



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10909 OF 2023

Securities and Exchange Board of India

Being a Regulatory Authority established
under the provisions of the Securities
and Exchange Board of India Act, 1992
Having its Head Office at SEBI Bhavan
Plot No.C4-A, G Block, Bandra-Kurla
Complex, Bandra (East), Mumbai 400
051

... Petitioner

Versus

1. **Central Information Commissioner**
CIC Bhawan, Baba Gangnath Marg,
Munirka, New Delhi 110067

2. **Shri. Subhash Chandra Agarwal**
1775 Kucha Lattushah, Dariba,
Chandni Chowk, Delhi- 110006

3. **National Stock Exchange of India
Ltd.**NSE Corporate Office, Exchange
Plaza, Plot No.C/1, G Block, Bandra
Kurla Complex, Bandra (E),
Mumbai-400 051

... Respondents

WITH
WRIT PETITION NO. 10910 OF 2023

Securities and Exchange Board of India

Being a Regulatory Authority established
under the provisions of the Securities
and Exchange Board of India Act, 1992
Having its Head Office at SEBI Bhavan

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Plot No.C4-A, G Block, Bandra-Kurla
Complex, Bandra (East), Mumbai 400
051

... Petitioner

Versus

1. **Central Information Commission**
CIC Bhawan, Baba Gangnath Marg,
Munirka, New Delhi 110067
2. **Shri Subhash Chandra Agrawal**
1775 Kucha Lattushah, Dariba,
Chandni Chowk, Delhi 110006
3. **Bombay Stock Exchange Ltd.** A
recognized stock exchange
instituted under the provisions of
the Securities Contract (Regulation)
Act, 1956, having Address at
Phiroze Jeejeebhoy Towers Dalal
Street, Fort, Mumbai – 400001
4. **National Stock Exchange of India
Ltd.** NSE Corporate Office, Exchange
Plaza, Plot No. C/1, G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai - 400 051
5. **Multi Commodity Exchange of India
Ltd.** A company incorporated under
the Companies Act, 1956, having its
registered Office at Exchange
Square, Suren Road, Andheri (E),
Mumbai -400 093.
6. **Multi Commodity Exchange
Clearing Corporation Ltd**
A company incorporated under the
Companies Act, 1956, having its
registered office at CTS No. 255,

Exchange Square, Suren Road,
Andheri (E), Mumbai – 400 093. ... Respondents

WITH
WRIT PETITION NO. 10887 OF 2023

Subhash Chandra Agarwal, an adult
Indian Inhabitant, residing at 1775,
Kucha Lattushah Dariba, Chandni
Chowk, Delhi – 110 006 ... Petitioner

Versus

1. **Central Public Information Officer,
Securities and Exchange Board of
India,**
having its head office at plot No.C4-
A 'G' Block, Bandra-Kurla Complex,
Bandra (East), Mumbai- 400 051.
2. **BSE Limited**
having its registered office at 25th
Floor, PJ Towers, Dalal Street,
Mumbai-400 001
3. **National Stock Exchange of India
Ltd**
Having its registered office at
Exchange Plaza, C-1, Block G., BKC
Bandra, East, Mumbai- 400 051. ... Respondents

WITH
WRIT PETITION NO. 10888 OF 2023

Subhash Chandra Agarwal, an adult
Indian Inhabitant, residing at 1775,
Kucha Lattushah Dariba, Chandni
Chowk, Delhi – 110 006 ... Petitioner

Versus

1. **Central Public Information Officer,**

Securities and Exchange Board of India,

having its head office at plot No.C4-A 'G' Block, Bandra-Kurla Complex, Bandra (East), Mumbai- 400 051.

2. BSE Limited

having its registered office at 25th Floor, PJ Towers, Dalal Street, Mumbai-400 001

3. National Stock Exchange of India Ltd

Having its registered office at Exchange Plaza, C-1, Block G., BKC Bandra, East, Mumbai- 400 051.

... Respondents

Mr. J. J. Bhatt, Senior Advocate, a/w Ms. Shivani Kumbhojkar a/w Mr. Omprakash Jha, for The Law Point, Petitioner in WP 10909/2023 and WP 10910/2023 and R.No. 1 in WP 10887/2023 and WP 10888/2023.

Mr. Ashish Venugopal, a/w Ms. Mitravinda Chunduru a/w Mr. Valentine Mascarenhas i/by RHP Partners for Petitioner in WP 10887/2023 and WP 10888/2023 and Respd. No. 2 in WP 10909/2023 and WP 10910/2023.

Mr. Sunip Sen, Senior Advocate, a/w Mr. Akshay Vani a/w Mr. Sunilkumal Pillai i/by MLS Vani & Associates, for R.No. 3 in WP 10909/2023 and R.No. 4 in WP 10910/2023 and R. No. 3 in WP 10887/2023 and WP 10888/2023

Mr. Zerick Dastur, a/w Ms. Archana Uppulliri i/by M/s. Zerick Dastur Advocates, for R.No. 5 & 6.

Mr. Pesi Modi, Senior Advocate, a/w Ms. Kalpana Desai a/w Mr. Ritvik Kulkarn a/w Ms. Kanika Sharma, i/by Khaitan & Co. For R.No.2 in WP 10887/2023 and WP 10888/2023 and R.No.3 in WP 10910/2023.

CORAM : M.S. Sonak &
Jitendra Jain, JJ.

RESERVED ON : 25 JUNE 2025
PRONOUNCED ON : 10 JULY 2025

JUDGMENT : *(Per M. S. Sonak, J.)*

1. Heard learned Counsel for the parties.
2. Having regard to this Court's order dated 14 March 2023, we issue Rule in each of these Petitions. With the consent of and at the request of the learned Counsel for the parties, the Rule in each of the Petitions is made returnable immediately.
3. All these Petitions challenge the Central Information Commission's (CIC) order dated 27 December 2022 partly allowing Mr Agarwal's application dated 18 June 2021 seeking some information from the Chief Public Information Officer (CPIO), Securities and Exchange Board of India (SEBI) under the Right to Information Act, 2005 (RTI).
4. The SEBI has instituted Writ Petition No. 10909 of 2023 and Writ Petition No. 10910 of 2023 to challenge the impugned order, to the extent it directs the CPIO, SEBI, to furnish a revised reply to Mr Agarwal on points 1, 3, 4 and 5 under the RTI Act. Mr Agarwal has instituted Writ Petition No. 10887 of 2023 and Writ Petition No. 10888 of 2023 to challenge the impugned order to the extent that it does not furnish the entire information sought in the application dated

18 June 2021 made to the CPIO, SEBI. Accordingly, it is only appropriate that all these Petitions be disposed of by common judgment and order. The learned Counsel for the parties agree to the adoption of this course of action.

5. Mr Agarwal, in his application dated 18 June 2021 had raised nine queries. In the synopsis submitted in Writ Petition No. 10887 of 2023, such queries and the observations/findings in the CIC's impugned order have been set out in a tabular form. Accordingly, they are transcribed below for the convenience of reference: -

<i>Information sought (extracted verbatim from the Application)</i>	<i>Observations under the Impugned Order</i>
<u>Query No. 1:</u> Complete information including policy, guidelines etc on role of SEBI for appointment of Public-Interest-Directors (PIDs) on boards of Market Infrastructure Institution (MII) Bombay Stock Exchange (BSE) National stock Exchange (NSE) Multi Commodity Exchange (MCX) MCX Clearing	[see: Pg. 27] The CPIO was directed to provide workable links to the Petitioner. <i>[This is <u>not</u> challenged by Mr Agarwal as well as SEBI]</i>

Corporation Limited (subsidiary of MCX)	
<u>Query No. 2:</u> File notings, correspondence and other documents on framing policy, guidelines etc as referred in query (1) above for SEBI having its role in appointing PIDs on boards of MII, BSE, NSE, MCX and MCX Clearing Corporation Limited	[see: Pg. 27] Applying the exemption under Section 8(1)(e) of the RTI Act, the information sought was not provided on the ground that the information with SEBI was held in a 'fiduciary' capacity. <i>[This is challenged by Mr Agarwal as well as SEBI]</i>
<u>Query No. 3:</u> File-notings, correspondence and other documents on granting approval by SEBI to appoint PIDs on boards of MII, BSE, NSE, MCX and MCX Clearing Corporation Limited from 01.01.2019 till 15.06.2021	[see: Pg. 27] Applying the exemption under Section 8(1)(j), the information sought was not provided on the ground that the documents pertaining to grant of approval for appointment of PIDs was personal information of the applicants. However, the CPIO was directed to provide a list of selected and rejected candidates, invoking the severability principle of Section 10 of the RTI Act and ensure the personal information and sensitive information is redacted and masked. <i>[This is challenged by the Mr</i>

	<i>Agarwal as well as SEBI]</i>
<u>Query No. 4:</u> Copies of annual inspection-reports made by SEBI in respect of BSE from the year 2017-18 till 2019-20 if not available on SEBI website.	[see: Pg. 29] Applying the exemption under Section 8(1)(d), full inspection reports were not provided and only concluding comments/final findings (year-wise) of annual inspections concluded during the period mentioned in queries no. 4 and 5 was provided in public interest.
<u>Query No. 5:</u> Copies of annual inspection-reports made by SEBI in respect of NSE from the year 2014-15 till 2017-18 if not available on SEBI website.	<i>[This is challenged by the Mr Agarwal as well as SEBI]</i>
<u>Query No. 6:</u> Inspection of all records, documents files etc on subject-matter of query-numbers (1) to (5)	<u>Note 1:</u> In Reserve Bank of India vs. Jayantilal N. Mistry (2016) 3 SCC 525, the Hon'ble Supreme Court, in relation to RBI and banks, held that reports of inspections, statements of the banks, information related to the business obtained by RBI are not under the pretext of confidence or trust and neither RBI nor the banks act in interest of each other. <u>Note 2:</u> The judgment in Jayantilal N. Mistry (supra) has been cited and affirmed by a 5-Judge Bench of the Hon'ble Supreme Court in Central Public Information Officer, Supreme Court of India vs. Subhash

	Chandra Agarwal (2020) 5 SCC 481. <u>Note 3:</u> By an Order dated 28.04.2021, the Hon'ble Supreme Court dismissed the miscellaneous applications seeking recall of the judgment in Jayantilal N. Mistry (supra).
<u>Query No. 7:</u> Web-links if any providing information as sought under query-numbers (1) to (5)	No findings <i>[This is challenged by Mr Agarwal as well as SEBI]</i>
<u>Query No. 8:</u> Any other related information	No findings <i>[This is challenged by Mr Agarwal as well as SEBI]</i>
<u>Query No. 9:</u> File-notings on movement of the RTI petition	No findings <i>[This is challenged by Mr Agarwal as well as SEBI]</i>

8. As some of the information applied to the functioning of the Bombay Stock Exchange Limited (BSE) and the National Stock Exchange of India Limited (NSE), they were ordered to be impleaded as Respondents in these Petitions. Pleadings have been completed, and with the consent of the learned Counsel for the parties, the matters were heard finally on 25 June 2025 and reserved for orders.

9. Mr J.J. Bhatt, the learned Senior Advocate appearing for SEBI, submitted that apart from the information already furnished by the CPIO to Mr Agarwal, the rest of the information was exempted from disclosure under the provisions of Section 8(1) and its various sub-clauses. In particular, he submitted that most of the information applied for by Mr Agarwal was obtained by the SEBI in its fiduciary capacity, and there was no larger public interest warranting the disclosure of this information. He submitted that disclosure of the information applied for would also prejudicially affect the State's economic interest. Mr Bhatt further submitted that the information sought relates to personal information, the disclosure of which has no relationship to any public activity or interest. He submitted that the furnishing of such information would cause an unwarranted invasion of individual privacy, and there was no larger public interest justifying its disclosure.

10. Mr Bhatt submitted that much of the information applied for by Mr Agarwal pertains to third parties like BSE, NSE and other stock exchanges. The CIC, in making the impugned order, had completely ignored the provisions of Section 11 of the RTI, and for this reason, the impugned order is also vulnerable.

11. Mr Bhatt submitted that Mr Agarwal had raised no specific queries or had sought no specific information. The entire exercise, he submitted, was more like a fishing

expedition. He submitted that while an RTI applicant may not be required to disclose their motives for seeking the information, it was still highly challenging for SEBI to deal with such applications bereft of any particulars. He submitted that by suggesting that the declined information be furnished to Mr Agarwal, a disproportionate burden was being imposed upon the SEBI.

12. Mr Bhatt referred to certain decisions and made his submissions to distinguish the decision of the Hon'ble Supreme Court in the case of **Reserve Bank of India Vs Jayantilal N Mistry**¹ relied upon by Mr Agarwal. He relied on the order dated 30 September 2022 in Interim Application No. 68597 of 2021 (**HDFC Bank Ltd Vs Union of India**)² in which some prima facie observations were made regarding the decision in the case of *Jayantilal N Mistry* (supra).

13. Based on all this, Mr Bhatt submitted that the SEBI's Petitions may be allowed, and Mr Agarwal's Petitions dismissed.

14. Mr Sunip Sen and Mr Pesi Modi, learned Senior Advocates for NSE and BSE respectively and Mr Zerick Dastur for Multi Commodity Exchange of India by adopting the submissions of Mr J J Bhatt referred to certain provisions of the Securities and Exchange Board of India Act, 1992, Securities and Exchange Board of India Regulations 2018, the Securities Contracts (Regulation) Act, 1956 and the Rules of

¹ 2016 3 SCC 525

² 2022 SCC OnLine SC 1337

1957 to submit that the information sought by Mr Agarwal could not be granted under the RTI. They pointed out that information regarding the functioning of share markets is extremely sensitive economic information. By revealing such information, the regulation and operation of stock exchanges would be rendered extremely difficult. Such information would be capable of the greatest abuse and therefore, such information was exempted from disclosure under the RTI Act.

15. The learned Counsel for the stock exchanges also relied upon certain decisions which will be considered during this judgment and order. They submitted that the decision in *Jayantilal N Mistry* (supra) was in the context of banks, and there was a marked difference between the functioning of the banks and the stock exchanges. They submitted that the observations in *Jayantilal N. Mistry* (supra) cannot be mechanically applied when dealing with stock exchanges.

16. The learned Counsel for the stock exchanges submitted that no information relating to stock exchanges, including the information that may have been supplied by the stock exchanges to the SEBI in its fiduciary capacity, can be disclosed. They further pointed out that the provisions of Section 11 of the RTI were never followed, even though the information mainly relates to the stock exchanges, which are third parties in relation to Mr Agarwal and SEBI. They submitted that without following the provisions of Section 11 of RTI, no information could have been directed to be

furnished to Mr Agarwal.

17. Mr Venugopal, the learned Counsel for Mr Agarwal, clinically analysed the SEBI's response to the RTI application, the orders made by the first and second appellate authorities and the impugned order made by the CIC. He submitted that SEBI and others are now attempting to raise grounds other than those on which their initial arbitrary rejection was based. He submitted that this was clearly impermissible, and the parties should not be allowed to add new grounds to sustain the otherwise arbitrary rejection of the information sought by Mr Agarwal.

18. Mr Venugopal submitted that no information sought for by Mr Agarwal was received by SEBI in its fiduciary capacity. In any event, there was a larger public interest in transparency in the functioning of the SEBI and the stock exchanges involved. He submitted that the principles set out in *Jayantilal N Mistry* (supra) clearly apply, and based upon the same, the information could not have been denied to Mr Agarwal.

19. Mr Venugopal submitted that there was no issue of competitive secrets or personal information involved in this matter. He submitted that SEBI, as a regulator, appoints public interest directors to the boards of various stock exchanges. Such appointments are in the public interest and for the proper regulation of the stock exchanges. He submitted that there can be no secrecy regards policy, guidelines, mode of

selection and parameters of selection of such public interest directors. Therefore, the denial of information under queries 2 and 3 was contrary to the provisions of RTI.

20. Mr Venugopal submitted that SEBI annually inspects the stock exchanges. However, there is no transparency regarding such reports, and therefore, the public has no means of knowing the deficiencies or concerns, if any, reflected in the annual inspection reports. The public is also deprived of knowledge about the action taken, if any, based on the issues flagged in such reports. He submitted that such reports should be published on the SEBI's website, and there was no good ground to resist supplying such information.

21. Therefore, Mr Venugopal submitted that the denial of information in response to queries 4 and 5 was contrary to the provisions of the RTI.

22. Mr Venugopal stressed on *Jayantilal N Mistry* (supra) and pointed out that the said decision still holds the field and has not been set aside or reviewed. He submitted that the RBI, which is also the regulator of banks, has resisted providing identical information. Still, the Hon'ble Supreme Court held that such resistance was not valid given the provisions of the RTI. He submitted that no qualitative difference in the information applied for by Mr Agarwal under queries 4 and 5, and therefore, consistent with the decision of the Hon'ble Supreme Court in *Jayantilal N Mistry* (supra), such information had to be supplied to Mr Agarwal.

23. Mr Venugopal also relied upon certain decisions, including the decision of the Hon'ble Supreme Court in the case of **Central Public Information Officer, Supreme Court of India vs. Subhash Chandra Agarwal**, which shall be considered in this judgment and order.

24. Based on all these submissions, Mr Venugopal contended that the Petitions instituted by SEBI be dismissed and the Petitions instituted by Mr Agarwal be allowed.

25. The rival contentions now fall for our determination.

26. In the context of the issues raised in this Petition, a brief reference to some of the relevant provisions of the RTI Act would be appropriate. Section 2(f) of the RTI Act defines "information". Section 2(j) defines "Right to Information". Section 3 provides that, subject to the provisions of this Act, all citizens shall have the right to information. Section 4 addresses the obligations of public authorities, and Section 5 concerns the designation of Public Information Officers.

27. Section 6 deals with requests for obtaining information. Section 6(2) provides that an applicant requesting 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 them. Section 7 addresses the disposal of requests for information. Section 7(8) requires the furnishing of the reasons where information is being rejected. Section 7(9) provides that information shall ordinarily be provided in the form in which

it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

28. Section 8 is one of the most crucial provisions concerning the issues raised in this petition. This deals with the exemption from disclosure of information and shall be dealt with in greater detail during this judgment and order. Section 9 deals with the rejection of access in some instances involving infringement of copyright subsisting in a person other than the State. Section 10 deals with severability.

29. Section 11 deals with third-party information, which is also crucial to the determination of the issues raised in this Petition. Therefore, even this provision will be dealt with in some detail during this judgment and order.

30. Section 8 of the RTI Act reads as follows: -

“8. Exemption from disclosure of information.—(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of

which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrens the disclosure of such information;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) 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.

(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.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.”

31. Section 11 of the RTI Act reads as follows:-

“11. Third party information.—*(1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:*

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision."

32. The scheme of Sections 8 and 11 of the RTI Act was analyzed by the Constitution Bench of the Hon'ble Supreme Court in *CPIO Vs Subhash Chandra Agarwal* (Supra). The Court explained that the RTI Act operationalizes the disclosure of information held by "public authorities" to reduce the asymmetry of information between individual citizens and the State apparatus. The RTI Act facilitates transparency in the decisions of public authorities, holds public officials accountable for any misconduct or illegality, and empowers

individuals to bring to light matters of public interest. The RTI Act has provided a powerful instrument to citizens and individuals engaged in advocacy and journalism. It fosters a culture of assertion among citizen-activists, whistle-blowers, and, above all, each citizen with a general interest in the affairs of the State.

33. The Constitution Bench observed that when enacting the RTI Act, Parliament was cognizant that the unrestricted disclosure of information could be fiscally inefficient, result in real-world harms and infringe on the rights of others. The Bench referred to the preamble to the RTI Act, which also states: “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 confidentiality of sensitive information;”.

34. The Constitution Bench explained that to address the harms that may result from an unrestricted disclosure of information, the legislature included certain qualified and unqualified exemptions to the general obligation to disclose under Sections 3, 4 and 7 of the RTI Act. Section 8(1) sets out certain classes of information, the disclosure of which, the legislature foresaw, may result in harm to the nation or the rights and interests of other citizens.

35. The Constitution Bench, after quoting the provisions of Section 8 of the RTI Act explained that the non-obstante

phrase with which Section 8(1) begins carves out an exception to the general obligation to disclose information under the RTI. Therefore, where the conditions set out in any of the sub-clauses to Clause (1) of Section 8 are satisfied, Information Officers are under no obligation to provide information to any applicant. The Constitution Bench has also explained that clauses (a), (b), (c), (f), (g) and (h) to note sub-section (1) of Section 8 provide an absolute exemption from the obligation of disclosure under the RTI Act. However, clauses (d), (e), (i) and (j) to sub-section (1) of Section 8 provide a qualified exemption from disclosure. For example, clause (a) to sub-section (1) of Section 8 provides an unconditional exemption where it is determined that disclosure of the information sought "would prejudicially affect the sovereignty and integrity of India". On the other hand, while clause (d) to Section 8(1) similarly provides that information is exempt from disclosure where such disclosure "would harm the competitive position of a third party" the exemption is further qualified by the phrase, "unless the competent authority is satisfied that larger public interest warrants the disclosure". Thus, the exemption under clause (d) is not absolute but is qualified and cannot be invoked where a "larger public interest" exists. Where the Information Officer determines that the "larger public interest" warrants a disclosure, the exemption in clause (d) cannot be invoked, and the information must be disclosed.

36. Similarly, the Constitution Bench, in the context of Clause (j) of Section 8(1) explained that it provides a qualified exemption from disclosure where the information sought relates to "personal information the disclosure of which has no relationship to any public activity or interest" or the disclosure of the information would cause an "unwarranted invasion of the privacy". However, the exemption may be overridden where the Information Officer is "satisfied that the larger public interest justifies the disclosure". Clause (j) is not an absolute exemption from the disclosure of information on the ground of privacy, but states that disclosure is exempted in cases where "personal information" is sought and there exists no "larger public interest". Where the Information Officer is satisfied that the existence of the "larger public interest" justifies the disclosure of the "personal information", the information must be disclosed.

37. Section 2(n) of the RTI Act defines "third party" to mean a person other than the citizen requesting information, and includes a public authority. Section 11 is concerned with third-party information. The Constitution Bench explained that "Third party information" is information which "relates to or has been supplied by any other person (including a public authority) other than the information applicant and has been treated as confidential by such third party".

38. Where disclosure of "third party information" is sought, and such information has been prima facie treated as confidential by the third party in question, the procedure under Section 11 of the RTI Act is mandatory. The Information Officer shall, within five days of receiving the request for "third party information" notify the relevant third party to whom the information relates or which had supplied it. The notice shall invite the third party to submit reasons (in writing or orally) as to whether or not the information sought should be disclosed. Section 11(2) provides the third party with a right to make a representation against the proposed disclosure within ten days of receiving the notice.

39. The provision expressly mandates the Information Officer to consider the objections of the third party when deciding whether to disclose or not disclose the information. It encapsulates the fundamental idea that a party whose personal information is sought to be disclosed is afforded the opportunity to contest disclosure. The proviso to sub-section (1) of Section 11 permits disclosure where the "public interest" in disclosure outweighs any possible harm in disclosure highlighted by the third party.

40. The Constitution Bench explained that Sections 8 and 11 must be read in conjunction with each other. Other than in a case where the information applicant seeks the disclosure of information which relates to the information applicant herself, information sought that falls under the category of "personal

information" within the meaning of clause (j) of Section 8(1) is also "third party information" within the ambit of Section 11. Therefore, in every case where the requested information is "personal information" within the meaning of clause (j) of subsection (1) of Section 8, the procedure for notice and objections under Section 11 must be complied with. The two provisions create a substantive system of checks and balances that seek to balance the right of the information applicant to receive information with the right of the third party to prevent the disclosure of personal information, permitting the latter to contest the proposed disclosure.

41. The contention that Section 11 applied only to situations where information sought was directly supplied by a third party, and not to situations where the information related to the third party but was not supplied by it, was rejected by the Constitution Bench. The Court held that the procedure under Section 11 must be complied with not only in cases where information has been supplied to the public authority by a third party, but also when the information held by the public authority "relates to" a third party.

42. Section 11 is not merely a procedural provision, but a substantive protection to third parties against the disclosure of their personal information held by public authorities, without their knowledge or consent. The mere fact that the public authority holds information relating to a third party does not render it freely disclosable under the RTI Act. A third party

may have good reason to object to the disclosure of the information, including on the ground that the disclosure would constitute a breach of the right to privacy. By including the requirement of inviting objections and providing a hearing on the proposed disclosure of third-party information to the very party that the disclosure may adversely impact, Section 11 embodies the principles of natural justice.

43. The Constitution Bench was concerned inter alia with information regarding the declaration of assets by members of the judiciary and the official file noting's and correspondence concerning the elevation of judges to the Supreme Court. The Court held that the information sought regarding the assets of Judges is not generated by the Supreme Court itself, but is provided by individual Judges to the Supreme Court. The file notes regarding the elevation of Judges do not merely contain information about the operation of the Supreme Court, but also relate to individual Judges being considered for elevation.

44. Thus, the Court held that the information sought both “relates to” and “has been supplied by” a third party and “has been treated confidentially by that third party”. The procedure under Section 11 was held to be applicable regarding the information sought by Mr Agarwal in the said matter and had to be mandatorily complied with.

45. The Constitution Bench also explained the interplay between the right to privacy, which is now accepted as one of the facets of Article 21 of the Constitution, and the Right to

Information Act. The Court explained that the RTI is a legislative enactment that contains a finely tuned balancing of interests between the privacy rights of individuals whose information may be disclosed and the broader public interest in ensuring transparency, accountability, and an informed electorate. The overarching scheme of the RTI Act, and in particular Sections 3, 4, and 7, constitutes a mandate to fulfil the positive content of the "right to information" as a facet of Article 19(1)(a) of the Constitution.

46. The privacy interest protected by clause (j) of subsection (1) of Section 8 engages the principle of informational privacy as a facet of constitutional privacy, as recognised by this Court in *K.S. Puttaswamy*. Neither the "right to information" as a facet of Article 19(1)(a) nor the right to informational privacy as a facet of the right to privacy is absolute. The rights under Article 19(1)(a) may be restricted on the grounds enumerated in clause (2) of Article 19. The right to privacy and its numerous facets may be permissibly restricted where the abridgement is provided by law, pursues a legitimate State objective and complies with the principle of proportionality.

47. The Constitution Bench, by referring to **Subhash Chandra Agarwal Vs Supreme Court of India**³ (supra), in which Mr. Agarwal had sought for details of medical facilities availed by Judges and their family members in the preceding three years, the Court held that certain category of information such as medical information, details of personal

³ 2018 11 SCC 634

relations, employee records, and professional income can be classified as personal information. The question of whether such information must be disclosed has to be determined by the CPIO on a case-to-case basis, depending on the public interest demonstrated in favour of disclosure.

48. The Constitution Bench also dealt with the aspect of “public interest” especially in the context of qualified exemptions for disclosure of information. For example, Section 8(1)(d) or (e) exempts disclosure of information specified therein, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. The Court held that the factors that weigh in favour of disclosure in “public interest” are specific to each unique case.

49. The issues raised in this Petition will have to be addressed in the light of the provisions of the RTI as explained by the Hon’ble Constitution Bench in the above-referred decisions.

50. Regarding the first query, the CPIO was directed to provide workable links to Mr. Agarwal. This portion of the impugned order has neither been challenged by SEBI nor by Mr. Agarwal. Therefore, there is no need to address any issues arising from the first query.

51. Even otherwise, we are satisfied that this information is mainly contained in the Securities Contracts (Regulation) Act 1956 and Rules 1957 and the Securities Contracts

(Regulation) (Stock Exchanges and Clearing Corporations) Regulations 2018. Such information is thus available in the public domain.

52. Query No. 2 concerns file notings, correspondence and other documents on framing policy, guidelines, etc, as referred to in query (1) above for SEBI having its role in appointing PIDs on boards of MII, BSE, NSE, MCX and MCX Clearing Corporation Limited. The SEBI invoked the exemption under Section 8(1)(e) of the RTI Act by urging that this would contain information held by SEBI in its fiduciary capacity.

53. In the body of the CIC's impugned order, the observations suggest that the CIC accepted SEBI's contention that the information which was sought was held by SEBI in its fiduciary capacity. Such information includes commercial information, the disclosure of which may harm the interests of the suppliers of such information. The CIC assessed the institutional impact of disclosing this information in the instant case and opined that the possibility of harm or injury emanating from the disclosure outweighed the public interest. Therefore, the exemption under Section 8(1)(e) of the RTI, as claimed by the SEBI, was upheld and allowed.

54. In the directions issued in the impugned order under the caption of "decision", there is no reference to any decision or direction on point No. 2, which dealt with query No. 2. The information sought by Mr. Agarwal under query No. 2 is a little confusing and vague. The information sought relates to

file noting, correspondence, and other documents “*on framing policy, guidelines etc.*” as referred to in query (1) above for SEBI having its role in appointing PIDs on the Boards of “MII, BSE, NSE, MCX and MCX Clearing Corporation Limited.” Nevertheless, such information can be said to have been held in fiduciary capacity by the SEBI. Because this would include information supplied by candidates to be considered for appointment as PIDs in good faith and candour, trusting that confidentiality would be maintained. Therefore, we do not think that any case is made out to interfere with the impugned order to the extent it rejects information regarding query No. 2.

55. Query No.3 concerns “*File-notings, correspondence and other documents on granting approval by SEBI to appoint PIDs on boards of MII, BSE, NSE, MCX and MCX Clearing Corporation Limited from 01.01.2019 till 15.06.2021*” The SEBI invoked the exemption under Section 8(1)(j) of the RTI Act, on the ground that the documents about the grant of approval of PIDs constituted personal information of the Applicants. By the impugned order, the CIC has partially upheld SEBI’s defence. However, the CPIO was directed to provide a list of selected and rejected candidates, invoking the severability principle in Section 10 of the RTI Act, after ensuring that the personal information and sensitive information was redacted and masked.

56. The information sought under Query No. 3 could include personal information about the various Applicants or candidates desirous of being appointed as PIDs on the stock exchange. The list of those appointed as PIDs would obviously be in the public domain, and obtaining this information would pose no difficulty. Similarly, if the Applicant had entertained any doubts about the appointed PIDs not fulfilling the prescribed qualifications, information in that regard could have been sought, and the exemption under Section 8(1)(j) would not have applied. However, seeking omnibus information about not only those appointed as PIDs but also those who may not have been appointed as PIDs could, in a given case, cause an unwarranted invasion of the privacy of such persons or candidates. The CIC has also taken into account the public interest aspect. The CIC's order is vulnerable to the extent it directs the supply of a list of rejected candidates, even though such rejected candidates would be third parties as defined under Section 2(n) of the RTI Act.

57. If information regarding the rejected candidates, including their names, is to be disclosed, the third-party procedure prescribed under Section 11 must be followed. Once again, this is not a case of selection through a competitive examination or by a departmental promotion committee or departmental selection committee, where considerations would differ. The subjective element in such selections is minimal, and the results of written tests or marks

obtained in interviews are usually made public. The information is generally uploaded to the designated website and is available for the concerned to access.

58. However, the position regarding the appointments of PIDs is qualitatively different. Typically, professionals and experts from the field are considered and evaluated. Those not selected or appointed may not necessarily be disqualified or less meritorious than those selected. But there might be requirements concerning diversity or domain expertise. There may be several factors relevant to their non-selection. They may not want these matters to be made public. Their privacy concerns cannot be disregarded without giving them an opportunity to oppose such disclosures, if they so choose. The provisions in Section 11, which are mandatory, cannot be avoided or bypassed in such situations.

59. In the case of *CPIO V/s. Subhash Chandra Agarwal* (supra), the Applicants had sought copies of correspondence exchanged between constitutional authorities, together with file-notings relating to the appointment of Supreme Court Judges, superseding the seniority of some High Court Judges. The Court held that such information falls within the meaning of “third party information” and the procedure under Section 11 must be complied with in arriving at a determination. Therefore, the matter was remanded to the CPIO to examine it afresh, following the procedure prescribed under Section 11 of the RTI Act.

60. Therefore, insofar as Query No.3 is concerned, we set aside the CIC's impugned order and remand the matter to the CPIO to consider Mr Agarwal's request afresh by following the provisions of Section 11.

61. Query Nos. 4 and 5 concern the annual inspection reports made by SEBI for a certain specified period. The impugned order, by applying the exemption under Section 8(1)(d) has not granted full inspection but only directed that concluding comments/final findings (year-wise) be provided in public interest. Again, we note that the annual inspection reports would include information about stock exchanges, such as BSE and NSE.

62. Mr Bhatt argued that these annual inspection reports are detailed and cover a variety of activities and parameters, *including* cybersecurity and measures to prevent leaks of sensitive pricing information. He contended that even revealing concluding comments or final findings based on vague and broad queries would not serve the public interest. In any case, he maintained that such information could never have been ordered for disclosure without following the procedure required by Section 11 of the RTI Act.

63. Mr Venugopal, however, relied on *Jayantilal N. Mistri* (supra) to submit that in this case, the RBI, which had raised a substantially similar defence, was ultimately directed to disclose its annual general reports concerning the banks. While some of the observations in *Jayantilal N. Mistri* (supra)

undoubtedly support Mr Agarwal's case, we must note the observations made by the Hon'ble Supreme Court in *HDFC Bank Ltd And Ors. V/s. Union of India And Ors.* (supra) disposing of the Interim Applications filed by several banks in the context of directions issued in *Jayantilal Mistri* (supra).

64. In paragraph 42 of *HDFC Bank Ltd* (supra), the Hon'ble Supreme Court observed thus: -

“Without expressing any final opinion, prima facie, we find that the judgment of this Court in the case of Jayantilal N. Mistry (supra) did not take into consideration the aspect of balancing the right to information and the right to privacy. The petitioners have challenged the action of the respondent-RBI, vide which the RBI issued directions to the petitioners/Banks to disclose certain information, which according to the petitioners is not only contrary to the provisions as contained in the RTI Act, the RBI Act and the Banking Regulation Act, 1949, but also adversely affects the right to privacy of such Banks and their consumers. The RBI has issued such directions in view of the decision of this Court in the case of Jayantilal N. Mistry (supra) and Girish Mittal (supra). As such, the petitioners would have no other remedy than to approach this Court. As observed by Ranganath Misra, J. in the case of A.R. Antulay (supra) that, this being the Apex Court, no litigant has any opportunity of approaching any higher forum to question its decision. The only remedy available to the petitioners would be to approach this Court by way of writ petition under Article 32 of the Constitution of India for protection of the fundamental rights of their customers, who are citizens of India.”

65. Furthermore, the banks and the role of the RBI in regulating their affairs cannot be equated with stock exchanges and the role of SEBI in regulating the stock exchanges. In any event, the annual general reports, based upon information furnished by the various stock exchanges,

can be said to constitute information related to third parties. Therefore, without following the provisions of Section 11 of the RTI Act, there was no question of directing even the limited disclosures that have been made.

66. Query Nos. 6, 7, 8 and 9 seek general information like inspection of all records, documents, files etc. on the subject matters of Query Nos. 1 to 5, weblinks, if any, providing information as sought under Query Nos. 1 to 5 and even file notings on movement of the RTI Petition.

67. We agree with Mr Bhatt that furnishing such vague information may not be possible. While there may be no exemption as such provided in such situations, it is expected of an applicant to seek information with a sufficient degree of precision and clarity so that the request for information can be processed within the timelines set out under the RTI Act. Mr Venugopal advanced no serious contentions concerning Query Nos. 6 to 9.

68. We therefore dispose of these Petitions by passing the following order:

- (i) The CIC's impugned order in so far as Query Nos. 1, 2, 6, 7, 8 and 9 is not interfered with.
- (ii) The CIC's impugned order regarding Query Nos. 3, 4 and 5 is set aside, and the matter is remanded to the CPIO for fresh consideration of the Petitioners' request for information on these

queries, but after following the provisions of Section 11 of the RTI Act.

69. There shall be no order for costs in these Petitions.

70. All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)