HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 13th November, 2009

Judgment pronounced on: 12th January, 2010

\+ LPA No.501/2009

Secretary General, Supreme Court of India ..... Appellant
Through: Mr.G.E. Vahanvati, Attorney General for India with Mr.Atul Nanda and Mr.Sanjay Bhardwaj, Advocates

Versus

Subhash Chandra Agarwal ..... Respondent
Through: Mr.Prashant Bhushan with Mr.Mayank Mishra, Mr.Rohit Kumar Singh and Mr.Vivek Bishnoi, Advocates

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR.JUSTICE VIKRAMAJIT SEN
HON'BLE DR.JUSTICE S. MURALIDHAR

1. Whether the reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

AJIT PRAKASH SHAH, CHIEF JUSTICE

1. This appeal is directed against the judgment dated 2nd September, 2009 of the learned single Judge (S. Ravindra Bhat, J) in the writ petition filed by the Central Public Information Officer, Supreme Court of India (hereinafter, "the CPIO") nominated under the Right to Information Act, 2005 (hereinafter, "the Act") questioning correctness and legality of the order dated 6th

January, 2009 of the Central Information Commission (hereinafter, "the CIC") whereby the request of the respondent No.1 (a public person) for supply of information concerning declaration of personal assets by the Judges of the Supreme Court was upheld.

PREFACE

2. The subject matter at hand involves questions of great importance concerning balance of rights of individuals and equities against the backdrop of paradigm changes brought about by the legislature through the Act ushering in an era of transparency, probity and accountability as also the increasing expectation of the civil society that the judicial organ, like all other public institutions, will also offer itself for public scrutiny. A citizen demanded information about asset declarations by the Judges. In this context, questions have been raised and need to be answered as to whether a "right to information" can be asserted and maintained within the meaning of the expression defined in Section 2(j) of the Act. Equally important are the questions requiring interpretation of the expressions "fiduciary", as in Section 8(1)(e) and "privacy" as in Section 8(1)(j), both used but not defined specifically by the statute.

3. When the learned single Judge set about the task of hearing submissions on the writ petition, the Attorney General for India

appearing for the appellant clarified at the outset that the learned Judges of the Supreme Court are "not opposed to declaring their assets, provided that such declarations are made in accordance with due procedure laid down by a law which would prescribe (a) the authority to which the declaration would be made (b) the form in which the declaration should be made, with definitional clarity of what are 'assets', and (c) proper safeguards, checks and balances to prevent misuse of information made available." After the learned single Judge had concluded the hearing and had reserved his judgment on the writ petition, certain events supervened. The Full Court of the Supreme Court resolved to place the information on the court website after modalities are duly worked out. Some High Courts, including Delhi High Court, also resolved similarly to make public the information about the declaration of assets by the Judges. The learned single Judge in the impugned judgment had given certain directions about disclosure. In the course of hearing on 7th October, 2009, on CM No.14043/2009, the learned Attorney General for India informed that the operative part in the judgment under appeal had been complied with. The appeal has been pursued on the ground that fundamental questions of law with regard to scope and applicability of the Act with specific reference to declarations of assets by the Judges of High Courts and Supreme Court persist and need to be addressed.

FACTS

4. The genesis of the dispute at hand relates to two resolutions; first, resolution dated 7th May, 1997 of the Full Court of the Supreme Court (hereinafter, "the 1997 Resolution") and second, the "Re-statement of Values of Judicial Life (Code of Conduct)" adopted unanimously in the Conference of the Chief Justices of all High Courts convened in the Supreme Court on 3rd and 4th December, 1999 (hereinafter, "the 1999 Resolution"). Through the 1997 Resolution, Hon'ble Judges of the Supreme Court, *inter alia*, resolved that "every Judge should make a declaration of all his/her assets in the form of real estate or investment" held in own name or in the name of spouse or any person dependent within a reasonable time and thereafter make a disclosure "whenever any acquisition of a substantial nature is made". The 1999 Resolution, *inter alia*, referred to the 1997 Resolution and the draft re-statement of values of judicial life prepared on the basis, amongst others, inputs received from various High Courts and an earlier committee as also resolutions passed in the Chief Justices' Conference held in 1992. The Code of Conduct, thus finalized, came to be adopted and may also be called 1999 Judicial Conference Resolution.

5. The facts of the case, briefly stated, are that the respondent (hereinafter, "the applicant") made an application to the CPIO on 10th November, 2007 under the Act making two-fold request; viz.,

(i) to furnish a copy of the 1997 resolution of the Full Court of the Supreme Court, and

(ii) information on any such declaration of assets etc. ever filed by Hon'ble Judges of the Supreme Court and further information if High Court Judges are submitting declaration about their assets etc. to respective Chief Justices in States.

6. The first request was granted by the CPIO and a copy of the 1997 resolution was made available to the applicant. The CPIO vide order dated 30th November, 2007, however, informed the applicant that the information sought under the second head was not held or under the control of the registry (of the Supreme Court) and, therefore, could not be furnished. The applicant preferred an appeal before the nominated appellate authority.

7. The Appellate Authority remanded the matter to CPIO, *inter alia,* observing that "the appellant is justified in contending that if the CPIO was not holding the information, he should have considered the question of Section 6(3). Regarding the respective States, if the CPIO was not holding information, he should have considered whether he should have invoked the

provision under Section 6(3) of the Right to Information Act". The CPIO, after the said remand order, once again declined the relief, now stating that the request could not be appreciated since it was against the spirit of Section 6(3) inasmuch as the applicant had been very well aware that the information sought related to various High Courts and yet had taken a "short circuit procedure" by approaching the CPIO, Supreme Court of India, "and getting it referred to all the public authorities at the expense of one Central Public Information Officer".

8. The applicant then filed an appeal before the CIC, the apex appellate authority under the Act. The contention raised was that the CPIO had not followed the directions of the appellate authority, which originally remanded the case for decision as to whether the application had to be sent to another authority. It was also submitted before the CIC that the order of CPIO maintained a studied silence about disclosure of information regarding asset declaration by Judges of the Supreme Court to the Chief Justice of India (hereinafter, "the CJI"), in accordance with the 1997 Resolution.

9. In the appeal before the CIC, the CPIO took several defences including the submission that the Registrar of the Supreme Court did not hold the information; the information sought related to a subject matter which was "an in-house exercise" and pertained to material held by the CJI in his personal capacity. It was also

submitted that the declarations made by the Judges of the Supreme Court had been made over by them to the CJI on voluntary basis in terms of the 1997 Resolution in a "fiduciary relationship". On the basis of the last said submission, it was also contended before the CIC that the disclosure of such information would be in breach of the fiduciary character attached to the material and, therefore, contrary to the provisions of Section 8(1) of the Act.

10. Before the CIC the issue concerning transfer of the request under Section 6(3) of the Act was not pressed. The CIC vide its order dated 6th January, 2009 rejected the contentions of the CPIO. He reasoned that Supreme Court is a "public authority" within the meaning of Section 2(h) of the Act since it has been established by the Constitution of India. He referred to Section 2(e)(i) to hold that the CJI is a "competent authority" empowered to frame rules under Section 28 to carry out the provisions of the Act and thus concluded that the CJI and the Supreme Court cannot disclaim being public authorities. The CIC pointed out that the information in question is maintained like any other official information available for perusal and inspection to every succeeding CJI and, therefore, cannot be categorized as "personal information" held by the CJI in his "personal capacity". It was argued before the CIC that CJI and Supreme Court of India are two distinct public authorities. This contention was repelled with further observation that the Registrar and CPIO of the Supreme

Court are part of the said institution and thus not independent or distinct authorities. On this finding, it was held by CIC that the CPIO is obliged to provide the information to a citizen making an application under the Act unless the disclosure was exempt. The CIC noted that neither the CPIO nor the first appellate authority had claimed that the information asked for is exempt on account of "fiduciary relationship" or it being "personal information". He further noted that the applicant was apparently not seeking a copy (or inspection) of the declaration or the contents thereof or even the names etc. of the Judges giving the same. He concluded that the exemptions under Sections 8(1)(e) or 8(1)(j) were not attracted to the case.

11. The CIC, vide order dated 6th January, 2009 thus directed the CPIO "to provide the information asked for by the appellant in his RTI application as to whether such declaration of assets etc. has been filed by the Hon'ble Judges of the Supreme Court or not within ten working days from the date of receipt of this decision notice".

PROCEEDINGS BEFORE THE SINGLE JUDGE

12. The writ petition was preferred by the CPIO challenging the said directions of CIC in the impugned order. The applicant was impleaded as a respondent.

13. In the writ proceedings before the learned single Judge, the Registrar, Supreme Court was subsequently added as a co-petitioner. On the other hand, Delhi High Court Bar Association (hereinafter, "DHCBA") and Rashtriya Mukti Morcha were allowed to join as interveners.

14. In the writ petition, the order of CIC was challenged mainly on the following lines:-

a. The "information", to the disclosure of which a "right to information" can be claimed under the Act has to be an information "accessible" under the law and one "held by or under the control of any public authority", as defined in Section 2(j).

b. The information sought for by the applicant is not in the "public domain" inasmuch as it is not held under the mandate of any law. The 1997 resolution is not binding nor can it be described as "rules" for the reasons that compliance therewith is a matter of choice or own volition for the individual Judges and there is no sanction attached for "non-performance";

c. The disclosure made by the Judges, pursuant to the 1997 resolution, is not a public act done in the discharge of duties of their office whereas the regime under the Act is aimed at ensuring access to all actions of public officials done or performed during the course of their official duties;

d. If it were to be held that the information sought by the applicant is “information” within the meaning of the expression used in the statute, the question of its access would arise with reference to exemptions under Section 8;

e. The information sought is exempt from disclosure by virtue of Section 8(1)(e) of the Act. The 1997 resolution emphasized on the understanding that “declaration made by the Judges or the Chief Justice, as the case may be, shall be confidential”, and, therefore, there is a fiduciary duty cast on the CJI to hold these declarations “in confidence”. Founded on the last mentioned premise, it was further argued that any attempt to compel the CJI to make the information public would amount to compelling him “to breach the fiduciary nature of his duty”; and

f. The information sought is exempt by virtue of Section 8(1)(j) of the Act for the reason it relates to “personal information” which has no nexus with “any public activity or interest” and the disclosure of which was likely to cause “unwarranted invasion of the privacy” of the Judges.

15. The applicant contested the writ petition before the learned single Judge joining issue on each of the grounds taken. It was submitted that Section 22 of the Act conferred upon this special statute an “overriding effect” and the classification of any information as “confidential”, by itself, would not render it an

information “not in the public domain” or one which cannot be accessed. It was argued that the 1997 Resolution represented a conscious decision taken by the Judges of the Supreme Court and, therefore, its binding nature could not be undermined. Before the learned single Judge, the applicant questioned the plea that the information was held by the CJI in his private capacity or in a fiduciary relationship. It was submitted that the Judges are public functionaries and the declarations in question were made by them in their official capacity to the CJI, who, in turn, received the same and held it in his official capacity. Though pointing out that the contents of the declarations made by the respective Judges were not part of the information that had been requested from the CPIO and thus submitting that there was no invasion of privacy in the case at hand, it was insisted that only such further information (i.e. contents of the declarations) could be asked for and disclosed under the Act, notwithstanding the exemption under Section 8(1)(j), should the CPIO or the appellate authority find justification in its disclosure “in larger public interest”.

16. Both the interveners, in their submissions before the learned single Judge adopted the case made out by the applicant and insisted that there exists a right to information vis-à-vis the declarations made by the judges under the Act.

17. The learned single Judge proceeded to consider the rival submissions. He culled out the points for consideration (in para 27 of the impugned judgment) as under:

(1) Whether the CJI is a public authority;

(2) Whether the office of CPIO of the Supreme Court of India, is different from the office of the CJI; and if so, whether the Act covers the office of the CJI;

(3) Whether the asset declarations by Supreme Court judges, pursuant to the 1997 Resolution is "information", under the Right to Information Act, 2005;

(4) If such asset declarations are "information" does the CJI hold them in a "fiduciary" capacity, and are they therefore, exempt from disclosure under the Act;

(5) Whether such information is exempt from disclosure by reason of Section 8(1)(j) of the Act;

(6) Whether the lack of clarity about the details of asset declaration and about their details, as well as lack of security renders asset declarations and their disclosure, unworkable.

18. Upon consideration of the submissions made before him, the learned single Judge concluded against point Nos.1 and 2 that the CJI is a public authority under the Right to Information Act and holds the information pertaining to asset declarations in his capacity as the Chief Justice. It was also held that the office of the Chief Justice of India is "public authority" under the Act and is covered by its provisions.

19. On point No.3, it was held by the learned single Judge that the second part of the respondent's application (which relates to declaration of assets by the Supreme Court Judges) is "information" within the meaning of the expression defined in Section 2(f) of the Act and further that the information pertaining to declarations given to the CJI and the contents of such declarations are "information" which is subject to the provisions of the Right to Information Act.

20. The plea of the appellant, founded on Section 8(1)(e), that the information contained in said asset declarations are held by the CJI in "fiduciary capacity" and, therefore, exempt from disclosure was held to be "insubstantial". Answering point No.4, it was held that the CJI does not hold such declarations in a fiduciary capacity or relationship.

21. The learned single Judge further held, in the context of point No.5, that the contents of asset declarations, pursuant to the 1997 Resolution, as also 1999 Resolution, are entitled to be treated as personal information which are "not otherwise subject to disclosure" but "may be accessed in accordance with the procedure prescribed under Section 8(1)(j)." On the specific information sought by the applicant in the case at hand (i.e. whether the declarations were made pursuant to 1997 Resolution), it was held that the procedure under Section 8(1)(j) is "inapplicable".

22. The appellant had also raised the issue of lack of clarity about the asset declaration and details thereof as well as lack of security, claiming further that these aspects (lack of clarity and security) rendered asset declaration and the disclosure "unworkable". This was the subject-matter of point No.6 (mentioned in para 27 of the impugned judgment). Learned single Judge observed that these are not insurmountable obstacles. In his view, the CJI, if he deems it appropriate, may in consultation with the Supreme Court Judges, evolve uniform standards, devising the nature of information, relevant formalities, and if required, the periodicity of the declarations to be made. In this context, learned single Judge referred to the forms evolved as well as the procedures followed in the United States (including the "redaction" of the norms) under the Ethics in Government Act, 1978, reports of the US Judicial Conference, as well as the Judicial Disclosure Responsibility Act, 2007 (which amended the Ethics in Government Act, 1978). Learned single Judge suggested that cue can be taken from the above norms or procedures in vogue in USA to: (i) restrict disclosure of personal information about family members of judges whose revelation might endanger them; (ii) extend the authority of the Judicial Conference to redact certain personal information of Judges from financial disclosure.

23. In view of the above findings, the learned single Judge, vide the impugned judgment, directed the appellant CPIO to reveal the information sought by the respondent applicant, about the declaration of assets (and not the contents of the declarations, as that was not sought for) made by Judges of the Supreme Court, within four weeks.

CHALLENGE IN APPEAL

24. This appeal was preferred by the CPIO and the Registrar of the Supreme Court impleading the applicant and the CIC as respondents. Vide order dated 7th October, 2009 of the Division Bench, upon a request by the learned Attorney General for India, CPIO and CIC were deleted from the array of parties with the further direction that Secretary General, Supreme Court of India will be the appellant. Considering the importance of the question involved, the appeal was directed to be heard by a larger Bench of three Judges.

25. It may be mentioned here that the findings to above effect returned by the learned single Judge in the context of point Nos. 1 & 2 referred to above are no longer an issue of controversy or debate. It has been fairly conceded on behalf of the appellant that the conclusions arrived at by the learned single Judge in the impugned judgment and the reasons therefor are correct and thus, do not deserve to be disturbed.

26. Notwithstanding the fact that the correctness of the findings respecting point Nos. 1 & 2 have been fairly conceded by the learned Attorney General for India, we have given our careful consideration to the matter in the overall facts and circumstances of these proceedings. We find ourselves in full agreement with the reasoning set out in the impugned judgment. The expression "public authority" as used in the Act is of wide amplitude and includes an authority created by or under the Constitution of India, which description holds good for Chief Justice of India. While providing for Competent Authorities under Section 2(e), the Act specifies Chief Justice of India as one such authority in relation to Supreme Court, also conferring upon him the powers to frame rules to carry out the purposes of the said law. Chief Justice of India besides discharging the prominent role of "head of judiciary" also performs a multitude of tasks specifically assigned to him under the Constitution or various enactments. As said in the impugned judgment, these varied roles of the CJI are directly relatable to the fact that he holds the office of Chief Justice of India and heads the Supreme Court. In absence of any indication that the office of the CJI is a separate establishment with its own Public Information Office under the Act, it cannot be canvassed that the office of the CPIO of the Supreme Court is different from the office of the CJI. Thus, the answer to point Nos. 1 & 2 referred to above has been correctly given in the impugned judgment which findings are hereby confirmed.

27. In this quest, both the sides did not seek to make any submissions on the issue of “unworkability” on account of “lack of clarity” or “lack of security” vis-à-vis asset declarations by the Judges, which form part of the discourse on point No.6 (para 27 of the impugned judgment).

28. The prime submission of the learned Attorney General for India appearing for the appellant is that the learned single Judge has failed to properly formulate or answer the question, which was fundamental and central to the adjudication of the issues arising, viz. that the applicant had no “right to information” under Section 2(j). It is contended that the “right to information” under Section 2(j) applies only when the information sought is in public domain. The learned Attorney General submits that the learned single Judge failed to consider or appreciate the submission about absence of “right to information” and instead had proceeded to examine whether the asset declaration pursuant to the 1997 resolution was “information”, which issue was not even raised. It is argued that the Resolution dated 7th May, 1997 has no force of law and even the “in-house procedure in the judiciary has its basis only of moral authority and not any exercise of power under any law”. It is urged that the words “held by” or “under the law” necessarily implied the legal sanction behind the holding of or controlling of such sanction. It is argued that the plea about information sought not being in public domain was a sequitor to

the Section 2(j) argument. The argument based on Sections 8(1)(e) and 8(1)(j) are reiterated.

THE ISSUES

29. The controversy thus subsists on point Nos. 3,4 & 5, formulated for consideration by the learned single Judge. Having regard to the submissions at the stage of appeal, the points for consideration need to be recast as under:-

(1) Whether the respondent had any "right to information" under Section 2(j) of the Act in respect of the information regarding making of declarations by the Judges of the Supreme Court pursuant to 1997 Resolution?

(2) If the answer to question (1) above is in affirmative, whether CJI held the "information" in his "fiduciary" capacity, within the meaning of the expression used in Section 8(1)(e) of the Act ?

(3) Whether the information about the declaration of assets by the Judges of the Supreme Court is exempt from disclosure under the provisions of Section 8(1)(j) of the Act ?

RIGHT TO INFORMATION

30. Information is currency that every citizen requires to participate in the life and governance of the society. In any democratic polity, greater the access, greater will be the

responsiveness, and greater the restrictions, greater the feeling of powerlessness and alienation. Information is basis for knowledge, which provokes thought, and without thinking process, there is no expression. "Knowledge" said James Madison, "will for ever govern ignorance and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of obtaining it is but a prologue to farce or tragedy or perhaps both". The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world.

RELEVANT INTERNATIONAL LAW

31. The Charter of the United Nations, which was set up in 1945, in its preamble clearly proclaims that it was established in order to save succeeding generations (of humanity) from the scourge of war and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person. The right to information was recognised at its inception in 1946, when the General Assembly resolved that: "freedom of information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated". [UN General Assembly, Resolution 59(1), 65th Plenary Meeting, 14th December, 1946].

32. The Universal Declaration of Human Rights of 1948 adopted on 10th December in Article 19 said :

> "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

33. The International Covenant on Civil and Political Rights (ICCPR) was adopted in 1968. Article 19 of the Convention reads as follows:

(1) Everyone shall have the right to hold opinions without interference;

(2) Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice."

India has ratified the ICCPR. Section 2(d) read with 2(f) of the Protection of Human Rights Act, 1993 clarifies 'human rights' to include the rights guaranteed by the ICCPR.

34. The Convention of the Organisation of American States and European Convention on Human Rights also incorporate specific provisions on the right to information.

RIGHT TO INFORMATION AS A CONSTITUTIONAL RIGHT

35. The development of the right to information as a part of the constitutional law of the country started with petitions by the

print media in the Supreme Court seeking enforcement of certain logistical implications of the right to freedom of speech and expression such as challenging government orders for control of newsprint, bans on distribution of paper etc. It was through the following cases that the concept of the people's right to know developed.

36. In ***Benett Coleman v. Union of India***, AIR 1973 SC 106, the Court held that the impugned Newsprint Control Order violated the freedom of the press and therefore was ultra vires Article 19(1)(a) of the Constitution. The Order did not merely violate the right of the newspapers to publish, which was inherent in the freedom of the press, but also violated the right of the readers to get information which was included within their right to freedom of speech and expression. Chief Justice Ray, in the majority judgment, said:

> "It is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views. The freedom of the press embodies the right of the people to read." (para 45)

37. In a subsequent judgment in ***Indian Express Newspaper (Bombay) Private Ltd. V. Union of India***, AIR 1986 SC 515, the Court held that the independence of the mass media was essential for the right of the citizen to information. In ***Tata Press Ltd. V. Maharashtra Telephone Nigam Ltd.***, (1995) 5

SCC 139, the Court recognized the right of the public at large to receive 'commercial speech'.

38. The concept of the right to information was eloquently formulated by Mathew, J. in ***The State of UP v. Raj Narain***, AIR 1975 SC 865, in the following words: (para 74)

> "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security, see New York Times Co. v. United States (1971) 29 Law Ed. 822 = 403 U.S. 713. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."

39. In the case of ***S.P. Gupta v. Union of India***, 1981 (Supp) SCC 87 (para 65), Bhagwati, J (as he then was) emphasising the need for openness in the government, observed:

> 65. The demand for openness in the government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rules and, once the vote is

> cast, then retiring in passivity and not taking any interest in the government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means inter alia that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the government and the merits of public policies, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of government - an attitude and habit of mind. But this important role people can fulfil in a democracy only if it is an open government where there is full access to information in regard to the functioning of the government."

40. In ***Association for Democratic Reforms*** v. ***Union of India***, AIR 2001 Delhi 126, the Delhi High Court held that voters have a right to receive information about the antecedents of the candidates who stood for election. The Court held that the Election Commission had the duty to inform the voters about the candidates and therefore, it can direct the candidates filing nominations for election to give details about their assets and liabilities, past criminal cases ending in acquittals or convictions and pending criminal prosecution if any. The Union Government appealed against that decision to the Supreme Court which upheld the Delhi High Court decision in ***Union of India*** v. ***Association for Democratic Reforms***, (2002) 5 SCC 294 and directed the Election Commission to seek such information from the candidates filing nominations. The Government after consulting various political parties arrived at the conclusion that the Election Commission should not have such power and it

brought forth an Ordinance under Article 123 of the Constitution to amend the Representation of People Act, 1951 and withdrew from the Election Commission such powers requiring information to the extent mandated by the above decision of the Supreme Court. Constitutional validity of that amendment was challenged in the Supreme Court. The Supreme Court held the amendment to be unconstitutional and void in ***PUCL*** v. ***Union of India***, (2003) 4 SCC 399. Justice M.B. Shah delivering the majority opinion of the Supreme Court said: (para 42)

> "Firstly, it should be understood that the fundamental rights enshrined in the Constitution such as, right to equality and freedom have no fixed contents. From time to time, this Court has filled in the skeleton with soul and blood and made it vibrant. Since the last more than 50 years, this court has interpreted art. 14, 19 and 21 and given meaning and colour so that nation can have a truly republic democratic society."

41. Justice P. Venkatarama Reddi in his concurring opinion reiterated the same view as follows: (para 81)

> "We must take legitimate pride that this cherished freedom (freedom of speech) has grown from strength to strength in the post independent era. It has been constantly nourished and shaped to new dimensions in tune with the contemporary needs by the constitutional courts."

42. Professor S.P. Sathe, in his brilliant work on right to information ("Right to Information": Lexis Nexis Butterworths, 2006) stated that there are certain disadvantages of treating the right to information as situated exclusively in Article 19(1)(a) of

the Constitution. According to the learned author, the right to information is not confined to Article 19(1)(a) but is also situated in Article 14 (equality before the law and equal protection of law) and Article 21 (right to life and personal liberty). The right to information may not always have a linkage with the freedom of speech. If a citizen gets information, certainly his capacity to speak will be enhanced. But many a time, he needs information, which may have nothing to do with his desire to speak. He may wish to know how an administrative authority has used its discretionary powers. He may need information as to whom the petrol pumps have been allotted. The right to information is required to make the exercise of discretionary powers by the Executive transparent and, therefore, accountable because such transparency will act as a deterrent against unequal treatment. In ***S.P. Gupta's case***, the petitioners had raised the question of alleged misuse of power of appointing and transferring the Judges of the High Court by the Government. In order to make sure that the power of appointment of Judges was not used with political motives thereby undermining the independence of the judiciary, the petitioners sought information as to whether the procedures laid down under Articles 124(2) and 217(1) had been scrupulously followed. Here the right to information was a condition precedent to the rule of law. Most of the issues, which the Mazdoor Kisan Shakti Sangathan of Rajasthan had raised in their mass struggle for the right to information, were mundane matters regarding

wages and employment of workers, such information was necessary for ensuring that no discrimination had been made between workers and that everything had been done according to law. The right to information is thus embedded in Articles 14, 19(1)(a) and 21 of the Constitution.

THE RIGHT TO INFORMATION ACT, 2005

43. After almost 55 years since the coming into force of the Constitution of India, a national law providing for the right to information was passed by both Houses of Parliament on 12/13th May, 2005. It is undoubtedly the most significant event in the life of Indian Democracy. Prime Minister Manmohan Singh, while speaking on the Right to Information Bill in the Lok Sabha, said:

> "The Legislation would ensure that the benefits of growth would flow to all sections of people, eliminate corruption and bring the concerns of the common man to the heart of the all processes of governance."
>
> [*The Hindu, 12.5.2005, pg.1*]

44. The preamble to the Act says that the Act is passed because 'democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and hold Governments and their instrumentalities accountable to the governed'. The Act restricts the right to information to citizens (Section 3). An applicant seeking information does not have to give any reasons why he/she needs such information except such details as may be necessary for

contacting him/her. Thus, there is no requirement of locus standi for seeking information [Section 6(2)].

'INFORMATION' EXPLAINED

45. Section 2(f) of the Act defines "information" as any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force. As per Section 2(i), "record" includes (i) any document, manuscript and file; (ii) any microfilm, microfiche and facsimile copy of a document; (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (iv) any other material produced by a computer or any other device. "Right to information" is defined by Section 2(j) to mean the right to information accessible under the Act which is held by or under the control of any public authority and includes the right to (i) inspection of work, documents, records; (ii) taking notes, extracts, or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

LIABILITY TO PROVIDE INFORMATION

46. Every public authority is liable to provide information. "Public authority" has been defined by Section 2(h) as any authority or body or institution of self-government established or constituted – (a) by or under the Constitution; (b) by any other law made by Parliament; (c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any – (i) body owned, controlled or substantially financed; (ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government. By virtue of Section 24, the Act does not apply to the Intelligence and Security Organisations specified in the Second Schedule. However, the information pertaining to the allegations of corruption and human rights violations shall be required to be given by such authorities subject to the approval of the Central Information Commissioner.

47. The Act does not merely oblige the public authority to give information on being asked for it by a citizen but requires it to *suo moto* make the information accessible. Section 4(1)(a) of the Act requires every public authority to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act and ensure that all records that are appropriate to be computerised are, within a

reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated. Section 4 spells out various obligations of public authorities and Sections 6 and 7 lay down the procedure to deal with request for obtaining information.

EXEMPTIONS

48. Exemptions from disclosure of information are contained in Section 8 of the Act and that provision starts with a non-obstante clause. Section 8(1) states that notwithstanding anything contained in the Act, there shall be no obligation to give any citizen information relating to following matters:

(a) Information, the 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 his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants 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. However, the decision of the 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 and exception to this is further provided in the second proviso which says that “those matters which

come under exemptions specified above shall not be disclosed;

(j) **Information which relates to personal information the disclosure of which has no relation to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the CPIO or the SPIO, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information**.

(emphasis supplied)

OVER-RIDING EFFECT OF THE ACT

49. Section 22 of the Act provides that the provisions of the Act shall have effect notwithstanding anything inconsistent contained in the Official Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act.

***POINT 1**: WHETHER THE RESPONDENT HAD ANY "RIGHT TO INFORMATION" UNDER SECTION 2(J) OF THE ACT?*

APPELLANT'S CONTENTIONS:

50. The gravamen of the submissions of the learned Attorney General is that the respondent had no 'right to information' under Section 2(j) of the Act. He submitted that Section 2(j) contemplates two essential ingredients to constitute a 'right to information' under the Act i.e. (i) the information should be

accessible under the Act and (ii) such information should be 'held by' or 'under the control of' any public authority. It is his submission that the second mandatory requirement is not fulfilled in the instant case. According to him, the phrases 'held by' or 'under the control of' necessarily imply a legal sanction behind the holding of or controlling such information. If there is no legal sanction behind holding of or controlling such information, there cannot be any right in respect of such information under Section 2(j). In other words unless public authority has dominion or control over the information, there is no right to information under the Act. The second limb of his argument is that the Resolutions have no force of law and that there is no legal or constitutional requirement for filing the assets declaration. As such declarations filed pursuant to 1997 Resolution cannot be the subject matter of disclosure under the Act. Therefore, the finding of the learned single Judge that the 1997 Resolution is binding merely because it was passed at the Chief Justices Conference is entirely unjustified. According to him, the observations of the learned single Judge failed to answer the further question as to how the Resolution is to be implemented, by whom, to what extent and in what manner.

51. In support of the above submissions, learned Attorney General relied upon the decision in (i) ***In re. Coe's Estate***, 2002 Pacific Reporter 2nd Series, 1022 in which the term 'held' was

construed as “being invested with legal title or right to hold such claim or possession”. In this context, he also referred to the decisions of the Supreme Court in ***Bhudan Singh*** v. ***Nabi Bux,*** (1969) 2 SCC 481 (para 12), ***Kailash Rai*** v. ***Jai Jai Ram***, (1973) 1 SCC 527 (para 11). The observations of Evershed M.R. in ***Dollfus Mieg et Compagnie S.A***. v. ***Bank of England***, 1 Ch. 333 that “Control would ..... cover the right to tell the possessor what is to be done with the property” were relied upon. A reference was made to *Black’s Law Dictionary 8th ed.* where the word ‘control’ is defined as ‘to exercise power or influence over’ and also to P. Ramanatha Aiyar’s *Advanced Law Lexicon* that the expression ‘control’ connotes power to issue directions regarding how a thing may be done by a superior authority to an inferior authority. Certain passages in Philip Coppel’s book “Information Rights” were also relied upon.

52. Learned Attorney General further submitted that the Resolution of 1997 was in two parts. The first part related to the creation of an in-house mechanism for taking remedial action against Judges who do not follow the universally accepted values of judicial life, the second part related to the declaration of assets, and no sanction/in-house procedure was contemplated in the event of non-filing of declaration. He placed heavy reliance on the decision in the case of ***Indira Jaising*** v. ***Registrar General*** (2003) 5 SCC 294, in which the Supreme Court has held

that even the in-house procedure ‘in the judiciary’ has its basis only on moral authority and not in exercise of power under any law. Learned Attorney General argued that a plethora of information is available within the judiciary, for example, notes of Judges or draft judgments. If the only requirement is ‘possession’ then all such information would also have to be brought under Section 2(j) of the Act. Therefore, according to him, a restricted meaning will have to be given to the term ‘held’ as information held by a public authority in its functioning as a public authority and not merely in its possession.

RESPONDENT’S CONTENTIONS

53. In reply, Mr. Prashant Bhushan submitted at the outset that the respondent is not seeking the enforcement of the Resolutions. The non-enforcement of the Resolutions is an entirely different issue altogether, and it may be argued that a citizen cannot compel either the Judges or the Chief Justice to comply with the same. He submitted that when information is provided to the CJI under the Resolutions, the same constitutes information held and under the control of the CJI as a public authority and would thus be amenable to the provisions of the Act. The Code of Conduct, according to him, establishes a mechanism and an in-house procedure for inquiring into complaints by a committee constituted by the CJI for taking action against Judges found to have violated the Code of Conduct. The Code also prescribes

certain consequences that arise out of non-adherence to the Code. The information provided to the CJI is consciously retained by the office of the CJI in his capacity as the CJI and as a repository of such information, prescribed by the Resolutions. It is not as if such information is held unlawfully or casually or even by accident. It is in fact maintained in the office as record for successive Chief Justices. According to Mr. Bhushan if the interpretation suggested by the learned Attorney General is accepted, it would lead to subversion of the Act and would render it totally ineffective.

54. Mr. Bhushan submitted that the CJI has implemented this mechanism in several past instances, which reveals that Judges have considered that these are binding standards. The 1997 Resolution cannot be disclaimed, as it was a conscious decision taken by Judges, who hold high public office, under the Constitution of India. Therefore, it was submitted that the Resolution has the force of law, and alludes to the 1999 Conference Resolution, which states that it is a "restatement of pre-existing and universally accepted norms, guidelines and conventions ...." It was argued that the binding nature of either resolution cannot be undermined, and that it is for the CJI or the individual High Court Chief Justice, to take such appropriate measures as are warranted to ensure that declaration of assets takes place.

55. Mr. Bhushan submitted that the passages relied upon by the learned Attorney General from the commentary of Philip Coppel would rather support a liberal interpretation of the terms 'held' or 'under the control of' under Section 2(j) of the Act. The rest of the authorities relied upon by the learned Attorney General are related to property, which imply an entirely different nature of title and holding. With regard to the draft notes and judgments, learned counsel submitted that whether they constitute information within the meaning of the Act will have to be determined on case to case basis, in the manner all RTI applications are decided.

SECTION 2(j) "RIGHT TO INFORMATION"

56. Two definitions are crucial for answering the first issue i.e. "Information" [Section 2(f)] and "Right to Information" [Section 2(j)]. Information is defined to mean any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models. Also, data held in any electronic form such as FAX, micro film, microfiche etc. It also includes information relating to any private body which can be accessed by a public authority under any other law for the time being in force. The definition thus comprehends all matters which fall within the expression "material in any form". In absence of any

specific exclusion, asset declarations by the Judges held by the CJI or the CJs of the High Courts as the case may be, are 'information' under Section 2(f). This position is not disputed by the learned Attorney General. But according to him, the term 'held' under the Act necessarily requires a Public Authority to have the right to call for the information, or impose on a person an obligation to provide such information to the public authority.

57. As defined in Section 2(j), the term 'right to information' means the right to information accessible under the Act which is held by or under the control of any public authority and includes the right to inspect, take notes, certified copies etc. 'Accessible' shall mean the information being readily available or reachable or which can be obtained from the document, file, record etc. It is mandatory for each public authority to give this information to the citizen except where the information is exempt under the provisions of Section 8(1) of the Act. However, a public authority may allow access to every information in public interest if disclosure outweighs the harm to the protected interest irrespective of the provisions under Section 8(1). Further, where the information is exempt from disclosure, Section 10 lays down that access may be provided to that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be secured from any part that contain exempt information.

58. Philip Coppel in his monumental work “Information Rights” (2nd Edition, Thomson, Sweet & Maxwell 2007) explains the holding requirement in the context of Freedom of Information Act, 2000 (UK), thus :

> **“When information is “held” by a public authority**
>
> For the purposes of the Freedom of Information Act 2000, information is “held’ by a public authority if it is held by the authority otherwise than on behalf of another person, or if it is held by another person on behalf of the authority. The Act has avoided the technicalities associated with the law of disclosure, which has conventionally drawn a distinction between a document in the power, custody or possession of a person. Putting to one side the effects of s.3(2) (see para.9-009 below), the word “held” suggests a relationship between a public authority and the information akin to that of ownership or bailment of goods.
>
> Information:
>
> - that is, without request or arrangement, sent to or deposited with a public authority which does not hold itself out as willing to receive it and which does not subsequently use it;
> - that is accidentally left with a public authority;
> - that just passes through a public authority; or
> - that “belongs” to an employee or officer of a public authority but which is brought by that employee or officer onto the public authority’s premises,
> -
>
> will, it is suggested, lack the requisite assumption by the public authority of responsibility for or dominion over the information that is necessary before it can be said that the public authority can be said to “hold” the information. The position under the Environmental Information Regulations 2004 is clearer, those regulations expressly providing that environmental information must have been produced or received by the public authority if it is to be information “held” by that public authority. Under both regimes, information sent to a public authority without invitation and knowingly kept for any material length of time can probably be said to be held by the public authority. In short, information will not be “held” by a public authority, it is suggested, where that information neither is nor has been

> created, sought, used or consciously retained by it. Thus, in the example given by the explanatory notes to the legislation, a Minister's constituency papers would not be held by the department just because the Minister happens to keep them there. It is quite possible for the same information to be held by more than one public authority. For example, if a document is sent by one public authority to another, but the first keeps a copy for itself, both public authorities will be holding the information comprised in the document. There is nothing to stop an applicant making a request to either or both public authorities for the same information."

59. Therefore, according to Coppel the word "held" suggests a relationship between a public authority and the information akin to that of an ownership or bailment of goods. In the law of bailment, a slight assumption of control of the chattel so deposited will render the recipient a depository (see ***Newman v. Bourne and Hollingsworth*** (1915) 31 T.L.R. 209). Where, therefore, information has been created, sought, used or consciously retained by a public authority will be information held within the meaning of the Act. However, if the information is sent to or deposited with the public authority which does not hold itself out as willing to receive it and which does not subsequently use it or where it is accidentally left with a public authority or just passes through a public authority or where it belongs to an employee or officer of a public authority but which is brought by that employee or officer unto the public authority's premises it will not be information held by the public authority for the lack of the requisite assumption by the public authority of responsibility for or dominion over the information that is necessary before the

public authority can be said to hold the information. Coppel refers to the decision in **Canada Post Corpn. v. Canada (Minister of Public Works)** (1995) 2 F.C. 110 where the Federal Court has held that the notion of control was not limited to the power to dispose of a record, that there was nothing in the Act that indicated that the word "control" should not be given a broad interpretation, and that a narrow interpretation would deprive citizens of a meaningful right of access under the Act.

60. The decisions cited by the learned Attorney General on the meaning of the words 'held' or 'control' are relating to property and cannot be relied upon in interpretation of the provisions of the Right to Information Act. The source of right to information does not emanate from the Right to Information Act. It is a right that emerges from the constitutional guarantees under Article 19(1)(a) as held by the Supreme Court in a catena of decisions. The Right to Information Act is not repository of the right to information. Its repository is the constitutional rights guaranteed under Article 19((1)(a). The Act is merely an instrument that lays down statutory procedure in the exercise of this right. Its overreaching purpose is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and to help the governors accountable to the governed. In construing such a statute the Court ought to give to it the widest operation which its language

will permit. The Court will also not readily read words which are not there and introduction of which will restrict the rights of citizens for whose benefit the statute is intended.

61. The words 'held by' or 'under the control of' under Section 2(j) will include not only information under the legal control of the public authority but also all such information which is otherwise received or used or consciously retained by the public authority in the course of its functions and its official capacity. There are any numbers of examples where there is no legal obligation to provide information to public authorities, but where such information is provided, the same would be accessible under the Act. For example, registration of births, deaths, marriages, applications for election photo identity cards, ration cards, pan cards etc. The interpretation of the word 'held' suggested by the learned Attorney General, if accepted, would render the right to information totally ineffective.

NOTES, JOTTINGS AND DRAFT JUDGMENTS

62. The apprehension of the learned Attorney General that unless a restrictive meaning is given to Section 2(j), the notes or jottings by the Judges or their draft judgments would fall within the purview of the Information Act is misplaced. Notes taken by the Judges while hearing a case cannot be treated as final views expressed by them on the case. They are meant only for the use

of the Judges and cannot be held to be a part of a record "held" by the public authority. However, if the Judge turns in notes along with the rest of his files to be maintained as a part of the record, the same may be disclosed. It would be thus retained by the registry. Insofar as draft judgments are concerned it has been explained by Justice Vivian Bose in ***Surendra Singh*** v. ***State of UP*** AIR 1954 SC 194:

> "Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. The final operative act is that which is formally declared in open court with the intention of making it the operative decision of the Court. That is what constitutes the 'judgment'..."

The above observations though made in a different context, highlight the status of the proceedings that take place before the actual delivery of the judgment. Even the draft judgment signed and exchanged is not to be considered as final judgment but only tentative view liable to be changed. A draft judgment therefore, obviously cannot be said to be information held by a public authority.

BINDING NATURE OF THE 1997 RESOLUTION AND THE 1999 JUDICIAL CONFERENCE RESOLUTION.

63. The narration of the background as stated in "Restatement of Values of Judicial Life" adopted in the Chief Justices' Conference in December, 1999 would show that as far back as on

September 18-19, 1992, the Chief Justices' Conference resolved to restate the pre-existing and universally accepted norms, guidelines and conventions reflecting the high values of judicial life to be observed by Judges during their tenure in office. A draft restatement of values was circulated on 21st November, 1993 to the Chief Justices of the High Courts for discussion with their colleagues. This draft prepared by a duly constituted committee was considered and adopted after approval in the Full Court meeting of the Supreme Court held on 7th May, 1997. This provided for an in-house procedure for remedial action against erring Judges and also declaration by individual Judges of all his/her assets in the form of real estate or investments held by him/her in his/her own name or in the name of his/her spouse or any person dependent on him/her. The Resolution adopted in the Full Court meeting of the Supreme Court on 7th May, 1997 reads as follows:

> "RESOLVED that an in-house procedure should be devised by the Hon'ble Chief Justice of India to take suitable remedial action against Judges who by their acts of omission or commission do not follow the universally accepted values of judicial life including those indicated in the "Restatement of Values of Judicial Life."
>
> RESOLVED FURTHER THAT every Judge should make a declaration of all his/her assets in the form of real estate or investments (held by him/her in his/her own name or in the name of his/her spouse or any person dependent on him/her) within a reasonable time of assuming office and in the case of sitting Judges within a reasonable time of adoption of this Resolution and thereafter whenever any acquisition of a substantial nature is made, it shall be disclosed within a reasonable

time. The declaration so made should be to the Chief Justice of the Court. The Chief Justice should make a similar declaration for the purpose of the record. The declaration made by the Judges or the Chief Justice, as the case may be, shall be confidential."

64. On 3rd and 4th December, 1999, the Conference of Chief Justices of all High Courts was held in the Supreme Court premises in which the Chief Justices unanimously resolved to adopt the "Restatement of Values of Judicial Life" (Code of Conduct). It is a complete code of canons of judicial ethics and is extracted below:

> "(1) Justice must not merely be done but it must also be seen to be done. The behaviour and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary. Accordingly, any act of a Judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of this perception has to be avoided.
>
> (2) A Judge should not contest the election to any office of a Club, society or other association; further he shall not hold such elective office except in a society or association connected with the law.
>
> (3) Close association with individual members of the Bar, particularly those who practice in the same court, shall be eschewed.
>
> (4) A Judge should not permit any member of his immediate family, such as spouse, son, daughter, son-in-law or daughter-in-law or any other close relative, if a member of the Bar, to appear before him or even be associated in any manner with a cause to be dealt with by him.
>
> (5) No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.

(6) A Judge should practice a degree of aloofness consistent with the dignity of his office.

(7) A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.

(8) A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.

(9) A Judge is expected to let his judgments speak for themselves; he shall not give interview to the media.

(10) A Judge shall not accept gifts or hospitality except from his family, close relations and friends.

(11) A Judge shall not hear and decide a matter in which a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing and deciding the matter is raised.

(12) A Judge shall not speculate in shares, stocks or the like.

(13) A Judge should not engage directly or indirectly in trade or business, either by himself or in association with any other person. (Publication of a legal treatise or any activity in the nature of a hobby shall not be construed as trade or business).

(14) A Judge should not ask for, accept contributions or otherwise actively associate himself with the raising of any fund for any purpose.

(15) A Judge should not seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available. Any doubt in this behalf must be got resolved and clarified through the Chief Justice.

(16) Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which that office is held.

These are only the “Restatement of the Values of Judicial Life” and are not meant to be exhaustive but only illustrative of what is expected of a Judge.”

INDEPENDENCE OF JUDICIARY

65. The merits of the argument about the binding nature of the Resolutions involve, to a great extent, the examination of the role of the Judiciary in a democracy. A judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance with democracy and the rule of law. Even when all other protections fail, it provides a bulwark to the public against any encroachments of its rights and freedoms under the law.

66. The recognition that independence of judiciary is a pre-requisite for rule of law is to be found in nearly all major human right conventions. The International Covenant on Civil and Political Rights (ICCPR) contains "Procedural Guarantees in Civil and Criminal Trials." Article 14 says that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him or of his rights and obligations in suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. This cardinal procedure is derived from earlier statements of universal principles. (For example, "Universal Declaration of Human Rights, Article 10").

67. It is impossible to ensure the rule of law upon which other human rights depend, without providing independent courts and

tribunals to resolve, in the language of the ICCPR, competently, independently and impartially, disputes both of a criminal and civil character. In his address on Independence of Judiciary – Basic Principles, New Challenges" Justice Michael Kirby, a former Judge of the Australian High Court, said:

> "Total separation of the judicial power is not possible in the real world. In many countries, the Executive Government appoints judges. The legislature provides for their salaries and pensions. It funds the activities of the courts. To give content to the provisions of Art 14.1 ICCPR, it is therefore necessary to go beyond the letter of a written constitution. It is essential to breathe life into the sparse language of the ICCPR. This requires a reflection upon the constitutional struggles, past and present, by which people everywhere have been seeking to attain the kind of human right to which Art 14.1 gives expression. ..... A judge without independence is a charade wrapped in a farce inside an oppression."
>
> *[http://www/hcourt.gov.au/speeches/kirbyj/kirbyj_abahk.htm]*

68. The independence of judiciary is the basic postulate of our Constitution which has its genesis in the power of judicial review which enables the court to declare executive and legislative actions ultra vires the Constitution. A reference may be made to some of the important provisions of the Constitution concerning the judiciary and its independence. Articles 124 (2) and 217(1) require, in the matter of appointments of Judges, consultation with the Chief Justices [After the decision of the Supreme Court in ***Supreme Court-Advocates On Record Association*** v. ***Union of India*** [1993] 4 SCC 441], popularly known as the ***Second Judges case***, the opinion of the Chief Justice of India (Collegium)

has been given primacy in the matter of appointments]. These provisions also ensure fixity of tenure of office of the Judge. The Constitution protects the salaries of the Judges. Article 121 provides that no discussion shall take place in Parliament with respect to conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President of India praying for the removal of the Judge as provided. Articles 124 and 124(5) afford protection against premature determination of the tenure. Article 124(4) says that a Judge of the Supreme Court shall not be removed from his office except on the grounds stated therein. The grounds for removal are again limited to proved misbehaviour and incapacity. A similar provision is found in Article 217 for the Judges of the High Courts.

69. By Articles 233 and 235, members of the subordinate judiciary are brought under the control of the High Court and except for initial entry and final exit, they are under the direct control of the High Court.

70. In cases dealing with subordinate judiciary, by a catena of decisions commencing from ***State of West Bengal*** v. ***Nripendra Nath Bagchi,*** AIR 1966 SC 447 and ending with ***Shamsher Singh*** v. ***State of Punjab,*** (1974) 2 SCC 831, it has been authoritatively laid down that in matters concerning the

conduct and discipline of District Judges, their further promotion and confirmations, disputes regarding their seniority, their transfers, placing of their services at the disposal of the government for ex-cadre posts, considering their fitness for being retained in service and recommending their discharge from service, exercise of complete discipline, jurisdiction over them including initiation of disciplinary inquiries and their premature retirement, the members of the subordinate judiciary are under the direct control of the High Court. In ***Shamsher Singh's case,*** learned Chief Justice observed: (para 78)

> "The members of the subordinate judiciary are not only under the control of the High Court but are also under the care and custody of the High Court."

71. After reviewing all these provisions and decisions, Chandrachud, J, (as he then was) in ***Union of India*** v. ***Sankalchand Himmatlal Sheth,*** [(1977) 4 SCC 193] observed: (para 12)

> "It is beyond question that independence of the judiciary is one of the foremost concerns of our Constitution. The Constituent Assembly showed great solicitude for the attainment of that ideal, devoting more hours of debate to that subject than to any other aspect of the judicial provisions: "If the beacon of the judiciary was to remain bright, the Courts must be above reproach, free from coercion and from political influence."

72. In ***S.P. Gupta*** v. ***Union of India***, Bhagwati, J, (as he then was) observed: (para 27)

> "....If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective. It is to aid the judiciary in this task that the power of judicial review has been conferred upon the judiciary and it is by exercising this power which constitutes one of the most potent weapons in armoury of the law, that the judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive and therefore it is absolutely essential that the judiciary must be free from executive pressure or influence and this has been secured by the Constitution-makers by making elaborate provisions in the Constitution to which detailed reference has been made in the judgments in *Sankalchand Sheth case [(1977)4 SCC 193]*. But it is necessary to remind ourselves that the concept of independence of the judiciary is not limited only to independence from executive pressure or influence but it is a much wider concept which takes within its sweep independence from many other pressures and prejudices. It has many dimensions, namely, fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the Judges belong.
>
> .....
>
> Judges should be of stern stuff and tough fibre, unbending before power, economic or political, and they must uphold the core principle of the rule of law which says, "Be you ever so high, the law is above you." This is the principle of independence of the judiciary which is vital for the establishment of real participatory democracy, maintenance of the rule of law as a dynamic concept and delivery of social justice to the vulnerable sections of the community."

NEED FOR CODE OF CONDUCT

73. It is no doubt true that the constitutional assurances relating to basic service conditions are absolutely necessary to

protect the independence of the judiciary, but they are not the be all and end all. Judicial independence is not the personal privilege or prerogative of the individual Judge. It is the responsibility imposed on each Judge to enable him or her to adjudicate a dispute honestly and impartially on the basis of the law and the evidence. The very existence of the justice delivery system depends on the Judges, who, for the time being, constitute the system. The greatest strength of the judiciary is the faith people repose in it. The constitutional rights, statutory rights, human rights and natural rights need to be protected and implemented. Such protection and implementation depends on the proper administration of justice, which in its turn depends on the existence and accessibility of an independent judiciary. Public confidence in the administration of justice is imperative for its effectiveness, because ultimately ready acceptance of a judicial verdict alone gives relevance to the judicial system. To quote the words of Pathak, J (as he then was) in ***S.P. Gupta's case****:* "While administration of justice draw its legal sanction from the constitution, its credibility rests in the faith of the people. Indispensable to that faith, an independent and impartial judiciary supplies reasons for the judicial institution; it also gives character and content to the constitutional milieu".

74. In ***K. Veeraswamy*** v. ***Union of India & Others,*** (1991) 3 SCC 655 (paras 79-80), the Supreme Court, emphasising the duty

of the Judge to maintain high standards of conduct observed that independence and impartiality and objectivity would be tall claims, hollow from within, unless the Judges are honest – honest to their Office, honest to the society and honest to themselves ...the society's demand for honesty in a Judge is exacting and absolute. The standards of judicial behaviour, both on and off the Bench, are normally extremely high. For a Judge, to deviate from such standards of honesty and impartiality is to betray the trust reposed to him. No excuse or no legal relativity can condone such betrayal. From the standpoint of justice, the size of the bribe or scope of corruption cannot be the scale for measuring a Judge's dishonour. A single dishonest Judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system. A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature. The slightest hint of irregularity or impropriety in the court is a cause for great anxiety and alarm. A legislator or an administrator may be found guilty of corruption without apparently endangering the foundation of the State. But a Judge must keep himself absolutely above suspicion; to preserve the impartiality and independence of the judiciary and to have the public confidence thereof.

75. In a later judgment in ***C.Ravichandran Iyer*** v. ***Justice A.M. Bhattacharjee and others,*** (1995) 5 SCC 457 (para 23),

the Supreme Court in the same vein observed: “To keep the stream of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behavior. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behavior of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.”

76. The 1997 Resolution and the 1999 Judicial Conference Resolution are intended to establish a standard for ethical conduct of Judges. The Resolutions give expression to the highest traditions relating to the judicial functions as visualised in all the world’s cultures and legal systems. They are designed to provide guidance to Judges and to afford the judiciary a framework for regulating judicial conduct. They recognise the

need for universally acceptable statements on judicial standards, which, consistent with the principle of judicial independence, would be capable of being respected and ultimately enforced by the judiciary.

77. Explaining the need for a self-regulatory mechanism for Judges, Justice J. S. Verma, former Chief Justice of India, said:

> "We cannot say that we will control everyone else but there need not be any control on us merely because we take the oath of office. It would be exhibiting the ostrich syndrome to say that there can be any one who cannot be accountable to known standards. That is not the scheme of our constitution. That is antithesis to basic democratic principles and, therefore, for the purpose of effective preservation of Independence of Judiciary. It is necessary that we ought to ensure proper judicial accountability."
>
> *[R.C. Ghia Memorial Lecture by Justice J.S. Verma, delivered on 28.6.1997]*

INTERNATIONAL PERSPECTIVE

78. Guides to judicial conduct have become common place in recent years. As far as Commonwealth countries are concerned, a seminal study by Justice J.B. Thomas, a Judge of the Supreme Court of Queensland, "Judicial Ethics in Australia" was published in 1988. There have followed many documents including the Canadian Judicial Council's "Ethical Principles for Judges" (1998), the "Guide to Judicial Conduct" published for the Council of Chief Justices of Australia (2002) and the Guide to Judicial Conduct for England and Wales (2006).

79. Having posed the question whether judicial ethics exist as such, Justice J.B. Thomas stated:

> "We form a particular group in the community. We comprise a select part of an honourable profession. We are entrusted, day after day, with the exercise of considerable power. Its exercise has dramatic effects upon the lives and fortunes of those who come before us. Citizens cannot be sure that they or their fortunes will not some day depend upon our judgment. They will not wish such power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law as we know it, that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations."(Judicial Ethics in Australia, Sydney, Law Book Company, 1988)

80. On a wider stage, what have become known as the Bangalore Principles of Judicial Conduct were initiated in 2001. The Bangalore principles arose from a United Nations initiative with the participation of Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers. A draft code of judicial conduct was prepared by a group comprising senior Judges from Commonwealth countries. This was discussed at several conferences attended by Judges of both common law and civil law systems and has also been considered by the Consultative Council of European Judges. Revised principles were prepared in November 2002 following a round-table meeting of Chief Justices held at the Peace Palace, the Hague and were endorsed at the 59th session of the United Nations Human Rights Commission at Geneva in April, 2003.

81. The Bangalore Principles are succinctly stated as six 'values" and their stated intention is : "To establish standards for ethical conduct of Judges. They are designed to provide a framework for regulating judicial conduct. They are also intended to assist members of the Executive and Legislature, and lawyers and the public in general, to better understand and support the judiciary". The principles are:

(i) Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A Judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

(ii) Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

(iii) Integrity is essential to the proper discharge of the judicial office.

(iv) Propriety, and the appearance of propriety, are essential to the performance of all of the activities of the Judge.

(v) Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

(vi) Competence and diligence are prerequisites to the due performance of judicial office.

82. Prior to adoption of Bangalore Principles at the 6th Conference of Chief Justices held in Beijing in August 1995, 20 Chief Justices adopted a Joint Statement of Principles of the Independence of Judiciary. This Statement was further refined during the 7th Conference of Chief Justices held in Manila in August, 1997. It has now been signed by 32 Chief Justices throughout the Asia-Pacific region and, inter alia, reads as follows:

> "1. The Judiciary is an institution of the highest value in every society.
>
> 2. The Universal Declaration of Human Rights (Art. 10) and the International Covenant on Civil and Political Rights (Art. 14(1)) proclaim that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An independent judiciary is indispensable to the implementation of this right.
>
> 3. Independence of the Judiciary requires that;
>
> a) The judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source; and
>
> b) The judiciary has jurisdiction, directly or by way of review, over all issues of a justiciable nature.
>
> 4. The maintenance of the independence of the judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the rule of

law. It is essential that such independence be guaranteed by the State and enshrined in the Constitution or the law.

5. It is the duty of the judiciary to respect and observe the proper objectives and functions of the other institutions of government. It is the duty of those institutions to respect and observe the proper objectives and functions of the judiciary.

6. In the decision-making process, any hierarchical organisation of the judiciary and any difference in grade or rank shall in no way interfere with the duty of the judge exercising jurisdiction individually or judges acting collectively to pronounce judgement in accordance with Article 3 (a). The judiciary, on its part, individually and collectively, shall exercise its functions in accordance with the Constitution and the law.

7. Judges shall uphold the integrity and independence of the judiciary by avoiding impropriety and the appearance of impropriety in all their activities.

8. To the extent consistent with their duties as members of the judiciary, judges, like other citizens, are entitled to freedom of expression, belief, association and assembly.

9. Judges shall be free, subject to any applicable law, to form and join an association of judges to represent their interests and promote their professional training and to take such other action to protect their independence as may be appropriate.

JUDICIAL ACCOUNTABILITY

83. The 1997 Resolution and the 1999 Judicial Conference Resolution emphasise that any code of conduct or like expression of principles for the judiciary should be formulated by the judiciary itself. That would be consistent with the principle of judicial independence and with the separation of powers. High

integrity and independence is fundamental and inherent, notwithstanding any specific code having been provided in the constitution or by a statute. If the judiciary fails or neglects to assume responsibility for ensuring that its members maintain high standards of judicial conduct expected of them, public opinion and political expediency may lead the other two branches of government to intervene. When that happens, the principle of judicial independence upon which the judiciary is founded and by which it is sustained, is likely to be undermined to some degree, perhaps seriously.

84. The ***second Judges case*** witnessed an assertion by the Supreme Court of the independence of the Judiciary forming part of the basic structure of the Constitution. The need to insulate judiciary from interference by the Executive in the matter of appointments of Judges was seen as a necessary concomitant of its very functioning within the scheme of the Constitution. The Judiciary was also asserting as a part of that independence, that as an institution it believed in self-regulation. In other words, it was believed that the Judiciary as an institution could itself regulate conduct of Judges without requiring any enacted law for that purpose. The 1997 and 1999 Resolutions have to be viewed in the background of the above assertion of the independence of judiciary.

85. The text of the two Resolutions focuses on two different aspects of accountability. One touching on the conduct of Judges for which the Resolutions speak of an in-house mechanism. The other concerns declaration of assets which is also seen as a facet of accountability.

86. That Judges have to declare their assets is a requirement that is not being introduced for the first time as far as subordinate Judges are concerned. They have for long been required to do that year after year in terms of the Rules governing their conditions of service. As regards accountability and independence, it cannot possibly be contended that a Judicial Magistrate at the entry level in the judicial hierarchy is any less accountable or independent than the Judge of the High Court or the Supreme Court. If declaration of assets by a subordinate judicial officer is seen as essential to enforce accountability at that level, then the need for such declaration by Judges of the constitutional courts is even greater. While it is obvious that the degree of accountability and answerability of a High Court Judge or a Supreme Court Judge can be no different from that of a Magistrate, it can well be argued that the higher the Judge is placed in the judicial hierarchy, the greater the standard of accountability and the stricter the scrutiny of accountability of such mechanism. All the Judges functioning at various levels in the judicial hierarchy form part of the same institution and are

independent of undue interference by the Executive or the Legislature. The introduction of the stipulation of declaring personal assets, is to be seen as an essential ingredient of contemporary accepted behaviour and established convention.

87. Questioning of the binding nature of the Resolutions is, therefore, contrary to the assertions of judicial independence. To contend that there has to be a law enacted by the Parliament to compel Judges to disclose their assets is to undermine the independence that has been asserted in **the second Judges case.**

88. It can hardly be imagined that Resolutions which have been unanimously adopted at a conference of Judges would not be binding on the Judges and its efficacy can be questioned. In fact, the understanding of successive CJIs and the institution as a whole since the passing of these Resolutions has been otherwise. Letters have been written by the CJI to each of the Chief Justices of the High Courts enclosing copies of the Resolutions and requiring the Chief Justice of every High Court to draw the attention of individual Judges to the text of the resolutions and to ask for information pertaining to assets possessed by each of them, his/her spouse and dependent persons. At no point in time has there been any questioning of the need to comply with the requirements of the Resolutions.

EXTENT AND MANNER OF DECLARATION

89. It is indeed strange that it is sought to be contended that unless and until the Resolutions themselves provide for a sanction or penalty for non-compliance of disclosure of assets by an individual Judge to the CJI or the CJ, as the case may be, the Resolutions would not have any binding effect and that would not be in the nature of 'law'. The question posed by the learned Attorney General and reiterated in the written submissions is that unless the question "as to how the Resolution is to be implemented, by whom, to what extent and in what manner" is answered, it cannot be said that the Resolutions have a binding effect.

90. Since the impugned judgment of the learned single Judge, a resolution has been passed on the administrative side by the Full Court of the Supreme Court, deciding to place information relating to assets on the website. Four High Courts have decided to disclose the assets of their Judges publicly. Two of the High Courts have placed the information on their respective websites. Although it was sought to be contended by the learned Attorney General that even such resolutions would not have a binding effect of law, such a contention cannot be accepted if the proper functioning of the judiciary as an institution has to be ensured. The consequence of accepting such an argument would mean

that individual Judges will simply declare that they are not bound by any of the resolutions of the Court and they are free to act according to their whim. Such a position is wholly untenable and unacceptable for the proper functioning of the judiciary as a self-regulatory independent mechanism of State, accountable to the people and to the Constitution of India.

91. The disclosure on the website of information pertaining to assets of Judges is a complete answer to the question posed by the learned Attorney General. The disclosure of assets by Judges, their spouses and dependent persons on the website of the Supreme Court, Kerala High Court and Madras High Courts provides the answer as to how the Resolutions can be implemented, in what manner, by whom and to what extent. This, therefore, cannot be the reason for denying the binding nature of the Resolutions. Much has been said of where one should draw a line on how much should be disclosed. This is entirely for the Judges to decide consistent with their perception of their accountability to the judiciary as an institution. It can be seen from the assets disclosure of the Judges which are available on website that the uniform standards have been evolved regarding the nature of the information and the periodicity of the declarations to be made. The above development shows that the Judges have perfectly understood how much information should be disclosed and in what manner they have to put the information on the website.

INDIRA JAISING'S CASE DISTINGUISHED

92. The reliance placed by the learned Attorney General on ***Indira Jaising's case*** is rather misconceived. In that case, a petition was filed under Article 32 of the Constitution in public interest primarily for the publication of the inquiry report made by a Committee consisting of two Chief Justices and a Judge of different High Courts in respect of certain allegations of alleged involvement of sitting Judges of the High Court of Karnataka in certain incidents and also for a direction to any professional and independent investigating agency having expertise to conduct a thorough inquiry into the said incident and to submit a report on the same to the Supreme Court. Rajendra Babu, J (as he then was) writing the judgment pointed out that a Judge cannot be removed from his office except by impeachment by a majority of the House and a majority of not less than two-third present and voting as provided by Articles 124 and 217 of the Constitution of India. The Judges (Inquiry) Act, 1968 has been enacted providing for the manner for conducting inquiry into the allegation of judicial conduct upon a motion of impeachment sponsored by at least hundred Lok Sabha Members or fifty Rajya Sabha Members. No other disciplinary inquiry is envisaged or contemplated either in the Constitution or under the Act. On account of this lacuna, in-house procedure has been adopted for inquiry to be made by the peers of Judges for report to the Chief Justice of India in case

of a complaint against the Chief Justices or Judges of the High Court in order to find out the truth of the imputation made in the complaint and that in-house inquiry is for the purpose of his own information and satisfaction. The report of the Inquiry Committee is purely preliminary in nature, ad hoc and not final. If the Chief Justice of India is satisfied that no further action is called for in the matter, the proceeding is closed. If any further action is to be taken as indicated in the in-house procedure itself, the Chief Justice of India may take such further steps as he deems fit. In case of breach of any rule of the Code of Conduct, the Chief Justice can choose not to post cases before a particular Judge against whom there are acceptable allegations. It is possible to criticise that decision on the ground that no inquiry was held and the Judge concerned had no opportunity to offer his explanation particularly when the Chief Justice is not vested with any power to decide about the conduct of a Judge. The Court was of the opinion that a report made on such inquiry if given publicity will only lead to more harm than good to the institution as Judges would prefer to face inquiry leading to impeachment. In such a case, the only course open to the parties concerned if they have material is to invoke provisions of Article 124 or Article 121(7) of the Constitution, as the case may be. It is in this context it was observed that the only source or authority by which the Chief Justice of India can exercise this power of inquiry is moral or ethical and not in exercise of powers under any law. The

obligation of the Judges to declare assets in terms of the Resolutions was not in issue before the Court. It is not even remotely suggested that the Code of Conduct is not binding on the Judges or they are free to ignore the Code of Conduct. Indeed the Court distinguished the decisions in ***S.P. Gupta***, ***Raj Narain*** etc., relating to the right to information. We must bear in mind that this decision was rendered prior to the enactment of the Right to Information Act and may not serve as a useful guide in interpreting the provisions of the said Act.

93. The learned single Judge thus rightly concluded that the Resolutions are meant to be adhered to and that the fact that there is no objective mechanism to ensure its implementation is of little consequence because the consequence of not complying with the Resolutions is linked to the faith in the system; that thought alone is sufficient to incentivise compliance. Justice J.B. Thomas sums up this position aptly in the following manner:

> "Some standards can be prescribed by law, but the spirit of, and the quality of the service rendered by a profession depends far more on its observance of ethical standards. These are far more rigorous than legal standards.... They are learnt not by precept but by the example and influence of respected peers. Judicial standards are acquired, so to speak, by professional osmosis. They are enforced immediately by conscience."
>
> *[Ref. Justice J.B. Thomas; Judicial Ethics in Australia, 2d ed. Sydney: LBC Information Services,1997]*

94. In view of the above discussion, it is held that the respondent had right to information under Section 2(j) of the Act in respect of the information regarding making of declarations by the Judges of the Supreme Court pursuant to the 1997 Resolution.

***POINT 2**: WHETHER THE CJI HELD THE "INFORMATION" IN HIS "FIDUCIARY" CAPACITY*

95. The submission of the learned Attorney General is that the declarations are made to the CJI in his fiduciary capacity as *pater familias* of the Judiciary. Therefore, assuming that the declarations, in terms of the 1997 Resolution constitute "information" under the Act, yet they cannot be disclosed – or even particulars about whether, and who made such declaration, cannot be disclosed – as it would entail breach of a fiduciary duty by the CJI. He relies on Section 8(1)(e) to submit that a public authority is under no obligation to furnish "information available to a person in his fiduciary relationship". He argues that the voluntary information given by the Judges is not information in the public domain. He emphasizes that the Resolution crucially states:

> "The declaration made by the Judges or the Chief Justice, as the case may be, **shall be confidential**".

96. On the other hand, Mr.Prashant Bhushan argues that a fiduciary relationship is one that is based on trust and good faith, rather than on any legal obligation. The purpose for disclosing a

statement of assets to the CJI is to foster transparency within the judiciary and is essential for an independent, strong and respected judiciary, indispensable in the impartial administration of justice. Where the Judges of the Supreme Court act in their official capacity in compliance with a formal Resolution, it cannot be said that the CJI acts as a fiduciary of the Judges and that he must, therefore, act in the interests of the Judges and not make such information public. According to him, unless the information sought can be excluded on the basis of one of the exemptions under Section 8 of the Act, the same cannot be denied merely on the classification of a document or on a plea of confidentiality, if the document is otherwise covered by the Act.

FIDUCIARY RELATIONSHIP

97. As Waker defines it: "A 'fiduciary' is a person in a position of trust, or occupying a position of power and confidence with respect to another such that he is obliged by various rules of law to act solely in the interest of the other, whose rights he has to protect. He may not make any profit or advantage from the relationship without full disclosure. The category includes trustees, Company promoters and directors, guardians, solicitors and clients and other similarly placed." [Oxford Companion to Law, 1980 p.469]

98. "A fiduciary relationship", as observed by Anantnarayanan, J., "may arise in the context of a *jural relationship*. Where

confidence is reposed by one in another and that leads to a transaction in which there is a *conflict of interest and duty* in the person in whom such confidence is reposed, fiduciary relationship immediately springs into existence." [see ***Mrs.Nellie Wapshare v. Pierce Lasha & Co. Ltd.*** (AIR 1960 Mad 410)]

99. In ***Lyell v. Kennedy***, (1889) 14 AC 437, the Court explained that whenever two persons stand in such a situation that confidence is necessarily reposed by one in the other, there arises a presumption as to fiduciary relationship which grows naturally out of that confidence. Such a confidential situation may arise from a contract or by some gratuitous undertaking, or it may be upon previous request or undertaken without any authority.

100. In ***Dale & Carrington Invt. (P) Ltd. v. P.K. Prathaphan,*** (2005) 1 SCC 212 and ***Needle Industries (India) Ltd. V. Needle Industries Newey (India) Holding Ltd.,*** (1981) 3 SCC 333, the Court held that the directors of the company owe fiduciary duty to its shareholders. In ***P.V. Sankara Kurup v. Leelavathy Nambier***, (1994) 6 SCC 68, the Court held that an agent and power of attorney can be said to owe a fiduciary relationship to the principal.

101. Section 88 of the Indian Trusts Act requires a fiduciary not to gain an advantage of his position. Section 88 applies to a trustee, executor, partner, agent, director of a company, legal advisor or other persons bound in fiduciary capacity. Kinds of persons bound by fiduciary character are enumerated in Mr.M. Gandhi's book on "Equity, Trusts and Specific Relief" (2nd ed., Eastern Book Company)

"(1) Trustee,

(2) Director of a company,

(3) Partner,

(4) Agent,

(5) Executor,

(6) Legal Adviser,

(7) Manager of a joint family,

(8) Parent and child,

(9) Religious, medical and other advisers,

(10) Guardian and Ward,

(11) Licensees appointed on remuneration to purchase stocks on behalf of government,

(12) Confidential Transactions wherein confidence is reposed, and which are indicated by (a) Undue influence, (b) Control over property, (c) Cases of unjust enrichment, (d) Confidential information, (e) Commitment of job,

(13) Tenant for life,

(14) Co-owner,

(15) Mortgagee,

(16) Other qualified owners of property,

(17) De facto guardian,

(18) Receiver,

(19) Insurance Company,

(20) Trustee de son tort,

(21) Co-heir,

(22) Benamidar."

102. The CJI cannot be a fiduciary vis-à-vis Judges of the Supreme Court. The Judges of the Supreme Court hold independent office, and there is no hierarchy, in their judicial functions, which places them at a different plane than the CJI. The declarations are not furnished to the CJI in a private relationship or as a trust but in discharge of the constitutional obligation to maintain higher standards and probity of judicial life and are in the larger public interest. In these circumstances, it cannot be held that the asset information shared with the CJI, by the Judges of the Supreme Court, are held by him in the capacity of fiduciary, which if directed to be revealed, would result in breach of such duty.

CONFIDENTIALITY

103. The Act defines which information will be in the public domain and includes within the definition "any material in any form, including records, documents, memos, e-mails, opinions, advices, etc." Irrespective of whether such notes, e-mails, advices, memos etc. were marked confidential and kept outside the public domain, the Act expressly places them in the public domain and accessible to the people subject to exclusionary clauses contained in Section 8 of the Act. Section 11(1) of the Act

provides that where the authority intends to disclose any information which relates to and was supplied by a third party and has been treated confidential by third party, it shall give a clear notice of five days to such third party inviting him to make a submission in writing or orally whether such information should be disclosed and such submission shall be kept in view while taking a decision regarding the disclosure of such information. Except in the case of trade and commerce secrets, protected by law, disclosure may be allowed in public interest if disclosure outweighs in importance any possible harm or injury to the interest of the third party. The disclosure of such information regarding a third party is, however, further subject to the provisions providing for non-disclosure of information relating to privacy of a person under Section 8(j) of the Act.

104. In U.K., the Freedom of Information Act 2000 exempts the information from disclosure where it was obtained by a public authority from any other person and the disclosure of the information to the public by the public authority would constitute an actionable breach of confidence. Similar provisions are made in the information laws of USA, New Zealand, Australia, Canada etc. However, as pointed out by Phillip Coppel, a public interest defence is available to a claim of breach of confidence. Therefore, a consideration of the public interest is required to determine whether disclosure would constitute an actionable

breach of confidence. In addition, so far as government secrets are concerned, the Crown is not entitled to restrain disclosure or to obtain redress on confidentiality grounds unless it can establish that disclosure has damaged or would be likely to damage the public interest. [*Phillip Coppel's "Information Rights", pg.836-837*].

105. In ***Attorney General v. Guardian Newspapers Limited*** [(No.2) (1990) 1 AC 109], Lord Goff identified three limiting concepts to the principles of breach of confidence. The first, that the principle of confidentiality does not apply to information that is so generally accessible that, in all the circumstances, it cannot be regarded as confidential. The second is that the duty of confidence does not apply to information that is useless or trivial. The third limiting concept identified by Lord Goff is that in certain circumstances the public interest in maintaining confidence may be outweighed by the public interest in disclosure. Lord Goff summed up the matter as follows: (pg.282)

> "The third limiting principle is of far greater importance. It is that, although the basis of the law's protection of confidence is that there is a law, nevertheless that public interest may be outweighed by some other countervailing public interest which favours disclosure. This limitation may apply, as the learned judge pointed out, to all types of confidential information. It is this limiting principle which may require a court to carry out a balancing operation, weighing the public interest in maintaining confidence against a countervailing public interest favouring disclosure. Embraced within this limiting principle is, of course, the so called defence of iniquity. In origin, this principle was narrowly stated, on the basis that a man cannot be made 'the confidant of a crime or a fraud': see Gartside v. Outram per Sir William Page Wood V.C. But it is now clear that the principle extends to matters of which disclosure is required in the public interest: see Beloff v. Pressdram Ltd, per Ungoed Thomas, J and Lion

> Laboratories Ltd v. Evans per Griffiths L.J. It does not however follow that the public interest will in such cases require disclosure to the media, or to the public by the media. There are cases in which a more limited disclosure is all that is required: see Francome v. Mirror Group Newspapers Ltd. A classic example of a case where limited disclosure is required is a case of alleged iniquity in the Security Services."

DUTY TO DENY OR CONFIRM

106. In the present case, the only information that was sought by the respondent was whether such declaration of assets were filed by Judges of the Supreme Court and also whether High Court Judges have submitted such declarations about their assets to respective Chief Justices in States. The respondent had not sought a copy of the declaration or the contents thereof or even the names etc., of the Judges providing the same. Release of this information would not amount to actionable breach of any confidentiality. The duty to confirm or deny would not amount to breach of confidentiality unless the request is so specific that the mere confirmation that information is held (without a disclosure of that information) would be to disclose the gist of the information. Philip Coppel explains the legal position as follows:

> "The duty to confirm or deny"
>
> "The duty to confirm or deny does not arise if, or to the extent that, a confirmation or denial that the public authority holds the information specified in the request would (apart from the Act) constitute an actionable breach of confidence. This is an absolute exclusion of duty. As a matter of practice, other than where the request is so specific that the mere confirmation that the information is held (without a disclosure of that information) would be to disclose the gist of the information, it is difficult to

contemplate circumstances in which a public authority could properly refuse to confirm or deny that it held information under S.41(2)". (page 843)

107. In our opinion, the learned single Judge has summed up the position correctly in para 58:

> "From the above discussion, it may be seen that a fiduciary relationship is one whereby a person places complete confidence in another in regard to a particular transaction or his general affairs or business. The relationship need not be "formally" or "legally" ordained, or established, like in the case of a written trust; but can be one of moral or personal responsibility, due to the better or superior knowledge or training, or superior status of the fiduciary as compared to the one whose affairs he handles. If viewed from this perspective, it is immediately apparent that the CJI cannot be a fiduciary vis-à-vis Judges of the Supreme Court; he cannot be said to have superior knowledge, or be better trained, to aid or control their affairs or conduct. Judges of the Supreme Court hold independent office, and there is no hierarchy, in their judicial functions, which places them at a different plane than the CJI. In these circumstances, it cannot be held that asset information shared with the CJI, by the judges of the Supreme Court, are held by him in the capacity of a fiduciary, which if directed to be revealed, would result in breach of such duty. So far as the argument that the 1997 Resolution had imposed a confidentiality obligation on the CJI to ensure non-disclosure of the asset declarations, is concerned, the court is of opinion that with the advent of the Act, and the provision in Section 22 – which overrides all other laws, etc. (even overriding the Official Secrets Act) the argument about such a confidentiality condition is on a weak foundation. The mere marking of a document, as "confidential", in this case, does not undermine the overbearing nature of Section 22. Concededly, the confidentiality

> clause (in the 1997 Resolution) operated, and many might have bona fide believed that it would ensure immunity from access. Yet the advent of the Act changed all that; all classes of information became its subject matter. Section 8(1)(f) affords protection to one such class, i.e. fiduciaries. The content of such provision may include certain kinds of relationships of public officials, such as doctor-patient relations; teacher-pupil relationships, in government schools and colleges; agents of governments; even attorneys and lawyers who appear and advise public authorities covered by the Act. However, it does not cover asset declarations made by Judges of the Supreme Court, and held by the CJI."

108. For the above reasons, we hold that Section 8(e) does not cover asset declarations made by Judges of the Supreme Court and held by the CJI. The CJI does not hold such declarations in a fiduciary capacity or relationship.

***POINT 3**: WHEHTER INFORMATION ABOUT DECLARATION OF ASSETS BY JUDGES IS EXEMPT UNDER SECTION 8(1)(j).*

109. The learned Attorney General argued that the information which is sought for by the respondent is purely and simply personal information, the disclosure of which has no relationship to any public activity. He emphasized that access to such information would result in unwarranted intrusion of privacy. The submission is that such information is exempt under Section 8(1)(j) of the Act. On the other hand, Mr.Prashant Bhushan argues that information as to whether declarations have been made, to the CJI can hardly be said to be called "private" and that

declarations are made by individual judges to the CJI in their capacity as Judges. He submitted that the present proceeding is not concerned with the content of asset declarations.

RIGHT TO INFORMATION VIS-À-VIS RIGHT TO PRIVACY

110. The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which the new cause of action for damages resulting from unlawful invasion of privacy was recognized. This right has two aspects: (i) The ordinary law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (ii) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful government invasion. Right to privacy is not enumerated as a fundamental right in our Constitution but has been inferred from Article 21. The first decision of the Supreme Court dealing with this aspect is ***Kharak Singh*** v. ***State of UP***, AIR 1963 SC 1295. A more elaborate appraisal of this right took place in later decisions in ***Gobind*** v. ***State of MP***, (1975) 2 SCC 148, ***R.Rajagopal*** v. ***State of T.N.,*** (1994) 6 SCC 632 and ***District Registrar and Collector*** v. ***Canara Bank***, (2005) 1 SCC 496.

111. The freedom of information principle holds that, generally speaking, every citizen should have the right to obtain access to government records. The underlying rationale most frequently

offered in support of the principle are, first, that the right of access will heighten the accountability of government and its agencies to the electorate; second, that it will enable interested citizens to contribute more effectively to debate on important questions of public policy; and third, that it will conduce to fairness in administrative decision-making processes affecting individuals. The protection of privacy principle, on the other hand, holds in part at least that individuals should, generally speaking, have some control over the use made by others, especially government agencies, of information concerning themselves. Thus, one of the cardinal principles of privacy protection is that personal information acquired for one purpose should not be used for another purpose without the consent of the individual to whom the information pertains. The philosophy underlying the privacy protection concern links personal autonomy to the control of data concerning oneself and suggests that the modern acceleration of personal data collection, especially by government agencies, carries with it a potential threat to a valued and fundamental aspect of our traditional freedoms.

112. The right to information often collides with the right to privacy. The government stores a lot of information about individuals in its dossiers supplied by individuals in applications made for obtaining various licences, permissions including passports, or through disclosures such as income tax returns or

for census data. When an applicant seeks access to government records containing personal information concerning identifiable individuals, it is obvious that these two rights are capable of generating conflict. In some cases this will involve disclosure of information pertaining to public officials. In others, it will involve disclosure of information concerning ordinary citizens. In each instance, the subject of the information can plausibly raise a privacy protection concern. As one American writer said one man's freedom of information is another man's invasion of privacy.

PROTECTION OF PERSONAL INFORMATION UNDER SECTION 8(1)(j)

113. The right to information, being integral part of the right to freedom of speech, is subject to restrictions that can be imposed upon that right under Article 19(2). The revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information and, therefore, with a view to harmonize these conflicting interests while preserving the paramountacy of the democratic ideal, Section 8 has been enacted for providing certain exemptions from disclosure of information. Section 8 contains a well defined list of ten kinds of matters that cannot be made public. A perusal of the aforesaid provisions of Section 8 reveals that there are certain information contained in sub-clause

(a), (b), (c), (f),(g) and (h), for which there is no obligation for giving such an information to any citizen; whereas information protected under sub-clause (d), (e) and (j) are protected information, but on the discretion and satisfaction of the competent authority that it would be in larger public interest to disclose such information, such information can be disclosed. These information, thus, have limited protection, the disclosure of which is dependent upon the satisfaction of the competent authority that it would be in larger public interest as against the protected interest to disclose such information.

114. There is an inherent tension between the objective of freedom of information and the objective of protecting personal privacy. These objectives will often conflict when an applicant seeks access for personal information about a third party. The conflict poses two related challenges for law makers; first, to determine where the balance should be struck between these aims; and, secondly, to determine the mechanisms for dealing with requests for such information. The conflict between the right to personal privacy and the public interest in the disclosure of personal information was recognized by the legislature by exempting purely personal information under Section 8(1)(j) of the Act. Section 8(1)(j) says that disclosure may be refused if the request pertains 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." Thus, personal information including tax returns, medical records etc. cannot be disclosed in view of Section 8(1)(j) of the Act. If, however, the applicant can show sufficient public interest in disclosure, the bar (preventing disclosure) is lifted and after duly notifying the third party (i.e. the individual concerned with the information or whose records are sought) and after considering his views, the authority can disclose it. The nature of restriction on the right of privacy, however, as pointed out by the learned single Judge, is of a different order; in the case of private individuals, the degree of protection afforded to be greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. This is so because a public servant is expected to act for the public good in the discharge of his duties and is accountable for them.

115. The Act makes no distinction between an ordinary individual and a public servant or public official. As pointed out by the learned single Judge "----- an individual's or citizen's fundamental rights, which include right to privacy - are not subsumed or extinguished if he accepts or holds public office." Section 8(1)(j) ensures that all information furnished to public authorities – including personal information [such as asset disclosures] are not given blanket access. When a member of the public requests personal information about a public servant, - such as asset declarations made by him – a distinction must be made between personal data inherent to the person and those that are not, and,

therefore, affect his/her private life. To quote the words of the learned single Judge “if public servants ---- are obliged to furnish asset declarations, the mere fact that they have to furnish such declaration would not mean that it is part of public activity, or “interest”. ----- That the public servant has to make disclosures is a part of the system’s endeavour to appraise itself of potential asset acquisitions which may have to be explained properly. However, such acquisitions can be made legitimately; no law bars public servants from acquiring properties or investing their income. The obligation to disclose these investments and assets is to check the propensity to abuse a public office, for a private gain.” Such personal information regarding asset disclosures need not be made public, unless public interest considerations dictates it, under Section 8(1)(j). This safeguard is made in public interest in favour of all public officials and public servants.

116. In the present case the particulars sought for by the respondent do not justify or warrant protection under Section 8(1)(j) inasmuch as the only information the applicant sought was whether 1997 Resolution was complied with. That kind of innocuous information does not warrant the protection granted by Section 8(1)(j). We concur with the view of the learned single Judge that the contents of asset declarations, pursuant to the 1997 Resolution, are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under Section 8(1)(j); that they are not

otherwise subject to disclosure. Therefore, as regards contents of the declarations, information applicants would have to, whenever they approach the authorities, under the Act satisfy them under Section 8(1)(j) that such disclosure is warranted in "larger public interest".

DISCLOSURE OF ASSETS INFORMATION OF JUDGES – INTERNATIONAL TRENDS

117. "Although Judges often balk at the invasion of privacy that disclosure of their private finances entails, it is almost uniformly considered to be an effective means of discouraging corruption, conflicts of interest, and misuse of public funds..." [*Guidance for Promoting Judicial Independence and Impartiality, 2001, USAID, Technical Publication*]. Income and Asset Disclosure is generally perceived to be an essential aid towards monitoring whether judges perform outside work, monitoring conflicts of interests, discouraging corruption, and encouraging adherence to the standards prescribed by judicial code of conduct. In countries where disclosure is mandatory, "the Guidance Principle" suggests that list of judges' assets and liabilities must be declared at appointment and annually thereafter. "Guidance Principle" further stipulates that the information disclosure must be accurate, timely and comprehensive. Furthermore, security and privacy concerns of judges should be respected, oversight body monitoring the register must be credible and the public should have proper access to the public portion of the register.

118. Keith E. Henderson in his article “Asset and Income Disclosure for Judges: A Summary Overview and Checklist” states that even though the OAS Convention created the legal basis for income and asset disclosure of public officials, the legal question as to whether Judges are deemed to be public officials remains unclear or is being debated on in a number of countries. In some countries, Judges have raised issues of constitutional separation of powers and have taken the position that the judicial branch itself must pass and enforce its own disclosure laws and rules. This is exactly what is achieved by the 1997 and 1999 Resolutions. Other unresolved issues relate to how to effectively and fairly implement and enforce disclosure laws and how much of this personal information should be publicly available and in what form. The author has pointed out that there are three basic sources of the assets declaration obligation:

a) Constitutional Obligation: Some constitutions impose an obligation to disclose assets of public officials e.g. Colombia, Constitution Article 122.

(b) Legislative Obligation: Some countries regulate asset disclosure by statute, although there are different types of Acts creating this obligation e.g. Poland, El Salvador, etc.

c) Court rules: In some countries, such as United States, Argentina, the judiciary itself regulates the conduct of Judges.

According to the author, while addressing the issue of assets disclosure, it is fundamental to find a balance between the kind of information that must be available to the public and the rights to

privacy and security of the official or Judge. Corrupt “information keepers” or weak information systems and institutions can result in serious information leaks that could have serious human rights implications – particularly in transition countries. A cursory review of existing laws reveals that there is no one model law or policy regarding exactly the range of assets Judges should disclose. To some degree, it depends, inter alia, on the development context of the country in question. Regarding the kind of assets to be disclosed, different countries have likewise adopted different models depending on the development context:

> Broad Disclosure - In the United States, there is an obligation to make a broad accounting of financial holdings, including a list of gifts, lecture fees or other outside incomes. However, there has been some criticism of some judges not fully disclosing their having received trip expenses from private sources and these rules are still under debate.
>
> Medium-size disclosure - In Argentina, judges are exempt from declaring some kinds of property if it might jeopardize their security. For example, judges are not obligated to submit details of the place where they live or their credit card numbers.
>
> Narrow disclosure - In many transition countries, judges must declare only incomes – assets are exempt. “

119. The Ethics in Government Act, 1978 of United States requires that federal judges disclose personal and financial information each year. Under the Act, federal judges must disclose the source and amount of income, other than that earned as employees of the United States government, received during the preceding calendar year. Judges must also disclose

the source description and value of gifts, for which the correct value is more than certain minimal amount, received from any source other than a relative; the source and description of reimbursements; the identity and category of value of property and interests; the identity and category of values of liabilities owed to creditors other than certain immediate family members; and other financial information. The Act allows judges to redact information from their financial disclosure request under certain circumstances. A report may be redacted "(i) to the extent necessary to protect the individual who files the report; and (ii) for so long as the danger to such individual exists". The Act further charges the US Judicial Conference Committee with the task of submitting to the House and Senate Committee on the Judiciary an annual report documenting redactions. When a member of the public requests for a copy of judges financial disclosure report, the Committee sends a notification of the request to the judge in question asking the judge to respond in writing whether he would like to request new or additional redactions of information. If the judge does not request redaction from his/her report, a copy of the report is released to the requester. However, if the judge requests redaction upon receiving the request for a copy of the report, the Committee then votes on the redaction request, with a majority needed to approve or deny the request, and finally a copy of the report is released, with approved redactions, if any.

120. It will be useful to note certain developments which led to the federal judges' asset information being placed on the internet. In September, 1999, APBnews.com ("APB"), a site focused on criminal justice news, requested for financial disclosure reports filed by federal judges in 1998. The Judicial Conference Committee denied this request in December, 1999 ruling that the disclosure reports should not be turned over to APB because posting the reports on the internet would contravene the statutory requirement that all report registers identify themselves by name, occupation and address. After the Judicial Conference Committee denied APB's request, APB filed suit in the US District Court for southern districts of New York to obtain the report. But on March 14, 2000, the Judicial Conference Committee voted to reverse its decision and allowed the reports to be available on the internet, recognizing that the statutory language did not permit withholding the reports in their entirety from news organizations. Though the Act generally prohibits obtaining or using a report for commercial purposes, it contains an exemption for "news and communication media" involved in "dissemination to the general public". Thus APB could not be refused access to the reports. Before the forms were released to the APB, however, the Committee removed some personal information submitted by judges but not required by the Act, such as home addresses and names of spouses and dependants.

EPILOGUE

121. It was Edmund Burke who observed that "All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust and that they are to account for their conduct in that trust." Accountability of the Judiciary cannot be seen in isolation. It must be viewed in the context of a general trend to render governors answerable to the people in ways that are transparent, accessible and effective. Behind this notion is a concept that the wielders of power – legislative, executive and judicial – are entrusted to perform their functions on condition that they account for their stewardship to the people who authorize them to exercise such power. Well defined and publicly known standards and procedures complement, rather than diminish, the notion of judicial independence. Democracy expects openness and openness is concomitant of free society. Sunlight is the best disinfectant.

122. We are satisfied that the impugned order of the learned single Judge is both proper and valid and needs no interference. The appeal is accordingly dismissed.

CHIEF JUSTICE

VIKRAMAJIT SEN, J.

JANUARY 12, 2010 S. MURALIDHAR, J.

"nm/v/pk"