining to lapse of Post office reservation No. 50 on CTS 2480(P), Khopoli, including;

1) Inspection of all concerned files.
2) The certified copies of all applications regarding the above said subject and all concerned correspondences made thereto may be provided.

The CPIO, vide letter dated 09.10.2018, denied information u/s 8(1)(d) & 8(1)(e) of the RTI Act, 2005. Being dissatisfied, the appellant filed **first appeal** dated 23.10.2018. FAA, vide order dated 20.11.2018, upheld the CPIO's reply.

Grounds for Second Appeal:

The appellant filed second appeal u/s 19 of the Act on the ground of unsatisfactory reply furnished by the respondent. He requested the Commission to direct the CPIO to provide complete information sought for and take appropriate legal action against the respondent.

Submissions made by Appellant and Respondent during Hearing:

The appellant's representative submitted that the information sought is pertaining to a land that was purchased by the appellant in public auction under the order of DRT, Mumbai. He further stated that the said land comprises of a number of reservations of which one was that of respondent's Post Office, that lapsed. Hence, in order to ascertain the facts pertaining to the said lapse, the appellant filed the RTI application in question. However, the respondent, malafidely, denied requisite information by wrongly invoking Section 8(1)(d) & 8(1)(e) of the RTI Act, 2005.

The respondent submitted that the land being referred to by the appellant's representative was reserved for Department of Posts in the year 1997. However, the plan pertaining to the same was approved in the year 2010 whereby two options were provided to the respondent authority – either to make direct purchase or to get into private negotiations with the concerned parties. He further submitted that since the reservation was in the name of the respondent public authority, a notice, as per law, should have been given to them before making the public auction. An objection in respect of the same was also raised with the District Administrator and the same has also been accepted. Further, MRTP Act has also been violated by the appellant. With respect to the inspection sought vide point no. 1, the respondent submitted that the concerned file contains several communications involving commercial secret that are held by the respondent authority in fiduciary capacity and if the same are disclosed or made available for inspection, the result would be multiple litigations filed against the respondent authority in order to intervene with the acquisition of land by the respondent that is in process. The respondent furthermore submitted that no larger public interest is involved in disclosure of such information and it is merely on account of the private interest of the appellant that the information is being sought for. He then referred to the decision of the Hon'ble High Court of Delhi in the matter of *Vijay Prakash vs. UOI and others* quoting that in a private dispute, the basic protection afforded by virtue of the exemption from disclosure enacted under Section 8(1)(j) cannot be lifted or disturbed unless the petitioner is able to justify how such disclosure would be in 'public interest'. The respondent requested the Commission to consider the private interest involved herein and the lack of larger public interest and pass appropriate orders.

In his reply, the appellant's representative submitted that the ratio laid down in the matter of *Vijay Prakash vs. UOI and others* does not apply to the instant case as the facts leading to the said judgement are completely different to the facts underlining the instant case. On being queried regarding the larger public interest involved therein, the appellant's representative submitted that due to delay on respondent's part, their reservation lapsed. Now, in order to protect his interest, the appellant needs the desired information so as to enable him to take appropriate legal action.

The written submissions dated 24.11.2020 filed by the respondent were taken on record.

Decision:

The Commission, after hearing the submissions of both the parties and perusing the records, refers to the decision of the Hon'ble High Court of Delhi in the matter of ***Naresh Trehan v. Rakesh Kumar Gupta*** (W.P(C) 85/2010) decided on 24.11.2014, wherein it was held as under:

> *"14. ....Such information would clearly disclose the pricing policy of the assessee and public disclosure of this information may clearly jeopardise the bargaining power available to the assessee since the data as to costs would be available to all agencies dealing with the assessee. It is, thus, essential that information relating to business affairs, which is considered to be confidential by an assessee must remain so, unless it is necessary in larger public interest to disclose the same.* ***If the nature of information is such***

that disclosure of which may have the propensity of harming one's competitive interests, it would not be necessary to specifically show as to how disclosure of such information would, in fact, harm the competitive interest of a third party. In order to test the applicability of Section 8(1)(d) of the Act it is necessary to first and foremost determine the nature of information and if the nature of information is confidential information relating to the affairs of a private entity that is not obliged to be placed in public domain, then it is necessary to consider whether its disclosure can possibly have an adverse effect on third parties."

Further, in the case of ***Reserve Bank of India & Ors. vs. Jayantilal N. Mistry & Ors.*** *(2016) 3 SCC 525* the Hon'ble Supreme Court while dealing with the defence of RBI that it was in the fiduciary relationship with the Bank, noted as follows:- —

"55. The Advanced Law Lexicon, 3rd Edition, 2005, defines fiduciary relationship as "a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the fiduciary relationship. Fiduciary relationship usually arise in one of the four situations (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act or give advice to another on matters falling within the scope of the relationship, or (4) when there is specific relationship that has traditionally be recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer. xxx

57. The term fiduciary relationship has been well discussed by this Court in the case of Central Board of Secondary Education and Anr. v. Aditya

Bandopadhyay and Ors. (supra). In the said decision, their Lordships referred various authorities to ascertain the meaning of the term fiduciary relationship and observed thus: 20.1) Black's Law Dictionary (7th Edition, Page 640) defines 'fiduciary relationship' thus: ***A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship.*** *Fiduciary relationships-such as trusteebeneficiary, guardian-ward, agent-principal, and attorneyclient-require the highest duty of care. Fiduciary relationships usually arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer."*

A reference is further made to the decision of the Hon'ble High Court Of Bombay ***Writ Petition Nos. 2912 and 3137 of 2011*** decided on 01.07.2011 wherein it has held as under:

"12. The RTI Act is an Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. The preamble of the RTI Act itself refers to this aspect and the constitutional principles enshrined in several articles of the Constitution. It is very clearly postulated that democracy requires an informed citizenry and transparency of information

> *which are vital to its functioning and also to contain corruption and to hold the Governments and their instrumentalities accountable to the governed. The 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. Therefore, the RTI Act seeks to harmonize these conflicting interests while preserving the paramount nature of democratic ideals.*
>
> *14. On the own showing of the Petitioner, Clause (d) provides that the information can be disclosed if the competent authority is satisfied that larger public interest warrants such disclosure. Therefore, that clause as admitted by Mr. Manohar is not absolute. It does not say that the information including commercial confidence, trade secrets or intellectual property, the disclosure of which, would harm the competitive position of a third party; cannot be demanded or if demanded, cannot be disclosed even if larger public interest warrants the same."*

Contemplating on the most important aspect of disclosing an exempted information i.e. *'larger public interest,'* the Commission referred to the decision of the Hon'ble Supreme Court in the matter of ***Bihar Public Service Commission vs. Saiyed Hussain Abbas Rizwi*** *(2012) 13 SCC 61* wherein, while explaining the term 'Public Interest,' it was held that:

> *"22. The expression "public interest" has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression "public interest" must be viewed in its strict sense with*

all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression "public interest", like "public purpose", is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs (State of Bihar v. Kameshwar Singh([AIR 1952 SC 252]). It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake [Black's Law Dictionary (8th Edn.)].”

Further, the Hon’ble Supreme Court in the matter of ***Ashok Kumar Pandey vs. The State of West Bengal*** Writ Petition (Crl.) 199 of 2003 decided on 18.11.2003 had made reference to the following texts for defining the meaning of ‘public interest’, which is stated as under:

“Strouds Judicial Dictionary, Volume 4 (IV Edition),'Public Interest' is defined thus:
"Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."
In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows :
Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean anything the

particular localities, which may be affected by the matters in question. Interest shared by national government....”

In ***Mardia Chemical Limited vs. Union of India*** *(2004) 4 SCC 311*, the Hon’ble Supreme Court of India while considering the validity of SARFAESI Act and recovery of non-performing assets by banks and financial institutions in India, recognized the significance of Public Interest and held as under :

> *“............Public interest has always been considered to be above the private interest.* ***Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact in the socio-economic drive of the country****..........”*

Every action of a Public Authority is expected to be carried out in Public Interest. The Hon’ble Supreme Court of India in the matter of ***Kumari Shrilekha Vidyarthi etc. vs. State of UP and Ors.*** *1990 SCR Supl. (1) 625* dated 20.09.1990 held that:

> *“Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest.”*

In light of the above noted judgements and considering the facts of the case, the Commission observes that the appellant in the present matter is seeking inspection of files pertaining to a disputed land for his personal interest and no larger public interest is involved therein. Moreover, since the land and the reservations thereon appear to be dubious, disclosure of correspondences pertaining to the same that are held by the respondent public authority in confidence and trust of all the other parties/authorities/officials involved therein, would only create havoc owing to the pendency of land acquisition. In view of the foregoing, the Commission endorses the CPIO's reply and observes that no further intervention of the Commission is required in the matter. The appellant is, however, advised to approach the appropriate forum to resolve the dispute pertaining to the above noted lapsed reservation and the title of the land.

With the above observations, the appeal is disposed of.

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

The appeal, hereby, stands disposed of.

Amita Pandove (अमिता पांडव)
Information Commissioner (सूचना आयुक्त)
दिनांक / Date: 03.12.2020

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

B. S. Kasana (बी. एस. कसाना)
Dy. Registrar (उप-पंजीयक)
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<u>Addresses of the parties</u>:

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3. Mr. Chandrakant Mohanlal Bhansali