
(2014) 11 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 7056 of 2013

Chalishaon Education Society

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Central Vigilance Commission Act, 2003 — Section 3(3)

Constitution of India, 1950 — Article 137, 14, 21

Right to Information Act, 2005 — Section 11, 12(5), 15, 15(5), 18

Citation : (2015) 4 BomCR 645

Hon'ble Judges : R.V. Ghuge, J

Bench : Single Bench

Advocate : N.B. Suryawanshi, Advocate for the Appellant; S.T. Shelke, Special Counsel, S.D. Kaldete, AGP and P.P. Chavan, Advocate for the Respondent

Judgement

R.V. Ghuge, J.—Heard the learned Advocates for the respective parties at length.

2. Rule. By consent, Rule made returnable forthwith and the petition is taken up for final disposal.

3. The basic contention, by way of a grievance of the petitioners is that the Division Bench of this Court, having concluded that the State Information Commission ought to be a multi member Bench, the State Government, as yet, has either not taken a note of the pronouncement of this Court or is not taking steps for appointing a multi member State Information Commission.

4. While issuing notice to the respondents, the impugned order dated 3.7.2013 was stayed by this Court.

5. The case of the petitioners in brief can be summarised as under:-

(A) The petitioner-institute is an educational trust, registered under the provisions of the Bombay Public Trusts Act.

(B) Respondent No. 2 had sought information from the petitioner under the Right

to Information Act.

(C) As the said information was not made available to respondent No. 2, he preferred an appeal before First Appellate Officer of the petitioner trust, which was rejected.

(D) Respondent No. 2 then approached the State Information Commissioner-respondent No. 1, which was allowed by the impugned judgment dated 3.7.2013.

(E) The information sought by respondent No. 2, vide his application dated 5.5.2010, was in relation to about 27 subjects during the period of 1996 upto 2010.

(F) The petitioner trust had informed respondent No. 2 by letter dated 5.7.2010 that the information in relation to the subject Nos. 1 to 6 was of personal nature and it did not have any nexus with the public interest.

(G) Respondent No. 2 was not satisfied by the communication dated 5.7.2010 and preferred an appeal No. 665 of 2010 on 12.8.2010.

(H) Earlier also, the petitioner had approached this Court by filing WP No. 8521 of 2011 for challenging the show cause notice on imposition of fine issued by the authority in Appeal No. 665 of 2010.

(I) By order dated 23.2.2012, this Court had allowed WP No. 8521 of 2011 and set aside the show cause notice.

(J) Respondent No. 2 is a busybody and has filed several frivolous applications (about 50) with the petitioner trust seeking information of several departments.

(K) The petitioner had explained its stand before respondent No. 1 and canvassed that the personal information cannot be divulged under the RTI Act.

(L) By application dated 2.7.2013 the petitioner trust explained its stand and sought time, firstly, to gather information and supply it to the second respondent to the extent permissible under the Act and secondly, to justify refusal of a particular information on the ground that it is a personal information, which cannot be divulged.

(M) The second respondent, without communicating its decision on the application, delivered its judgment on 3.7.2013 and communicated the same to the petitioner trust by letter dated 9.7.2013.

(N) The impugned judgment is cryptic in nature and without assigning specific reasons. It directs the petitioner trust to supply information to the second respondent as has been demanded by him.

(O) The Single Member-State Information Commission could not have issued any orders against the petitioner trust as the Division Bench of this Court has held in two cases pertaining to Public Information Officer and another Vs. Manohar Parrikar and another [2012(1) BCR 558] and Goa Cricket Association and Shri

Prasad Phaterpekar, General Secretary, Goa Cricket Association Vs. State of Goa and Others, that the State Information Commission is a multi-member body and the State Information Commission Bench cannot function only with one Member.

(P) The impugned judgment is delivered by respondent No. 1 as a Single Member Bench without authority and the same is unsustainable in law.

6. On behalf of the State Information Commissioner, it was canvassed that

(A) the apex Court had issued a direction in the case of Namit Sharma Vs. Union of India (UOI), that the State Information Commission shall necessarily be a multi-member body and shall work in Benches of two Members each, one of them being a judicial Member, while the another would be an Expert Member.

(B) The direction given by the apex Court of forming Benches with two members has been reviewed by the Apex Court in the Review Petition filed by Union of India (UOI) Vs. Namit Sharma, .

(C) In the Review Judgment, the apex Court has specifically done away with the direction of two Member Bench and therefore, the impugned judgment in this case has been rightly delivered by the Single Member, State Information Commission.

7. Respondent No. 2, who is the contesting applicant has submitted as follows:-

(A) The information sought is in the interest of the public at large.

(B) Merely because respondent No. 2 has filed about 50 applications seeking information from the petitioner trust under the RTI Act would not ipso facto mean that the information has been vexatiously or frivolously sought.

(C) The State Information Commission was convinced by the demand of the second respondent and has, therefore, directed the petitioner trust to furnish the information by the impugned order.

(D) The directives given by the apex Court to have multi-member Benches, have been withdrawn by the judgment in the case of Namit Sharma (supra).

(E) The judgments of the learned Division Bench of this Court in the cases of Manohar Parrikar (supra) and Goa Cricket Association (supra) have lost their applicability in view of the review judgment of the apex Court in the case of Namit Sharma (supra).

8. Having heard the learned Advocates for the respective sides, I have gone through the petition paper book and the judgments cited by both the sides with their assistance.

9. It clearly emerges from the submissions of the litigating parties that the controversy revolves around whether the State Information Commission and its Benches in the State should be Single Member Benches or whether the said Benches should function as multi-member Benches. Section 15 of the RTI Act

reads as under:-

"15(1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the..... (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consist of

(a) the State Chief Information Commissioner, and

(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of--

(i) the Chief Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Legislative Assembly; and

(iii) a Cabinet Minister to be nominated by the Chief Minister.

Explanation.--For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of

the State Government, establish offices at other places in the State.

10. It is clear from the above provision that the State Information Commission shall consist of one State Chief Information Commissioner and there shall be State Information Commissioners not exceeding ten.

11. Based on this provision, the learned Division Bench of this Court dealt with a similar issue in the case of Manohar Parrikar (*supra*). A specific point No. 5 was framed by the learned Division Bench in the said case as follows:-

" Point No. 5: Whether a State Information Commission has to be a multi member body? What is the effect of an order passed by the State Information Commission, when it is reduced to a sole member body? "

12. The submissions of the learned Additional Solicitor General were considered in paragraph No. 38 as follows:-

" 38. Learned Additional Solicitor General appearing for the appellant submitted that under section 15 of the RTI Act, the State is required to constitute the State Information Commission and such Information Commission has to be a multi-member body. The State Information Commission cannot function with only one member. The order passed by the State Information Commission consisting of only one member is not in accordance with law and is liable to be set aside. In support of his submission, he referred to and relied upon a decision of the Himachal Pradesh High Court in Virender Kumar Vs. P.S. Rana and Another, and of the High Court of Calcutta in Tata Motors Ltd. vs. State of West Bengal (Writ Petition No. 1773 of 2008 decided on 12.1.2010, Coram: Dipankar Datta, J.)."

13. The submissions of the applicant/respondent No. 2, a practicing Advocate, in the Manohar Parrikar case (*supra*) were recorded in paragraph No. 39 of the judgment as follows.

"39. Per contra, the respondent no. 3 appearing in person submitted that the law does not require that the State Information Commission to be a multi-member body. The State Information Commission can consist of the Chief Information Commissioner as a sole member. When the Chief Information Commissioner is the sole member, he can act alone. Even when the State Information Commission is a multi-member body, the distribution of the work amongst the members (State Information Commissioners) is to be done by the Chief Information Commissioner and he can assign any complaint under section 18 of the RTI Act to any one of the State Information Commissioners including himself and an order passed by one member of State Information Commission is valid. If so, the order passed by the State Chief Information Commissioner acting solely and alone is a valid order. In support, he referred to and relied upon a decision of a Single Judge of this Court in Shri Lokesh Chandra vs. State of Maharashtra (Writ Petition No. 5269 of 2008 decided on 1st July 2009-Coram: C.L. Pangarkar, J.)."

14. The learned Division Bench observed in paragraph No. 40 of the judgment

that every State shall have to constitute a State Information Commission and which shall be a multi member body with one State Chief Information Commissioner. It was, therefore, noted that the conjoint reading of sub-sections (1) to (4) of Section 15 of the RTI Act necessarily means that the State Information Commission has to be a multi member body. The learned Division Bench noted that clause (a) and (b) of subsection (2) of Section 15 are joined by a conjunctive article and the conjunction contemplates that the State Information Commission shall consists of at least two members, one being the State Chief Information Commissioner. The learned Division Bench drew support to its conclusions from the view expressed by the learned Single Judge of the Himachal Pradesh High Court in *Virender Kumar Vs. P.S. Rana and Another*, that the State Information Commission has to be a multi member body.

15. The learned Division Bench of this Court once again was invited to deal with a similar issue in the case of *Goa Cricket Association (supra)*. It needs mention that the verdict of the learned Division Bench in this case is based on the judgment of the apex Court in the case of *Namit Sharma Vs. Union of India (UOI)*, . It also needs mention that the Review Judgment in the case of *Namit Sharma (supra)* has been delivered on 3.9.2013 after the learned Division Bench delivered its judgment on 22.3.2013 in the *Goa Cricket Association's* case (*supra*).

16. In the *Goa Cricket Association's* case (*supra*) the State Chief Information Commissioner allowed a complaint. The said decision was challenged on the ground that the impugned judgment was delivered only by a Single Member Bench and that was the State Chief Information Commissioner. It was canvassed that he could not have functioned as a One Member Bench. The observations of the apex Court in the *Namit Sharma* case (*supra*) were taken into account by the learned Division Bench of this Court. However, it was concluded in paragraph No. 4 of the judgment that the impugned decision was set aside on the basis of the law laid down by this Court in the aforesaid decision of the learned Division Bench.

17. The submissions advanced by the rival parties before me revolve around the judgment of the apex Court in the *Namit Sharma* Review case. *Shri Suryawanshi*, has strenuously canvassed that the review judgment of the apex Court would not in any manner affect the ratio laid down by the learned Division Bench of this Court in the case of *Manohar Parrikar and Goa Cricket Association (supra)*. He has tried to elaborate and simplify his contention by stating that though the directions in clause 108.8 and 108.9 in the *Namit Sharma (supra)* case have been recalled by the apex Court in the *Namit Sharma* Review Case (*supra*) it would not affect the proposition that the Benches of the Information Commission shall comprise of two members each. He further submits that, the apex Court has only recalled the direction that one member on the Bench was to be necessarily a Judicial Member.

18. *Shri Suryawanshi*, learned Advocate, therefore, submits that the contentions

of the Union of India in the Namit Sharma Review Case (supra) need to be understood in the proper perspective. It is, therefore, necessary to reproduce the directions at clauses 108.8 and 108.9 issued by the apex Court in the Namit Sharma case as follows:-

"108.8. The Information Commissions at the respective levels shall henceforth work in Benches of two members each. One of them being a "judicial member", while the other an "expert member". The judicial member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. A law officer or a lawyer may also be eligible provided he is a person who has practiced law at least for a period of twenty years as on the date of the advertisement. Such lawyer should also have experience in social work. We are of the considered view that the competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioners. The Chief Information Commissioner at the Center or State level shall only be a person who is or has been a Chief Justice of the High Court or a Judge of the Supreme Court of India.

108.9. The appointment of the judicial members to any of these posts shall be made "in consultation" with the Chief Justice of India and Chief Justices of the High Courts of the respective States, as the case may be."

19. The petitioner, therefore, states that though the direction below clause 108.8 was in relation to Benches of two members" each, the Union of India never raised any grievance about the aspect of two Member Bench. It's grievance was only to the extent of one of them being a Judicial Member and the appointment of such Judicial Members was directed by the apex Court in clause 108.9 to be made in consultation with the Chief Justice of India and Chief Justices of the High Courts of the respective States, as the case may be.

20. It would be of assistance to reproduce the contentions of the Union of India in the Namit Sharma Review Case (supra) as follows:-

"12. Mr. Chandhiok next submitted that the view taken by this Court in the judgment under review that the Information Commissioners should possess the essential attributes of a court and that for effectively performing the functions and powers of the Information Commission there is requirement of a judicial mind and hence persons eligible for appointment as Information Commissioners should preferably have some judicial background and possess judicial acumen, is a patent error of law. He submitted that Information Commissioners have a duty to act judicially and perform quasi-judicial functions, but this does not mean that they must have the experience and acumen of judicial officers. In support of this submission, he cited the observations of Hidayatullah, J in Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, that an officer who is required to decide the matters judicially does not make him a Court or even a Tribunal because that only establishes that he is following the standards of conduct and is free from bias and interest. He submitted that as Information Commissions are

not really exercising judicial powers, and are not courts, Parliament has not provided in Sections 12(5) and 15(5) of the Act that Information Commissioners have to have judicial experience and acumen. He argued that direction no. 8 that Information Commissions at the respective levels shall work in Benches of two members each and one of them has to be a judicial member possessing a degree in law and having judicially trained mind and experience in performing judicial functions and the direction that competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioners and that the Chief Information Commissioner shall only be a person who is or has been a Chief Justice of a High Court or a Judge of the Supreme Court of India is a palpable error which needs to be corrected in this review. He further submitted that consequently direction no. 9 in the judgment under review that the appointment of judicial members as Information Commissioners shall be in consultation with the Chief Justice of India and Chief Justice of High Court of the respective States, as the case may be, should be deleted."

21. The submissions of the intervenors are also material and the same set out in paragraph No. 17 of the Namit Sharma Review Case (supra), are therefore, reproduced as follows:-

"17. Mr. Prashant Bhushan, learned senior counsel appearing for the interveners, Mr. Shailesh Gandhi and Mrs. Aruna Roy, submitted that as the Information Commissions do not perform judicial work, they need not be manned by judicial officers and Justices of High Courts and Supreme Court and, therefore, directions No. 8 and 9 of the judgment under review need to be deleted. He further submitted that directions No. 10 and 11 of the judgment under review regarding the procedure to be followed for appointment of Information Commissioners may not ensure transparency in the matter of appointment of Information Commissioners. He submitted that this Court in *Center for PIL and Another v. Union of India & Another* [(2011) 4 SCC] has laid down a procedure in para 88 for selecting and appointing the Central Vigilance Commissioner and Vigilance Commissioners under Section 3(3) of the Central Vigilance Commission Act, 2003 and has laid down therein that the empanelment of persons to be considered for appointment of Central Vigilance Commissioner and Vigilance Commissioner shall be carried out on the basis of rational criteria, which is to be reflected by recording of reasons and/or noting akin to reasons by the empanelling authority. He submitted that similar procedure should be followed for short listing persons for appointment as Information Commissioners and some reasons should be indicated as to why the person has been empanelled for appointment as Information Commissioner. He further submitted that the direction No. 8 in the judgment under review that Information Commissioners at the respective levels shall henceforth work in benches of two members and one of them should be a judicial member would result in very few Division Benches of the Information Commission taking up matters and the working of the Information Commission in dealing with matters will slow down. He submitted that instead legal training can

be given to Information Commissioners to decide matters involving intricate questions of law."

22. The Review Petition was opposed by the original petitioner and submissions advanced on behalf of the original petitioner are found in paragraph Nos. 18, 19 and 20 of the Namit Sharma Review Case (*supra*). The same being of assistance, are reproduced herein below:-

"18. Learned counsel for the respondent-writ petitioner Mr. Amit Sharma, on the other hand, supported the judgment under review. According to him, this Court has rightly held that the Information Commission functions as an adjudicatory authority and decides issues relating to the fundamental right of a citizen to be informed about the Government policies and information. He submitted that to ensure proper adjudication of the fundamental right to information of every citizen, it is absolutely necessary that an independent person who does not have a political agenda is appointed as Information Commissioner. He further submitted that Information Commissioners also have to adjudicate issues relating to right of privacy of the citizens of India, which is part of their personal liberty under Article 21 of the Constitution and for this reason also a person with judicial experience and training is best suited and therefore this Court has rightly held that persons with judicial experience and training and judicial acumen should be preferred for appointment as Information Commissioners. He finally submitted that it will be evident from Sections 7, 8, 9 and 11 of the Act that a lis between the parties will have to be decided by the Central Public Information Officer or State Public Information Officer and this Court has rightly held in judgment under review that Information Commissions which decide appeals under Section 20 of the Act against the decisions of the Central Public Information Officer or State Public Information Officer are akin to courts. He referred to Section 18 of the Act to show that Information Commissions have been vested with the powers of a civil court and, therefore, are in the nature of courts which have to be manned by judicial officers.

19. Mr. Sharma vehemently argued that in the event this Court holds in this review that the persons with judicial experience and training need not be appointed as Information Commissioners, then the provisions of Section 12(5) and 15(5) of the Act have to be struck down as ultra vires Article 14 of the Constitution. He cited the decision of this Court in *Sri Indra Das Vs. State of Assam*, in which it has been held that ordinarily the literal rule of interpretation while construing a statutory provision should be followed, but where such interpretation makes the provision unconstitutional it can be departed from and the statute should be read down to make it constitutional. He submitted that in the judgment under review, this Court has saved the provisions of Section 12(5) and 15(5) of the Act by reading down the said provisions.

20. Mr. Sharma referred to the chart at page 40 of the writ petition to show qualifications of persons appointed equivalent to Information Commissioners in Australia, Canada, Scotland, England and United States and argued that they are

required to obtain a degree in the field of law. He cited the observations of this Court in the case of *Union of India v. R. Gandhi*, President, Madras Bar Association (supra) that the assumption that members of the civil services will have the judicial experience or expertise in company law to be appointed either as judicial member or technical member is an erroneous assumption. He submitted that in that case, this Court therefore issued directions that only High Court Judges or District Judges of 5 years experience or lawyers having practice of 10 years can be considered for appointment as judicial members of the National Company Law Tribunal. He also relied on the decision of this Court in *Pareena Swarup Vs. Union of India (UOI)*, in which this Court observed that while creating new avenue of judicial forums, it is the duty of the Government to see that they are not in breach of basic constitutional scheme of separation of powers and independence of judiciary and held that the provisions of the Prevention of Money-Laundering Act, 2002 as enacted may not ensure an independent judiciary to decide the cases under the Act and accordingly directed the Union of India to incorporate the proposed provisions to ensure independence of judiciary."

23. While delivering its findings on the Review Petition, the apex Court, in the submissions of Shri Suryawanshi, learned Advocate, has specifically taken up the issue of a Judicial Officer being a Member on the State Information Commission Benches. He further submits that in Review, whether the Benches should comprise of two Members or one was never reopened by the apex Court. In support of this submission, he has referred to paragraph Nos. 21, 22, 24 to 33 of the said judgment. The said paragraphs are of assistance to me, while deciding this case and the same are, therefore, reproduced herein below:-

" 21. Review of a judgment or order of this Court under Article 137 of the Constitution is confined to only errors apparent on the face of the record as provided in Order XL Rule 1 of the Supreme Court Rules, 1966. A three Judge Bench of this Court has held in *Commissioner of Sales Tax, J and K and Others Vs. Pine Chemicals Ltd. and Others*, that if a reasoning in the judgment under review is at variance with the clear and simple language in a statute, the judgment under review suffers from a manifest error of law, an error apparent on the face of the record, and is liable to be rectified. Hence, in these Review Petitions, we have to decide whether the reasoning and directions in the judgment under review is at variance with the clear and simple language employed in the different provisions of the Act and accordingly whether the judgment under review suffers from manifest errors of law apparent on the face of the record.

22. As we have noticed, Sections 12(5) and 15(5) of the Act provide that Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. These provisions of the Act do not provide that

the Chief Information Commissioner and Information Commissioners shall be persons having judicial experience, training and acumen and yet this Court has held in the judgment under review that for effectively performing the functions and exercising the powers of the Information Commission, there is a requirement of a judicial mind and therefore persons eligible for appointment should preferably have judicial background and possess judicial acumen and experience. We may now examine the bare provisions of the Act, whether this finding that there is requirement of a judicial mind to discharge the functions of Information Commission is an error apparent on the face of the record.

23. Sections 18, 19 and 20 of the Act, which confer powers on the Information Commission, are extracted hereinbelow:

"18. Powers and "Functions of Information Commissions.--(1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,--

(a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limit specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and (f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of persons and compel them to

give oral or written evidence on oath and to produce the documents or things;

- (b) requiring the discovery and inspection of documents;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing summons for examination of witnesses or documents;

and (f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

19. Appeal.--(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to--

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including--

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

20. Penalties.--(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer

or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or, obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

24. It will be clear from the plain and simple language of Sections 18, 19 and 20 of the Act that, under Section 18 the Information Commission has the power and function to receive and inquire into a complaint from any person who is not able to secure information from a public authority, under Section 19 it decides appeals against the decisions of the Central Public Information Officer or the State Public Information Officer relating to information sought by a person, and under Section 20 it can impose a penalty only for the purpose of ensuring that the correct information is furnished to a person seeking information from a public authority. Hence, the functions of the Information Commissions are limited to ensuring that a person who has sought information from a public authority in accordance with his right to information conferred under Section 3 of the Act is not denied such information except in accordance with the provisions of the Act.

25. Section 2(j) defines "Right to Information" conferred on all citizens under Section 3 of the Act to mean the right to information accessible under the Act, "which is held by or under the control of any public authority". While deciding

whether a citizen should or should not get a particular information "which is held by or under the control of any public authority", the Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get information in possession of a public authority. This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions.

26. In the judgment under review, this Court after examining the provisions of the Act, however, has held that there is a *lis* to be decided by the Information Commission inasmuch as the request of a party seeking information is to be allowed or to be disallowed and hence requires a judicial mind. But we find that the *lis* that the Information Commission has to decide was only with regard to the information in possession of a public authority and the Information Commission was required to decide whether the information could be given to the person asking for it or should be withheld in public interest or any other interest protected by the provisions of the Act. The Information Commission, therefore, while deciding this *lis* does not really perform a judicial function, but performs an administrative function in accordance with the provisions of the Act. As has been held by Lord Greene, M.R. in *B. Johnson & Co. (Builders), Ltd. v. Minister of Health* (*supra*):

"*Lis*, of course, implies the conception of an issue joined between two parties. The decision of a *lis*, in the ordinary use of legal language, is the decision of that issue. The What is described here as a *lis* - the raising of the objections to the order, the consideration of the matters so raised and the representations of the local authority and the objectors-is merely a stage in the process of arriving at an administrative decision. It is a stage which the courts have always said requires a certain method of approach and method of conduct, but it is not a *lis inter partes*, and for the simple reason that the local authority and the objectors are not parties to anything that resembles litigation."

27. In the judgment under review, this Court has also held after examining the provisions of the Act that the Information Commission decides matters which may affect the rights of third parties and hence there is requirement of judicial mind. For example, under Section 8(1)(d) of the Act, there is no obligation to furnish information including commercial confidence, trade secrets, or intellectual property, the disclosure of which would harm the competitive position of the third party, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information. Similarly, the right to privacy of a third party, which is part of his personal liberty under Article 21 of the Constitution, may be breached if a particular kind of information, purely of personal nature may be directed to be furnished by the concerned authority. To protect the rights of third parties, Section 11 of the Act provides that 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, may on a request made under the Act, which relates to or has been supplied by a

third party and has been treated as confidential by that third party, a written notice will have to be given to such third party inviting such party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party can be kept in view while taking a decision about disclosure of the information. The decision taken by the Central Public Information Officer or the State Public Information Officer, as the case may be, under Section 11 of the Act is appealable under Section 19 of the Act before the Information Commission and when the Information Commission decides such an appeal, it decides only whether or not the information should be furnished to the citizen in view of the objection of the third party. Here also the Information Commission does not decide the rights of a third party but only whether the information which is held by or under the control of a public authority in relation to or supplied by that third party could be furnished to a citizen under the provisions of the Act. Hence, the Information Commission discharges administrative functions, not judicial functions.

28. While performing these administrative functions, however, the Information Commissions are required to act in a fair and just manner following the procedure laid down in Sections 18, 19 and 20 of the Act.

But this does not mean that the Information Commissioners are like Judges or Justices who must have judicial experience, training and acumen. In *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala and Others* (supra), Hidayatullah, J, explained:

"33. In my opinion, a Court in "the strict sense is a tribunal which is a part of the ordinary hierarchy of Courts of Civil Judicature maintained by the State under its constitution to exercise the judicial power of the State. These Courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction. The word "judicial", be it noted, is itself capable of two meanings. They were admirably stated by Lopes, L.J. in *Royal Aquarium and Summer and Winter Garden Society v. Parkinson* (1892) 1 QB 431 (452) in these words:

"The word "judicial" has two meanings. It may refer to the discharge of duties exercisable by a judge or by justices in court, or to administrative duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind-that is, a mind to determine what is fair and just in respect of the matters under consideration."

That an officer is required to decide matters before him "judicially" in the second sense does not make him a Court or even a tribunal, because that only establishes that he is following a standard of conduct, and is free from bias or interest."

29. Once the Court is clear that Information Commissions do not exercise judicial powers and actually discharge administrative functions, the Court cannot rely on the constitutional principles of separation of powers and independence of

judiciary to direct that Information Commissions must be manned by persons with judicial training, experience and acumen or former Judges of the High Court or the Supreme Court. The principles of separation of powers and independence of judiciary embodied in our Constitution no doubt require that judicial power should be exercised by persons with judicial experience, training and acumen. For this reason, when judicial powers vested in the High Court were sought to be transferred to tribunals or judicial powers are vested in tribunals by an Act of the legislature, this Court has insisted that such tribunals be manned by persons with judicial experience and training, such as High Court Judges and District Judges of some experience. Accordingly, when the powers of the High Court under Companies Act, 1956 were sought to be transferred to Tribunals by the Companies (Amendment) Act, 2002 a Constitution Bench of this Court has held in *Union of India v. R. Gandhi, President Madras Bar Association* (supra):

"108. When the legislature proposes to substitute a tribunal in place of the High Court to exercise the jurisdiction which the High Court is exercising, it goes without saying that the standards expected from the judicial members of the Tribunal and standards applied for appointing such members, should be as nearly as possible as applicable to High Court Judges, which are apart from a basic degree in law, rich experience in the practice of law, independent outlook, integrity, character and good reputation. It is also implied that only men of standing who have special expertise in the field to which the Tribunal relates, will be eligible for appointment as technical members.

Therefore, only persons with a judicial background, that is, those who have been or are Judges of the High Court and lawyers with the prescribed experience, who are eligible for appointment as High Court Judges, can be considered for appointment as judicial members."

30. In *Pareena Swarup v. Union of India* (supra), having found that judicial powers were to be exercised by the Appellate Tribunals under the Prevention of Money-Laundering Act, 2002 this Court held that to protect the constitutional guarantee of independence of judiciary, persons who are qualified to be judges be appointed as members of the Appellate Tribunal. But, as we have seen, the powers exercised by the Information Commissions under the Act were not earlier vested in the High Court or subordinate court or any other court and are not in any case judicial powers and therefore the Legislature need not provide for appointment of judicial members in the Information Commissions.

31. Perhaps for this reason, Parliament has not provided in Sections 12(5) and 15(5) of the Act for appointment of persons with judicial experience and acumen and retired Judges of the High Court as Information Commissioners and retired Judges of the Supreme Court and Chief Justice of the High Court as Chief Information Commissioner and any direction by this Court for appointment of persons with judicial experience, training and acumen and Judges as Information Commissioners and Chief Information Commissioner would amount to encroachment in the field of legislation.

To quote from the judgment of the seven-Judge Bench in *P. Ramachandra Rao v. State of Karnataka* (supra):

"27. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature."

32. Moreover, Sections 12(5) and 15(5) of the Act while providing that Chief Information Commissioner and Information Commissioners shall be persons with eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance, also does not prescribe any basic qualification which such persons must have in the respective fields in which they work. In the judgment under review, however, this Court has "read into" Sections 12(5) and 15(5) of the Act missing words and held that such persons must have a basic degree in the respective field as otherwise Sections 12(5) and 15(5) of the Act are bound to offend the doctrine of equality. This "reading into" the provisions of Sections 12(5) and 15(5) of the Act, words which Parliament has not intended is contrary to the principles of statutory interpretation recognised by this Court. In *Union of India and Another v. Deoki Nandan Aggarwal* (supra) this Court has held that the court could not correct or make up for any deficiencies or omissions in the language of the statute. V. Ramaswami, J. writing the judgment on behalf of a three Judge Bench says:

" It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities."

24. In the light of the above, I find that the following aspects were not before the Review Bench of the Apex Court in *Namit Sharma Review Case* (supra):-

(A) Any grievance as regards formation of the Benches comprising of two Members.

(B) Any grievance about the direction of the Apex Court, "The Information Commissions at the respective levels shall henceforth work in Benches of two Members each."

25. I further find that the learned Division Bench of this Court in the case of Goa

Cricket Association (supra), has relied upon the judgment of the apex Court in the case of Namit Sharma (supra), as it stood before the review judgment was delivered. The issue, therefore, is as to what could be the impact of the review judgment of the apex Court in Namit Sharma's case (supra) on the ratio laid down by the learned Division Bench of this Court in the case of Goa Cricket Association (supra). I am, therefore, of the view that the matter can be advantageously dealt with by a Larger Bench.

26. As such, the following issue is required to be decided by the Larger Bench:-

"Whether the review judgment of the Apex Court in the case of Union of India (UOI) Vs. Namit Sharma, would render the conclusions drawn by the Division Bench of this Court in the case of Goa Cricket Association and Shri Prasad Phaterpekar, General Secretary, Goa Cricket Association Vs. State of Goa and Others, , inapplicable, in relation to formation of Benches of State Information Commission comprising of two Members?"

27. In the light of the above, the papers of this Writ Petition, along with the copy of this order be placed before the Honourable the Chief Justice, by the Registrar (Judicial) in accordance with Rule 7 of Chapter I of the Bombay High Court Appellate Sides Rules, 1960.

28. The interim relief granted in favour of the petitioners, by order dated 25.9.2013, stands continued.