DEPARTMENT OF INDIAN EXTERNAL TRADE

Central Information Commission
Block IV, 5th Floor, Old JNU Campus
New Delhi 110067

December 7, 2006

Adjunct to Decision No. 241 and 243/IC(A)/2006
Appeal Nos.CIC/MA/A/2006/00406 & 00150

Name of the Appellants:
1. Shri Ravin Ranchchodlal Patel,
   G-1 “Malak”,
   Old High Court Lane,
   Opp. Loha Bhavan,
   Ashram Road,
   Ahmedabad-380009.
2. Shri Madhav Balwant Karmarkar
   B-6, Panchratna Housing
   Society, 13, Sheela Vihar Colony,
   Pune-411 038.

Name of the Public Authority: Reserve Bank of India

Date of Hearing: 28.11.2006
Date of Decision: 07.12.2006

DEcision

Facts:

1. These are two appeals, one filed by Shri R.R. Patel (hereinafter referred to as the 1st Appellant) and another by Shri Madhav Balwant Karmarkar (hereinafter referred to as the 2nd Appellant). Both the appeal petitions were decided by Information Commissioner, Professor M.M. Ansari on 6.9.2006 vide Decision No.241/IC(A)/2006 and 243/IC(A)/2006 respectively.

2. Brief facts in respect of the appeal petition filed by the 1st Appellant are as follows:

   (i) The 1st appellant had sought information from the CPIO, RBI in respect of a cooperative bank named, Saraspur Nagrik Sahkari
Bank Limited. The CPIO provided partial information which was available with the RBI. In regard to other documents and the inspection report, the CPIO claimed that the information contained therein were received by the RBI in a fiduciary capacity and are exempt under Section 8(1)(e) of the Right to Information Act (RTI), 2005.

(ii) The 1st Appellate Authority vide its decision dated 4.7.2006 in the case of Shri RR Patel upheld the order of the CPIO and held that the inspection reports and the replies on the queries relating to it are of a confidential nature and are exempt from disclosure under Section 8(1)(e) of the RTI Act.

(iii) In the 2nd appeal preferred before this Commission, Information Commissioner, Professor M.M. Ansari held as follows:

“The RBI, as a regulatory authority, has access to information that are in possession of the financial institutions, which fall under the purview of RBI’s regulations for operation of their activities. Under Section 2(f), citizens may have access to “information relating to any private body which can be accessed by a public authority under any other law for time being in force.” Accordingly, the CPIO of RBI is directed to disclose the copy of inspection report, prepared by the RBI, to the appellant, after due application of section 10(1) within 15 working days from the issue of this decision.”

3. Brief facts in respect of the appeal petition filed by the 2nd Appellant are as follows:

(i) The 2nd appellant submitted his application under the RTI Act before Shri V.S. Das, CPIO of RBI seeking certain information concerning the inspection conducted u/s 35 of the Banking Regulations Act in respect of Rupee Cooperative Bank Limited, Pune and enquiry conducted u/s 83 of the Maharashtra Cooperative Societies Act, 1960 by the Cooperative Department.
(ii) The CPIO in his reply stated that the questions raised by the applicant relate to tendering legal opinion on the interpretation of the provisions of the Banking Regulations Act, 1949 and Maharashtra Cooperative Societies Act, 1960 which were not ‘information’ as defined u/s 2(f) of the Act.

(iii) In the 1st appeal in the case of Shri MB Karmarkar the Appellate Authority dealt in its decision of 28.7.'06 at greater length on the effect of disclosure on the national economic system, thereby denying disclosure also u/s 8(1) (a). The 1st Appellate Authority held that the inspection reports of the RBI are confidential documents prepared on the basis of the information supplied by banks in confidence and these are held by RBI in a fiduciary capacity. The Appellate Authority further observed that the disclosure of the documents sought for by the appellant is fraught with difficulty since this is an issue relating to the supersession of a bank, involving information given by one regulator to another in strict confidence, it may have large implications on the functioning of not only that bank but might create ripple effect on the whole banking system of the country in general and as such, the information sought for by the appellant is exempt from disclosure u/s 8(1)(a) of the RTI Act.

(iv) When the matter came up before this Commission in 2nd appeal, Information Commissioner Professor M.M. Ansari held that the inspection reports are an outcome of the RBI activity and circulars issued thereafter by it should fall under the public domain. It was also held that the exemption u/s 8(1) (e) on the ground of fiduciary capacity is not applicable and accordingly, the CPIO was directed to furnish information sought after due application of section 10(1) of the RTI Act.
4. On receipt of the aforesaid two decisions from this Commission, the Deputy Governor of RBI vide his letter dated 21.9.2006 submitted as follows:

(i) “Among the various responsibilities vested with RBI as the country’s Central Bank, one of the major responsibilities relate to maintenance of financial stability. While disclosure of information generally would reinforce public trust in institutions, the disclosure of certain information can adversely affect the public interest and compromise financial sector stability.

(ii) The inspection carried out by RBI often bring out weaknesses in the financial institutions, systems and management of the inspected entities. Therefore, disclosure can erode public confidence not only in the inspected entity but in the banking sector as well. This could trigger a ripple effect on the deposits of not only one bank to which the information pertains but others as well due to contagion effect.

(iii) While the RBI had been conceding request for information on actions taken by it on complaints made by members of the public against the functioning of the banks and financial institutions and that they do not have any objective in giving information in respect of such action taken or in giving the substantive information pertaining to such complaints provided such information is innocuous in nature and not likely to adversely impact the system.

(iv) However, disclosure of inspection reports as ordered by the Commission in their decision dated September 6, 2006 would not be in the economic interest of the country and such disclosures would have adverse impact on the financial stability.

(v) It would not be possible to apply section 10(1) of the Act in respect of the Act in respect of the inspection report as portion of such reports when read out of context result in conveying even more misleading messages.

(vi) Vide decision No.243/IC(A)/2006 dated September 6, 2006, the learned Information Commissioner has directed to furnish a copy of the inspection report and it is pertinent that the appellant had not requested for a copy of the inspection report either in the original request for information or in the appeal to the RBI Appellate Authority.
Reiterating their commitment to the RTI, the Dy. Governor of RBI requested that the aforesaid two decisions be reconsidered and reviewed.

5. In view of the submissions made by the RBI that

   (i) it would not be possible to apply section 10(1) of the Act in respect of the inspection reports, as a portion of such report when read out of context would result in conveying even more misleading messages; and

   (ii) that the disclosure of information sought would adversely affect public interest and compromise financial sector stability.

the Commission decided to reconsider the matter by its Full Bench and accordingly after issuing notices to all concerned parties, the matter was heard on 28.11.2006 by a Bench consisting of:

(1) Shri Wajahat Habibullah, Chief Information Commissioner;

(2) Prof. M.M. Ansari, Information Commissioner;

(3) Mrs. Padma Balasubramanian, Information Commissioner; and

(4) Shri A.N. Tiwari, Information Commissioner.

6. At the time of hearing, none of the appellants was present, although they had been informed. RBI was represented by Shri Rakesh Mohan, Dy. Governor of RBI, and Appellate Authority. He was assisted by:

(1) Shri V.S. Das

(2) Shri K.D. Zackarias

(3) Shri A. Unnikrishnan

(4) Shri Thomas Mathew
7. At the time of hearing, the following decisions/documents were submitted on behalf of the RBI:

(i) Copy of the judgment dated May 7, 1958, of the High Court of Punjab and Haryana in RBI vs. Central Government Industrial Tribunal.

(ii) Copy of the judgment dated February 3, 1989, of the High Court of Andhra Pradesh in P.S.V.P. Vithal Rao alias Vithal Charan Das Vs. Progressive Constructions Private Ltd.

(iii) Opinion dated January 11, 1976, of the then Attorney General of India.

(iv) The press release dated October 20, 2004, on disclosure of penalties on banks, issued by the Reserve Bank of India.


RBI also submitted their written arguments immediately thereafter.

8. A summary of their arguments is as follows:

(i) RBI carries out inspections of banks and financial institutions on regular basis and the inspection reports prepared by it contain a wide range of information that is collected in a fiduciary capacity. The inspection reports are confidential in nature and a Division Bench of the Punjab & Haryana High Court in the case of RBI Vs. Central Government Industrial Tribunal and the Andhra Pradesh High Court in the case of Shri PSVP Vittal Rao Vs. Progressive Constructions Pvt. Ltd. have upheld the confidential nature of the inspection reports. Such inspection reports are not made available even to the Public Accounts Committee of Parliament. Hence, any
disclosure of such information to the public could be viewed as breach of privilege of Parliament.

(iii) Disclosure of inspection reports would not be in the economic interest of the country and such disclosures would have an adverse impact on financial stability of the country.

(iv) It would not be possible to apply Section 10(1) of the Act in respect of inspection reports as portions of such report when read out of context would result in conveying even more misleading messages.

(v) The disclosure of inspection reports may affect the economic interest of the State and as such, the disclosure is exempted u/s 8(1) (a) and (e) of the Act.

(vi) Mr. Karmarkar had not requested for a copy of the inspection reports either in the original request or in the appeal to the RBI Appellate Authority.

(vii) RBI is conducting the inspections u/s 35 of the Banking Regulations Act and sub-section (5) of section 35 of the said Act empowers the Central Government to publish inspection report either in full or in part but this can be done only after giving reasonable notice to the concerned banking company, obviously because it is a document of confidential nature concerning the affairs of the banking company.

(viii) RBI usually claims privilege under the Evidence Act from production of inspection reports in courts. The stand taken by the RBI has been accepted by the Parliamentary Committees and by courts and tribunals. **Insofar as the RTI Act is concerned, disclosure of inspection reports is exempted u/s 8(1) (a) & (e) of the Act.**
9. Shri M.B. Karmarkar, 2nd appellant, however, in his written submissions which were received on 1st December, 2006 has submitted that the RTI Act does not provide for any reconsideration or review of the order passed by the Commission as 2nd appellate authority. He has also submitted that what he required was not the inspection report but a copy of the letter from the RBI dated 7.2.2002. He has also emphasized that there is no question of applying section 10(1) to the said letter and that the denial by the RBI is not bona-fide. He has also expressed his inability to attend the hearing because of expenditure involved and because of his old age.

10. **ISSUES FOR DECISION**

1. Can the decisions of the Commission qualify for review?

2. Can the claim of RBI for exemption u/s 8(1) (a) of the Act in respect of inspection reports be held to be justified at this stage?

3. Can the RBI claim exemption from disclosure u/s 8(1) (e) of the RTI Act?

4. To what extent, if any, section 10(1) of the RTI Act be applied in view of the facts and circumstances of the case?

**DECISIONS & REASONS**

11. Insofar as the maintainability of Review is concerned, in an earlier review petition moved by the UPSC in Rajnish Choudhry vs. UPSC, (Appeal No.CIC/MA/A/2006/0062) we have in our order of 21/11/06 relied on a Supreme Court ruling on the authority to exercise review of decisions in appeal. In Grindlays’ Bank Ltd Vs. Central Govt. Industrial Tribunal, (AIR 1981 SC 606) the Hon’ble Supreme Court has clearly laid down that when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be
corrected *ex debito justitiae* to prevent the abuse of its power and such power inheres in every court or tribunal:

“The expression “review” is used in two distinct senses, namely, (1) A procedural review which is either inherent or implied in a court or tribunal to set aside a palpable erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record…..Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every court or tribunal.”

We therefore hold that a review on these grounds is justified in the present case. This first issue is decided accordingly.

12. Section 35 of the Banking Regulations Act, 1949 empowers the RBI to cause an inspection to be made of any Banking Company and its books of accounts. It can do so either *suo moto* or on being directed to do so by the Central Government. While carrying out the inspection, an officer of the RBI is empowered to examine on oath any Director or other officer or employee of the Banking Company in relation to its business. The RBI is also empowered to give such directions as it considers necessary to Banking Companies generally or to any Banking Company in particular as it deems fit in the public interest or in the interest of the banking policy and all such banking companies are bound to comply with such directions. However, section 35 also mandates the RBI to supply a copy of its inspection report to the concerned Banking Company and if the inspection has been caused under the directions of the Central Government, a copy of the inspection report has also to be furnished to the Central Government. As brought out by Deputy Governor Rakesh Mohan in his arguments before us, the Central Government has the authority u/s 35 (5) to publish such information. However, the Government has never thought fit to exercise this authority.

13. The powers of the RBI to cause inspection and to give directions are conferred with a view to preventing the affairs of any banking company being
conducted in a manner detrimental to the interest of the depositors or with a view to securing the proper management of banking sector generally. While exercising its statutory powers, the RBI is required to give utmost importance to the public interest and to the interest of the banking policies. The conducting of the banking and formulation of the banking policy is closely related to the economic interest of the State and the RBI being the central bank of the country is entrusted to safeguard the economic interest of the State. Being an expert body, it is the sole authority to decide as to what would best serve the economic interest of the State. This Commission naturally cannot go into the merits of the RBI’s decision. In this context, the following observations of the Hon’ble Punjab & Haryana High Court in RBI Vs. Central Government Industrial Tribunal are worth quoting:

“The provisions of the Banking Companies Act leave no doubt regarding the key position occupied by the Reserve Bank of India in the economic affairs of the country. It is in fact the agency through which the Central Government maintains its control on the banking system in the country and the whole system of credit. In the circumstances, there cannot, in my opinion, be any doubt that generally the results of Inspections of the scheduled banks conducted by the Reserve Bank suo moto or under the directions of the Central Government, and the correspondence between the individual banks and the Reserve Bank regarding their affairs, are highly confidential matters, the disclosure of which to the public might easily result in loss of confidence or even panic. The maintenance of confidence in banks and the banking system appears to me to be a matter of vital interest to the nation and I, therefore, consider that the claim of the head of the department in this case that as a whole the reports of the inspection of various banks by the Reserve Bank and the correspondence between the various banks and the Reserve Bank regarding their affairs are documents which relate to affairs of State, is justified. It is, of course, open to the Government to decide that the publication of any particular report or information contained in any correspondence is not likely to result in any harm being done, and in such cases the claim of privilege may be waived when the production of documents is required in a Court. Once, however, a certain class of documents is held to relate to affairs of State and privilege is claimed regarding documents falling within this class by the head of the department, it is not, in my opinion, open to the Court, or in this case the tribunal, to query the claim asserted and
to assert the right to examine the documents themselves for the purpose of being satisfied on the point whether they relate to the affairs of State and to what extent their disclosure will not be harmful.”

14. Under the RTI Act, this Commission is concerned to ensure that right to information guaranteed to every citizen under the Act is efficaciously availed by its citizens. All citizens have a right to obtain information from a public authority unless such information is categorized as exempted u/s 8(1) of the Act. The right to access information is, therefore, not ‘absolute’ as it is subject to other provisions of the Act. If any information falls within the exempted category as defined u/s 8(1), this Commission is expected to uphold that decision unless the decision so arrived at by the Public Authority is palpably wrong. In an integrated economy like ours, the job of a regulating authority is quite complex and such an authority has to decide as to what would be the best course of action in the economic interest of the State. It is necessary that such an authority is allowed functional autonomy in decision making and as regards the process adopted for the purpose.

15. While deciding the aforesaid two appeals, the Commission has taken into consideration the applicability of Sec 8(1)(e). Consideration of the applicability of Sec 8 (1) (a) was limited to the extent that it does not find mention in the decision. Contrary to this, the RBI in their submissions have cited this in at least one of the appeals before the 1st Appellate Authority as the main ground for refusing disclosure of the information sought.

16. In view of this, and in light of the earlier discussion, we have no hesitation in holding that the RBI is entitled to claim exemption from disclosure u/s 8(1)(a) of the Act if it is satisfied that the disclosure of such report would adversely affect the economic interests of the State. The RBI is an expert body appointed to oversee this matter and we may therefore rely on its assessment. The issue is decided accordingly.
17. In view of what has been decided above, it is no more necessary to go into the question of applicability of section 8(1)(e) of the Act to the above mentioned two cases, more so, in view of the fact that the inapplicability of section 8(1)(e) of the Act has already been considered and decided in the decision dated 6.9.2006. Re-consideration of that issue is, therefore, neither necessary nor warranted in light of the Supreme Court ruling cited above.

18. Similarly, applicability of section 10(1) is also not an issue that need be decided insofar as these proceedings are concerned. The decision dated 6.9.2006 already grants this discretion to the RBI. It is RBI’s view that in the instant case, it is not possible to apply section 10(1) of the Act in respect of the inspection report as portion of such reports when read out of context would result in conveying even more misleading messages.

19. However, at the time of hearing and even in their written submissions, the RBI has expressed their willingness to disclose a summary of substantive part of the inspection reports to both the appellants. The Commission, therefore, decides to advise them accordingly.

20. The orders dated 6.9.2006 passed by the Commission stand modified to the extent indicated in the preceding paragraphs and the appeals are disposed of accordingly.

21. Before parting with this appeal, we would like to record our observations that in a rapidly unfolding economics scenario, there are public institutions, both in the banking and non-banking sector, whose activities have not served public interest. On the contrary, some such institutions may have attempted to defraud the public of their moneys kept with such institutions in trust. RBI being the Central Bank is one of the instrumentalities available to the public which as a regulator can inspect such institutions and initiate remedial measures where necessary. It is important that the general public particularly the shareholders
and the depositors of such institutions are kept aware of RBI’s appraisal of the functioning of such institutions and taken into confidence about the remedial actions initiated in specific cases. This will serve the public interest. The RBI would therefore be well advised to be proactive in disclosing information to the public in general and the information seekers under the Right to Information Act, in particular. The provisions of Section 10(1) of the RTI Act can therefore be judiciously used when necessary to adhere to this objective.

Let a copy of this decision be sent free of cost to the parties. The Chief Information Commissioner pronounces the decision agreed to by the Information Commissioners on this 7th day of December 2006.

(Wajahat Habibullah)
Information Commissioner

Authenticated true copy. Additional copies of order shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(L.C. Singhi)
Additional Registrar
07/12/2006