



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

Date of decision: 20th DECEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 4288/2012**

UNION OF INDIA AND ANR

..... Petitioners

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kr. Saxena, Mr. Mukesh Kr. Tiwari, Mr. Ramneek Mishra and Ms. Poonam Mishra, Advocates. for UOI.

versus

SUBHASH CHANDRA AGRAWAL

..... Respondent

Through: Ms. Suroor Mander and Ms. Ria Yadav, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. This instant writ petition under Article 226 of the Constitution of India has been filed with the following prayers:

"i. Pass appropriate writ, directions or order in the nature of certiorari and or any other writ, direction or order quashing the impugned order dated 05.12.2011 passed by the Ld. Central Information Commission in Appeal No.CIS/SS/A/2011/001476;

ii. Such other and further direction which this Hon'ble Court may deem fit and proper in the facts of this case."

2. The Petitioner herein is aggrieved by the Impugned Order dated 05.12.2011 whereby the Central Information Commission (CIC) allowed the appeal of the Respondent herein and has directed the Central Public Information Officer (CPIO), Department of Legal Affairs, Ministry of Law and Justice to provide the copy of the note/opinion of 2007 given by the then



Solicitor General of India to the Department of Telecommunications, erstwhile Ministry of Communications and Information Technology *vis-à-vis* various cases filed by the Cellular Operators Association of India before the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) and this Hon'ble Court regarding the allotment of 2G Spectrums.

3. The facts, in brief, leading to the filing of the present writ petition are as under:

- i. The Respondent herein filed an RTI Application dated 21.05.2010 with the Central Public Information Officer, Department of Telecommunications, Union Ministry of Communication and Information Technology, seeking information and details regarding a letter dated 26.12.2007 by the Honourable Union Minister for Telecommunications to the then Honourable Prime Minister regarding the allotment of 2G Band/Spectrums.
- ii. The RTI Application dated 21.05.2010 was filed enclosing the letter dated 26.12.2007 and sought for the following information:

"1. Is the enclosed letter dated 26.12.2007 authentic

2. Was any discussion held with the Union Ministry for External Affairs and the then Solicitor General on the aspects referred in enclosed letter dated 26.12.2007?

3. If yes, please provide copies of minutes of meeting with the then Union Minister for External Affairs and the then Solicitor General on the aspects referred in enclosed letter dated 26.12.2007.

4. Was any written note/advice also given in the matter by the then Solicitor General.



5. *If yes, copy of the said advice/note by the then solicitor general.*

6. *Did the then Union Minister for External Affairs give any written note/advice in the matter?*

7. *If yes, copy of said advice/note by the then Union Minister for External Affairs.*

8. *Was there any meeting of Group of Ministers on the matter as referred in enclosed letter dated 26.12.2007?*

9. *If yes, minute of meetings of group of Ministers in the matter.*

10. *Complete set of documents/correspondence/file noting etc relating to aspects/matter mentioned in the enclosed letter dated 26.12.2007.*

11. *Any other related information.*

12. *File noting on movement of this RTI Petitioner as well."*

- iii. The CPIO, Department of Telecommunications, Ministry of Communication and Information Technology *vide* Order dated 10.06.2010 denied the disclosure of the information sought for by the Respondent on the ground that the information was not available with the Department of Telecommunication. The relevant excerpt is as follows:

"(1) The authentication of any document does not cover under the scope of information as defined in section 2(i) of the RTI Act, 2005.



(2 to 11) No such information is available in writing."

- iv. The Respondent, thereafter, on 16.06.2010 filed an appeal against the Order of the CPIO dated 10.06.2020 which was rejected *vide* Order dated 30.07.2010. The Order by the First Appellate Authority (FAA) observed that the concerned CPIO had aptly and properly replied to the application dated 21.05.2010 of the Respondent.
- v. The Respondent, thereafter, preferred an appeal No.CIC/DS/C/2010/001762 to the Order dated 30.07.2010 before the Central Information Commission (CIC) wherein the CIC partly allowed the appeal of the Respondent and provided that the grounds to deny information to the Respondent were not sustainable in law. The CIC, therefore, remanded the RTI application back to the CPIO, Department of Telecommunications, Ministry of Telecommunication and Information Technology to reconsider the same.
- vi. The concerned CPIO, thereafter, reconsidered the application of the Respondent afresh and *vide* Order dated 08.02.2011 partly allowed the RTI application by confirming the authenticity of the letter dated 26.12.2007 by the then Minister of Communications and IT to the then Hon'ble Prime Minister. The CPIO in the reply to queries Nos.2-10 had informed that there existed no document/information in the Department of Telecommunications regarding the meeting between the then Solicitor General of India, the Union Minister of External Affairs and the Union Minister of



- Telecommunications. The CPIO was directed to forward the RTI Applications to other ministries which would be able to provide the information sought for.
- vii. Pursuant to a letter dated 15.03.2011 by the CPIO, Department of Telecommunications to other concerned CPIO's, the Respondent was apprised of the existence of the opinion tendered by the then Solicitor General in the matter as sought for in Query 4 and 5 of the RTI application *vide* letter dated 07.04.2011 by the CPIO, Ministry of Law and Justice. It was also stated that advice tendered by Law Officers, such as the Solicitor General of India, is confidential and privileged information, disclosure of which would be exempted under Section 8(1)(d) of the RTI Act, 2005.
- viii. The First Appellate Authority dismissed the appeal of the Petitioner *vide* Order dated 05.05.2011 stating that the information as sought for is exempted under Section 8(1)(e) of the RTI Act and not Section 8(1)(d) of the RTI Act.
- ix. The aforesaid Order dated 05.05.2011 was challenged before the Ld. CIC in Appeal No. CIC/SS/A/2011/001476 and *vide* impugned Order dated 5.12.2011, the Ld. CIC allowed the appeal of the Petitioner and directed the CPIO, Ministry of Law and Justice to provide the opinion/note tendered by the then Solicitor General of India to the then Minister of Telecommunications. The Petitioners, the Ministry of Law and Justice as well as the Ministry of Communications and Information Technology, being aggrieved by the impugned Order have filed this present writ petition.



4. Heard learned Counsel for the Parties and perused the material on record.

5. The Ld. Counsel for the Petitioner, at the outset, submitted that the Central Information Commission has already adjudicated on the issue of the opinion tendered by the Ld. Solicitor General of India to different governmental agencies in Appeal No. CIC/SS/A/2011/000886, titled Rajiv Ranjan Verma v. Government of India *vide* Order dated 20.07.2011. He states that the CIC has already held that any advice/opinion tendered by the Ministry to other Government Departments does not fall under the category of information available to the Law Ministry in fiduciary capacity and Section 8(1)(e) of the RTI Act is not attracted with respect to such opinion/advices in any manner whatsoever. The relevant excerpt of the said case is as follows:

“(10) It seems to the Commission that the statement made by the Respondent is more like a passing reference or a secondary argument rather than an actual ground to deny information under the RTI Act. The Commission shall take this opportunity to clarify that the records of any advice / opinion tendered by the Respondent Ministry to other Government Departments do not fall under the category of information available to the Law Ministry in fiduciary capacity. Section 8 (1) (e) is not attracted with respect to such opinion/advices in any manner whatsoever.

(11)The reasoning behind the above observation can be best understood in light of the following illustration. The Department of Legal Affairs of the Respondent Ministry is principally concerned with advising the various Ministries of the Central Government. Thus, there exists a two-way channel connecting the Law Ministry with any other Department of the Central Government, that is to say, on one way, the File



seeking opinion travels from the Department concerned to the Law Ministry and on the other hand, the opinion tendered on that File travels from the Department of Legal Affairs, Law Ministry to the concerned Department.

(12) For the sake of argument, even if the stand of the Law Ministry is accepted, then the two-way channel through which the File travels between Law Ministry and the Department concerned will per se become a sacrosanct channel containing such information which will never be disclosed in any contingency under Section 8 (1) (e) of the RTI Act. Thus, in such a hypothetical situation, the opinion / advice tendered by the Law Ministry to any Department of the Central Government will per se become exempted from disclosure under the RTI Act and even if the concerned Department is more than ready and willing to disclose such advice / opinion which is held by or under the control of that Department, still it will be unable to do so because the information in the nature of such opinion / advice will per se be exempted under Section 8 (1) (e) of the RTI Act. That is certainly not the position warranted by the letter and spirit of the RTI Act.

(13) Thus, the Commission is of the view that the decision as to whether the legal opinion / advice tendered by the Law Ministry to the concerned Department of the Government of India be disclosed or not under the RTI Act, has to be made by the Department seeking that advice and it shall be open to that Department / Ministry to invoke the relevant clause of Section 8 (1) of the RTI Act if it chooses , not to provide the information sought under the RTI Act.”
(emphasis supplied)

6. He further relied on the Order dated 22.01.2018, passed by this Court in **W.P.(C) 8687/2011** titled as Union of India v. Rajiv Ranjan Verma



wherein the writ petition assailing the Order of the Hon'ble CIC in Rajiv Ranjan Verma (supra) was dismissed. The relevant excerpt is as follows:

“(8)The CIC accepted the aforesaid contentions and held that the information as required by the respondent ought to be sought from the authority which is holding the relevant file. The CIC observed that in the present case, DoPT being the parent Department of Mr Pranav Kumar would have originated the file and, therefore, the information ought to be sought from the said Department. Accordingly, the CIC directed the CPIO of the petitioner to transfer the application to the CPIO of DoPT and further directed that the concerned CPIO of DoPT to take appropriate action under the provisions of the Act with respect to the respondent’s application under the Act.

(9)The CIC also observed that the decision whether to disclose the information or not would have to be taken by the concerned Department and it will be open for the said Department to invoke the relevant provisions of Section 8(1) of the Act if it chooses not to provide the information as sought by the information seeker.

(11) It is not necessary to adjudicate the said issue in this petition because – as rightly held by the CIC – the decision whether the information sought by the respondent is to be withheld from him would have to be taken by the concerned department (in this case, DoPT). Paragraph 13 of the impugned order is set out below:

“13. Thus, the Commission is of the view that the decision as to whether the legal opinion / advice tendered by the Law Ministry to the concerned Department of the Government of India be disclosed or not under the RTI Act, has to be made by the Department seeking that advice and it shall be open to that Department / Ministry to



invoke the relevant clause of Section 8(1) of the RTI Act if it chooses not to provide the information sought under the RTI Act.”

7. The Counsel for the Petitioner relied on the findings of both the above-mentioned orders to submit that the decision to not provide the advice/letter tendered by the Ministry of Law and Justice to other Ministries would have to be made by the concerned department invoking the relevant provisions under Section 8(1) of the Right to Information Act, 2005. He, therefore, states that, according to the directions of this court, the Ministry of Law and Justice, and the Ministry of Telecommunications are entitled to deny the disclosure of the advice/letter tendered by the Solicitor General to the Minister of Telecommunications by invoking Section 8(1)(e) of the RTI Act.

8. The Ld. Counsel for the Petitioner further submitted that for opinion given by Ministry of Law and Justice, the Ministry of Law and Justice has invoked the exemption under Section 8(1)(e) of the Right to Information Act, 2005. He states that the Legal Opinion tendered by the Ld. Solicitor General to any Ministry is only tendered under a fiduciary relationship as established by law. The Counsel placed reliance on CPIO, Supreme Court of India v Subhash Chandra Agarwal, (2020) 5 SCC 481. The Counsel for the Petitioner further places reliance upon the Judgment of the Apex Court in Kokkanda B. Poondacha v K.D. Gangapathi, (2011) 12 SCC 600 wherein the Apex Court provided that the nature of the relationship between a lawyer and a client is in the nature of a fiduciary relationship, and the relationship has a confidential character requiring a high degree of fidelity and personal trust.



9. The learned Counsel for the Petitioner further placed reliance upon a decision of the Kerala High Court in Kunjukrishnan Nair v State of Kerala, 1998 SCC OnLine Ker 316, wherein it was held that the relationship between a Government Law Officer/ Pleader and the Government is that of a litigant and a lawyer, and hence, the advice and information given to the concerned Government Department is given in a fiduciary capacity by a Government Pleader. Lastly, to establish that work under such a relationship would be termed a fiduciary relationship, the learned Counsel for the Petitioner relied upon the judgment passed by the Kerala High Court in Secretary to Advocate General v State Information Commissioner and Ors, 2022 SCC Online Ker 4844, wherein it was observed that the relationship between an Advocate General of a State and the Government of that State is in the nature of a fiduciary relationship and the opinions tendered by the Advocate General would be exempted under Section 8(1)(e) of the RTI Act.

10. The Ld. Counsel for the Petitioner stated that in a fiduciary relationship between the Law Officer and the government, the Law Officer is expected to discharge his duties in confidence and for the benefit and the advantage of the beneficiary i.e., the State. He, therefore, stated that the Letter dated 26.12.2007 containing the legal opinion of the Solicitor-General was tendered to aid the process of decision-making of the authority, and was tendered in good faith and in confidence, and hence, should be exempted from disclosure under Section 8(1)(e) of the Right to Information Act, 2005.

11. The Ld. Counsel for the Petitioner thereafter submitted that the impugned order was mechanically passed by the CIC by applying the same principle that was applied in the Rajiv Ranjan Verma case (supra). The learned Counsel referred to the question which arose therein, which was



related to the disclosure of opinion given by the Ministry of Law and Justice to other government departments. He submitted that the question which arose in the case before the CIC in the present case solely pertained to the disclosure of the opinion of the Solicitor General of India, and not the opinion of the Minister for Law and Justice. Ld. Counsel for the Petitioner, therefore, submitted that the opinion of the Ld. Solicitor General of India to the Ministry of Government of India/Government Departments is a privileged document under the provisions of Indian Evidence Act, 1872. He placed reliance upon Section 126 of the Indian Evidence Act, 1872 which provides for a bar on disclosure of communications that occur between a barrister, attorney, pleader or vakil with their clients without their express consent. He, therefore, argued that the legal opinion/advice given by the Ld. Solicitor General cannot be disclosed under the RTI Act. The Ld. Counsel for the Petitioner also placed reliance on Section 129 of the Evidence Act, 1872, which bars a client from disclosing any confidential communications which takes place between them and their legal professional adviser. The Ld. Counsel, therefore, submitted that Sections 126 to Section 131 of the Evidence Act, 1872 expressly provide for non-disclosure of privileged documents between a Lawyer and Client. To support the contention, the Counsel submitted that Section 22 of the RTI Act does not have an overriding effect on the Privilege that is afforded between Lawyers and Clients, and as such, the Opinion/Note rendered by the then Solicitor General of India to the Ministry of Telecommunications will stand exempted.

12. *Per contra*, the Ld. Counsel for the Respondent submitted that the scope of Section 8(1)(e) of the RTI Act has already been decided by the



Supreme Court in Central Board of Secondary Education v Aditya Bandopadhyay, (2011) 8 SCC 495. The relied paragraph is as follows:

"...In a Philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the word 'information available to a person in his fiduciary relationship' are used in section 8(l)(e) of the RTI Act in its normal and well recognised sense, that is to refer to persons who act in a fiduciary capacity, with reference to specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the action of the fiduciary...."

13. The Ld. Counsel for the Respondent submits that in the present case the Minister cannot be said to be a beneficiary of the Law Officer's opinion. He states that a public authority rendering an opinion to another public authority is for the benefit of the public at large. The Ld. Counsel for the Respondent further relied on a judgement of this Hon'ble Court in Union of India v Col. V.K. Shaad, W.P. (C) 499/2012 and provided that in a relationship in an institutional setup, such as an inter-governmental one, a note provided by a personnel to another personnel cannot be said to give way to a fiduciary relationship. The Ld. Counsel for the Respondent, hence, submitted that since the government and the various ministries are part of an institutional setup, the information or opinions provided inter-ministry should also not establish a relationship in nature of a fiduciary. He also submitted that the Order dated 22.01.2018, passed by this Hon'ble Court in W.P.(C) 8687/2011 does not provide that the opinion and/or advice given by the Ministry of Law and Justice to other Departments of Central



Government is exempt from disclosure *ipso facto* under Section 8(1) of the RTI Act in all circumstances.

14. The Ld. Counsel for the Respondent submitted that the Ministry of Law and Justice is duty-bound to give a correct legal opinion to other departments and ministries as well as the Cabinet for advancing public interest, and hence, the other departments cannot be treated as a beneficiary of such information as the objective of both the Ministry of Law and other departments is to uphold public interest, and if such advice is tendered for public interest, it should be provided under Section 8(2) of the RTI Act. Furthermore, the Ld. Counsel for the Respondent submitted that similarly, Law Officers of the country under the Ministry of Law and Justice, such as the Advocate General and the Solicitor General of India, are supposed to uphold public interest while tendering an opinion individually to any Minister, and hence, the same should also not be exempted from disclosure under Section 8 of the RTI Act.

15. The Counsel further submitted that in the instant case, the information sought for related to the advice given by the then Solicitor General to the Minister of Telecommunications on the procedure for allotment of various 2G spectrums bands. He submitted that the decision thereafter by the Government of India in allocating the Spectrum Bands was based on the advice tendered by the Solicitor General. He further stated that the allocation of telecom licenses and 2G spectrums was cancelled in 2012 by the Supreme Court in Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1 and new licenses were supposed to be issued to licensees, and thus, there existed an overwhelming public interest in making public the opinions



rendered by the Solicitor General and other Law Officers to the Minister of Telecommunications.

16. The Ld. Counsel for the Respondent submitted that the reliance placed on the above-mentioned provisions is misplaced as he states that Section 22 of the RTI Act is widely worded and overrides all other laws, including the Official Secrets Act. He, therefore, submitted that any exemption from disclosure of any information should be covered under the exemptions provided under Section 8(1) of the RTI Act.

17. This Court has perused the material on record and the submissions by the Ld. Counsel appearing for all the parties, and has taken note of the Order dated 22.05.2018 in W.P.(C) 8687/2011. The relevant paragraph is as follows:

“12. The issue whether DoPT can deny the information sought under section 8(1)(e) of the Act would arise only when the concerned CPIO responds to the respondent’s request.

13. In view of the above, no interference with the impugned order is called for at this stage. However, it is clarified that the question sought to be raised by the petitioner in this case is left open.”

18. The issue raised in the present Writ Petition has not been adjudicated in W.P.(C) 8687/2011.

19. Section 8(1)(e) of the RTI Act exempts disclosure of 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. Section 8(1)(e) of the RTI Act reads as under:

“Section 8 in The Right To Information Act, 2005



(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

.....

(e) 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;.....”

20. The Court, at this juncture, deems it expedient to examine the relationship forged between the Solicitor General of India and any government ministry to which a legal opinion/advice is tendered.

21. In CPIO, Supreme Court of India v. Subhash Chandra Agarwal, (2020) 5 SCC 481, the Supreme Court, while explaining the ambit of a fiduciary relationship, provided as follows:

“44. In RBI [RBI v. Jayantilal N. Mistry, (2016) 3 SCC 525 : (2016) 2 SCC (Civ) 382] this Court had expounded upon the expression “fiduciary relationship” used in clause (e) to sub-section (1) of Section 8 of the RTI Act by referring to the definition of “fiduciary relationship” in the Advanced Law Lexicon, 3rd Edn., 2005, which reads as under : (SCC p. 559, para 57) “57. [...] Fiduciary relationship.—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 fiduciary relationship.... Fiduciary relationship usually arises 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 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 recognised as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer.” Thereafter, the Court had outlined



the contours of the fiduciary relationship by listing out the governing principles which read : (SCC p. 559, para 58) “58. [...] (i) No conflict rule—A fiduciary must not place himself in a position where his own interest conflicts with that of his customer or the beneficiary. There must be “real sensible possibility of conflict”. (ii) No profit rule—A fiduciary must not profit from his position at the expense of his customer, the beneficiary. (iii) Undivided loyalty rule—A fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position where his duty towards one person conflicts with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer's affairs. (iv) Duty of confidentiality—A fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person.”

45. *Fiduciary relationships, regardless of whether they are formal, informal, voluntary or involuntary, must satisfy the four conditions for a relationship to classify as a fiduciary relationship. In each of the four principles, the emphasis is on trust, reliance, the fiduciary's superior power or dominant position and corresponding dependence of the beneficiary on the fiduciary which imposes responsibility on the fiduciary to act in good faith and for the benefit of and to protect the beneficiary and not oneself. Section 8(1)(e) is a legal acceptance that there are ethical or moral relationships or duties in relationships that create rights and obligations, beyond contractual, routine or even special relationships with standard and typical rights and obligations. Contractual or non-fiduciary relationships could require that the party should protect and promote the interest of the other and not cause harm or damage, but the fiduciary relationship casts a positive obligation and demands that the*



fiduciary should protect the beneficiary and not promote personal self-interest. A fiduciary's loyalty, duties and obligations are stricter than the morals of the marketplace and it is not honesty alone, but the punctilio of an honour which is the most sensitive standard of behaviour which is applied (see Opinion of Cardozo, J. in Meinhard v. Salmon [Meinhard v. Salmon, (1928) 164 NE 545, 546 : (1928) 249 NY 456]). Thus, the level of judicial scrutiny in cases of fiduciary relationship is intense as the level of commitment and loyalty expected is higher than non-fiduciary relationships. Fiduciary relationship may arise because of the statute which requires a fiduciary to act selflessly with integrity and fidelity and the other party, that is, the beneficiary, depends upon the wisdom and confidence reposed in the fiduciary. A contractual, statutory and possibly all relationships cover a broad field, but a fiduciary relationship could exist, confined to a limited area or an act, as relationships can have several facets. Thus, relationships can be partly fiduciary and partly non-fiduciary with the former being confined to a particular act or action which need not manifest itself in entirety in the interaction and relationship between two parties. What would distinguish non-fiduciary relationship from fiduciary relationship or an act is the requirement of trust reposed, higher standard of good faith and honesty required on the part of the fiduciary with reference to a particular transaction(s) due to moral, personal or statutory responsibility of the fiduciary as compared to the beneficiary, resulting in dependence of the beneficiary. This may arise due to superior knowledge and training of the fiduciary or the position he occupies.”

22. In Central Board of Secondary Education v Aditya Bandopadhyay (supra), the Supreme Court elaborated the duties of a fiduciary, and provided as follows:



“39. The term “fiduciary” refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term “fiduciary relationship” is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party.”

23. In Union of India v Central Information Commission, 2009 SCC Online Del 3876, this Hon’ble Court observed as follows:

“7. In Woolf v. Superior Court, (2003) 107 Cal.App. 4th 25, the California Court of Appeals defined fiduciary relationship as “any relationship existing between the parties to the transaction where one of the parties is duty bound to act with utmost good faith for the benefit of the other party. Such a relationship ordinarily arises where confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interests of the other party without the latter's knowledge and consent.



8. *Fiduciary can be described as an arrangement expressly agreed to or at least consciously undertaken in which one party trusts, relies and depends upon another's judgment or Counsel. Fiduciary relationships may be formal, informal, voluntary or involuntary. It is legal acceptance that there are ethical or moral relationships or duties in relationships which create rights and obligations. The fiduciary obligations may be created by a contract but they differ from contractual relationships for they can exist even without payment of consideration by the beneficiaries and unlike contractual duties and obligations, fiduciary obligations may not be readily tailored and modified to suit the parties. In a fiduciary relationship, the principal emphasis is on trust, and reliance, the fiduciary's superior power and corresponding dependence of the beneficiary on the fiduciary. It requires a dominant position, integrity and responsibility of the fiduciary to act in good faith and for the benefit of and to protect the beneficiary and not oneself."*

24. Flowing from the observations of the Supreme Court in CPIO, Supreme Court v. Subhash Chandra Agarwal, this Court notes that to establish a relationship of a fiduciary and beneficiary between two persons, whether it be voluntary, involuntary, formal or informal, it has to satisfy the test of four rules and duties as established in the Reserve Bank of India v. Jayantilal N. Mistry, (2016) 3 SCC 525, which are the *No Conflict Rule, No Profit Rule, Undivided Loyalty Rule* and the *Duty of Confidentiality*. In the present case, to examine the relationship between the Solicitor General of India and the Union of India and other Union Ministries, it is important to peruse the rules for engagement of a Law Officer of the Union of India,



namely the Law Officer (Conditions of Service) Rules, 1987. Rule 5 of the same states as follows:

“5. Duties- It shall be the duty of a Law Officer –

(a) to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time, be referred or assigned to him by the Government of India.

(b) to appear, whenever required, in the Supreme Court or in any High Court on behalf of the Government of India in cases (including suits, writ petitions, appeal and other proceedings) in which the Government of India is concerned as a party or is otherwise interested;

(c) to represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution; and

(d) to discharge such other functions as are conferred on a Law Officer by or under the Constitution or any other Law for the time being in force.”

25. Rule 8 of the Law Officer (Conditions of Service) Rules states as follows:

“8. Restrictions- (1) A Law Officer shall not -

(a) hold briefs in any court for any party except the Government of India or the Government of a State or any University, Government School or College, local authority, Public Service Commission, Port Trust, Port Commissioners, Government aided or Government managed hospitals, a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956), any Corporation owned or controlled by the State, any



body or institution in which the Government has a preponderating interest;

(b) advise any party against the Government of India or a Public Sector Undertaking, or in cases in which he is likely to be called upon to advise, or appear for, the Government of India or a Public Sector Undertaking;

(c) accept appointment to any office in any company or corporation without the permission of the Government of India;

(d) advise any Ministry or Department of Government of India or any statutory organization or any Public Sector Undertaking unless the proposal or a reference in this regard is received through the Ministry of Law and Justice, Department of Legal Affairs.”

26. On the perusal of the Rules for engagement of Law Officers, it is seen that it is the duty of the Law Officers to give advice to the Government of India on legal matters. A Law Officer is not allowed to hold brief for any party except with the permission of the Government of India. The Law Officer is also restricted from advising any party against the Government of India or a Public Sector Undertaking.

27. What can be seen from the Rules as well as the judgements of the Supreme Court is that the relationship between the Solicitor General of India and the Government of India is that of a fiduciary and a beneficiary. The Solicitor General of India is duty bound to work for the benefit of the Union and other departments in good faith, where there exists trust and reliance by the beneficiary upon the Ld. Solicitor General. This Court finds no infirmity with the argument put forth by the Ld. Counsel for the Petitioner that the advice tendered by the Ld. Solicitor General to the Union of India and other



various government departments is done in the nature of a fiduciary, and hence the exception of Section 8(1)(e) of the RTI Act has been invoked.

28. The Right to Information Act, 2005 was enacted on 12th October, 2005, with the objective of empowering the citizens of this country to seek information from any public authority, and in turn uphold the principles of a true democracy by keeping the public authorities in check by making them answerable to the general populous. However, as highlighted in the aforementioned discussion, not all information can be disclosed under the purview of the Right to Information Act, 2005. The Section 8 of the RTI Act is titled “Exemption from disclosure of Information” which suspends the obligation for disclosure of information under various heads under Section 8(1)(a) to 8(1)(j). However, there exists a *non-obstante* clause in the form of Section 8(2) which allows for disclosure of exempted information under Section 8(1) in the interest of the public at large. The relevant portion of the said Section is as follows:

“8(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.”

29. It is *ad idem* that the disclosure of such information as exempted under Section 8 for public interest should also ensure that the disclosure in public interest should outweigh the harm caused to protected interests of a public authority or public functionary, and hence, the Court has to ensure that the disclosure of information (if need be) is done so while establishing a proper balancing act between the right to information of a citizen and the various state functionaries.



30. Section 8(2) of the RTI Act provides that if information which has been exempted from being provided has the effect of bolstering the private decision-making of individuals and public authorities as well as the nourishment of an individual and bolsters accountability on the part of public authorities and it furthers good governance that leads to the growth of a healthy democracy, the same can be provided under Section 8(2) of the RTI Act.

31. However, Section 8(2) of the RTI Act can be pressed only if the conditions therein are satisfied, i.e. if public interest in disclosure outweighs the harm to the protected interest. Just by simply stating that it is in public interest to disclose the information would not be sufficient unless weighty reasons are given as to how the information which is exempted from being provided under Section 8(1) of the RTI Act should be provided and as to how the public interest would outweigh the harm to the protected interest.

32. The Petitioner has not been able to demonstrate as to what is the public interest that would be subserved so as to invoke the provisions of Section 8(2) of the RTI Act. In the absence of any public interest, the information sought for by the Respondent, which is exempted under Section 8(1) of the RTI Act, this Court is not inclined to invoke the provisions of Section 8(2) of the RTI Act.

33. Resultantly, the Writ Petition succeeds and the Order dated 05.12.2011 is set aside.

34. The Writ Petition is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

DECEMBER 20, 2023/t