

Reserved On :24.09.2026
Pronounced On : 29/09/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 796 of 2026
In R/SPECIAL CIVIL APPLICATION/9476/2016

With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In R/LETTERS PATENT APPEAL NO. 796 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL
and
HONOURABLE MR.JUSTICE D.N.RAY

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Approved for Reporting	Yes	No
	✓	

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ARVIND KEJRIWAL, THE CHIEF MINISTER (GOVT NCT OF DELHI)
Versus
GUJARAT UNIVERSITY & ORS.

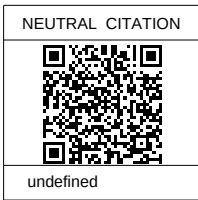
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Appearance:

DR. ABHISHEK MANU SINGHVI, SR. ADV., WITH MR. VIVEK JAIN, ADV.
WITH MS. AAYUSHI A. SHAH, ADV. WITH MR. AMIT BHANDARI, ADV.
WITH MR. MOHD. IRSHAD, ADV. WITH DR. AUM M KOTWAL, ADV.(7320)
for the Appellant(s) No. 1

MR. TUSHAR MEHTA. SOLICITOR GENERAL OF INDIA, WITH MS.
MANISHA LUVKUMAR, AAG WITH MR. RAJAT NAIR, ADV. WITH MR.
AMAN MEHTA, ADV. WITH MS. MS DHARMISHTA RAVAL(707) for the
Respondent(s) No. 1

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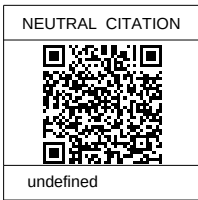


**CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
AGARWAL
and
HONOURABLE MR.JUSTICE D.N.RAY**

**CAV JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)**

This intra-court appeal is directed against the judgment and order dated 31.03.2023 passed by the learned single Judge in allowing the writ petition quashing the order dated 29.04.2016 passed by the Central Information Commissioner (CIC) in the proceeding No. CIC/SA/C/2015/000275, with the cost of Rs. 25,000/- imposed upon the respondent No.2 before the writ court, namely the appellant herein.

2. At the outset, on the first hearing date, Dr. Abhishek Manu Singhvi, the learned senior counsel assisted by the learned advocate Dr. Aum K. Kotwal appearing for the appellant would submit that the appellant does not propose to challenge the merits of the judgment impugned, i.e. on the correctness of the questioning of the order dated 29.04.2016 passed by the CIC. The appellant confines his challenge to the observations made in paragraph Nos. '40' and '41' of the judgment impugned, where the writ court has made observations about the conduct of the appellant herein/respondent No.2 therein, to impose cost while allowing the writ petition. The specific observations of the writ court made in paragraph No. '40' that “despite the fact that the petitioner University had put the degree-in-question on its website and there being clear expression with precision in the pleadings in that regard, the respondent though never ever disputed the degree-in-question in the proceedings, however, has persisted with the



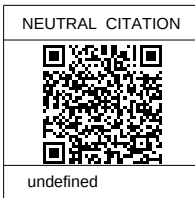
matter and, as such, cost be imposed”, is sought to be assailed by the learned senior counsel seeking intervention of the appellate court to expunge the said remarks and also the cost imposed upon the appellant.

3. It was submitted that the observations in the aforesaid paragraph that the respondent No.2/appellant herein has persisted with the matter, is wholly incorrect, inasmuch as, the appellant was merely a bystander. No application was filed by the appellant at any point of time and the order impugned was passed by the CIC taking *suo motu* cognizance. Even, the present LPA has not been pursued on the merits of the order. It is submitted that the appellant is neither persistent nor is contesting on the merits of the order dated 29.04.2016 of the CIC or the correctness of the judgment impugned. In that view of the matter, the observations in the judgment of the writ court about the conduct of the appellant/respondent No.2 therein, are wholly uncalled for.

4. In rebuttal, Mr. Tushar Mehta, the learned Solicitor General of India appearing on behalf of the respondent University, vehemently refuted the submissions made by the learned senior counsel for the appellant while highlighting the observations made by the learned single Judge in paragraph No. '12' of the judgment impugned, regarding the submissions made by the learned counsel for the respondent No.2 therein/appellant herein, which reads as under :-

"12. For the respondent No.2, Mr. Percy Kavina, learned Senior Counsel made the following submissions:

(i) that the present petition was not maintainable at the instance of petitioner- Gujarat University as there is no order against the petitioner which is a statutory body and principally the order is only against the PMO. Shri Kavina, Senior Advocate has



submitted that the petitioner being a statutory body cannot file a petition on behalf of Central Information Commission of PMO against whom directions have been issued. He submitted that petitioner being a public authority is merely tasked to do certain compliances and as such is not and cannot be held to be an aggrieved party clothing it with locus to challenge the order of the CIC.

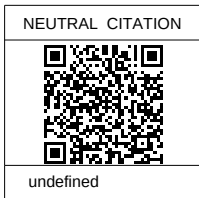
(ii) Shri Kavina, learned Senior Counsel, submitted that all information about the candidate contesting elections must be available in public domain for it to be scrutinized by public. He submitted that every voter has a fundamental right to know the educational qualification of a candidate which is clear from the provisions of Representation of Peoples Act, 1951 and Rules made therein, more particularly Rule 4A and Form 26 of Conduct of Elections (Rule) 1961. He submitted that thus every candidate has a duty to disclose the educational qualification to subserve the right of information of the voter and as such the application of Respondent No.2 was maintainable under Right to Information Act.

(iii) Shri Kavina, learned Senior Counsel, further submitted that once a student passes examination and qualifies to secure a degree then such degree cannot be treated as private or third party information. The said degree certificate thus has to be considered as public document generated by a public body and discharging its duties as public and statutory authority. He submitted that though mark-sheets or answer sheets can be held to be private information, however, degree certificate of final result would be a matter which ought to be published in public domain.

(iv) Mr. Kavina, learned Senior Counsel, submitted that a degree related information as available in the permanent register of the University is accessible as a public document, the same would fall within the statutory provision of Sections 74 & 76 of the Evidence Act, 1872 where under list of public documents and right to inspect and obtain certified copy is provided. He thus submitted that as per Sections 74 & 76 of Evidence Act, a degree issued by a University would come within the four corners of public information withheld by a public officer.

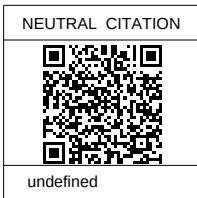
(v) Mr. Kavina, learned Senior Counsel, further submitted that the relationship between University and student is primarily of contractual nature and thus is fiduciary in nature. He submitted that the degrees are thus not protected under the exception provided under Section 8 (e) of the RTI Act."

5. The further observations made in paragraph No. '28' of the order recording the observations of the writ court of what was



transpired during the course of hearing was also pressed into service, which records as under :-

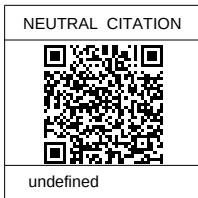
"28. During the course of the hearing full opportunity was once again given by this court to Respondent No. 2 to place his justification, as to what larger public purpose would be served in disclosing the educational degrees of Shri Narendra Damodardas Modi to him through the RTI route when the same was already available in public domain. However, in response, the only justification which came forward before this court was that all information about the candidate contesting elections must be available in public domain for it to be scrutinized by public. This court can only record its disagreement with the aforesaid justification placed by Respondent No. 2 when the degree is already in public domain. The said reasoning is outside the ambit of concept of public interest which has elaborately been pronounced in the case of Subhash Chandra Agarwal (supra) as quoted above. To borrow the words of their Lordships of the Hon'ble Apex Court, this court finds that the respondent has merely set up a case of "Something which is of interest to the public" rather than setting up a legal case of "something which is in the public interest". Further this court agrees with the submission of Shri Mehta, learned Solicitor General of India that the insistence of the Respondent No. 2 to get the educational degree of Prime Minister, Shri Narendra Damodardas Modi through RTI route, when the same is already available in public domain, also creates doubt on the bonafide and motive of the Respondent No 2. In the opinion of the court, the manner in which the request was made and considered by the CIC, squarely falls within the observation made by the Hon'ble Apex Court in para 95 of Subash Chandra Agarwal, (Supra) whereby the honourable Supreme Court has observed that in given cases "motive" and "purpose" may be negative factor while applying the public interest test in case of qualified exemptions governed by the



public interest test "when the "motive" and "purpose" is vexatious or it is a case of clear abuse of law". In absence of any valid ground of public interest, this court finds that the application made by respondent no 2 also fails to qualify the public interest test contemplated in Subash Chandra Agarwal, (Supra) due to ostensible motive and purpose which appears to this court to be more politically vexatious and motivated, instead of, being based on sound public interest considerations."

6. It is noted by the learned single Judge that the respondent No.2/appellant herein who was holding the office of the Chief Minister of Delhi had made a reckless statements while responding to an RTI application requiring him to declare his Electoral photo identity card and while responding as to whether he wanted to declare the said information, a casual remark was made giving a conditional consent substantially saying that if the Chief Minister is called upon to disclose his Electoral photo identity card, the Prime Minister should also be asked to declare his degree. Such a course of action, as observed by the learned single Judge, highlighted by Mr. Mehta, the learned Solicitor General of India for the University, was the action of the appellant guided by oblique motive.

7. As noted by the learned single Judge, while hearing the second appeal under the RTI Act on an application filed by a third party for supply of information about transportation request of Electoral Photo Identity Card of the respondent No.2, oral request of the respondent No.2/appellant herein and on a letter dated 28.04.2016 was converted into an RTI application directing the University for disclosure of the educational degree of the Prime Minister to the appellant. It was vehemently argued that the contents of the letter dated 28.04.2016 written by the appellant on his official letter head, extracted in the order impugned, would

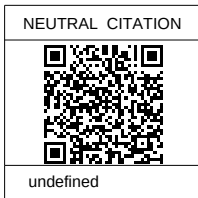


prove that the appellant is not innocent rather time and again he was making an effort to malign the Prime Minister on the issue and in a motivated action had written the letter dated 28.04.2016, which has led to the action initiated by the CIC in registering a *suo motu* RTI case at the second appellate stage to issue directions to the respondent University, which act itself is wholly without jurisdiction.

8. The submission, thus, is that the observations made in the paragraph No. '40' of the judgment of the writ court is rather on a careful consideration of the facts and circumstances of the case put forth by the appellant/respondent No.2 therein before the writ court. The learned Solicitor General of India, therefore, would submit that this Court may deal with the merits of the judgment impugned, as the question arises in the appeal are directly involving the jurisdiction of the CIC under the Right to Information Act, 2005, and also on the merits of the order being hit by Section 8 of the Right to Information Act, 2005.

9. It is submitted that the judgment impugned is perfectly justified when it comes to setting aside the directions in the order impugned dated 29.04.2016 passed by the CIC being in contravention of both the provisions of the RTI Act, 2005 and also the law laid down by the Apex Court and various High Courts on the subject.

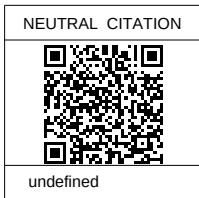
10. The learned Solicitor General of India made extensive arguments on the merits of the order of the CIC being hit by Section 8 of the RTI Act, 2005. It was submitted that the conduct of the appellant, in triggering the proceedings leading to the passing of the order impugned by the CIC and the subsequent



conduct in the writ court by filling the Review Application on merits of the order of dismissal of the writ petition, are sufficient to sustain the observations made in the paragraph Nos. '40' and '41' of the judgment impugned. Apart from the above, to bring the controversy to its logical conclusion, this Court may consider the merits of the case of the respondent University so as to render an authoritative pronouncement for the guidance of the CIC in future. The submission, thus, is that the appeal may not be disposed of without dealing with the merits of the case.

11. In rejoinder, Mr. Vivek Jain, the learned advocate appearing for the appellant who has also assisted Dr. Singhvi, the learned senior advocate during the first hearing would submit that there was no reason for the writ court to record in the order impugned that the appellant was persistent with the matter so as to impose cost upon him.

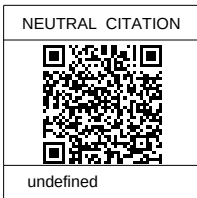
12. Moreover, about the cause of action for filling the writ petition, he would submit that once the University itself made a declaration that it has uploaded the degree of the Prime Minister on its website on 09.05.2016 that would make clear that there is no intention on the part of the University to withhold any information, there was no cause of action for the University to file writ petition challenging the order of the CIC giving direction to it. The submission is that since the details of the degree was already put up on the website as per the own stand of the University, no question of law needed to be decided either by the writ court or in this appeal, inasmuch as, the issue as to whether the order is hit by Section 8 of the RTI Act, 2005, would not arise in a case where the information is already displayed to the public by putting it up on the website of the University.



13. Moreover, the appellant is neither the applicant nor it has pursued the matter before the CIC. Being a bystander, he can not be imputed in a case which is essentially between the CIC and the University.

14. In rejoinder, apart from dealing with the delay aspect in filing the present Letters Patent Appeal (which was not seriously contested by the respondents), it is reiterated that since inception of the present appeal and also in the review petition, the appellant has taken a categorical stand that the challenge to the judgment of the learned single Judge is limited to the observations made in paragraph Nos. '39' and '40' and consequential directions of payment of costs of Rs. 25,000/- in paragraph No. '41'. The reason being that the learned single Judge in paragraph No. '40' imposed cost on the appellant noticing that "he persisted with the matter" despite "the degree being uploaded on the website of the University". With respect to the observations of the learned single Judge that the appellant herein made a request which is "not falling within the purview of the RTI Act", it is sought to be submitted that the appellant had neither filed any RTI application nor had made any prayer seeking information from the CIC. The order dated 29.04.2016 passed by the CIC clearly states that it was treating the response of the appellant herein as an applicant *suo motu*. Hence, the appellant cannot be made liable for the *suo motu* action of the CIC.

15. The contention is that the appellant did not even file any response to the writ petition during the year 2016-2023 and has not pursued even the Letters Patent Appeal filed by the University against the order of the learned single Judge refusing to grant any interim order. It was the LPA Court that granted interim relief to the University, which the appellant never pursued. The University argued before the writ court that even after the dismissal of the



writ petition by the learned single Judge, the petitioner continued to persist with the matter in the review application, whereas in the review petition the appellant/review applicant only brought on record the fact of non-availability of degree on the website of the University. It is submitted that even the fact that there is no degree online and that only details pertaining to the same have been furnished, has been admitted by the respondent University. The findings in the judgment impugned against the appellant herein that he persisted with the matter despite the degree having been uploaded on the website is, thus, unsustainable in view of the clear admission of the University.

16. It is, thus, submitted that in light of the aforesaid legal and factual narrations on behalf of the appellant, the observations made in paragraph Nos. '39' and '40' of the judgment impugned qua the appellant may be expunged/quashed and *inter alia* the directions in paragraph No. 41 of the impugned judgment directing the appellant to deposit Rs. 25,000/- towards cost be quashed.

17. Considering the above submissions made by the learned senior counsel for the parties, having noticed the contents of the letter dated 28.04.2016 extracted in paragraph No. '2' of the judgment impugned and further directions contained in paragraph No. '13' of the order of CIC, we do not find merit in the submission of the learned senior counsel for appellant to expunge the remarks made in the order of the learned single Judge against the respondent No.2/appellant herein or to condone the cost. For ready reference, the contents of the letter dated 28.04.2016 and the entire order of the CIC dated 29.04.2016 are reproduced as under :-



ARVIND KEJRIWAL
CHIEF MINISTER



GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
DELHI SECRETARIAT, I.P. ESTATE, NEW DELHI-110002
PHONE : 23392020, 23392030

D.O. No. : 507/C/MCO
Date : 28/4/2016

सेवा में,
प्रो. एम. श्रीधर आचार्यलू,
माननीय केन्द्रीय सूचना आयोग,
केन्द्रीय सूचना आयोग,
2 अगस्त कान्ति भवन,
भीकाजी कामा प्लेस,
नई दिल्ली-110066



विषय- याचिका संख्या CIC/SA/C/2015/000275 के संबंध में।

महोदय,

18 मार्च 2016 को याचिका संख्या CIC/SA/C/2015/000275 पर आपके द्वारा दिये गये आदेश के संबंध में मुझे कहना है कि-

मुझसे सम्बन्धित सरकारी रिकार्ड में जितनी भी जानकारियां हैं, उनको सार्वजनिक करने में मुझे कोई आपत्ति नहीं है।

लेकिन मुझे पता चला है कि आपने प्रधानमंत्री श्री नरेन्द्र मोदी जी की डिग्री से जुड़ी जानकारी सार्वजनिक करने पर रोक लगा दी है। (इस सम्बन्ध में एक न्यूज रिपोर्ट संलग्न है) आरोप लग रहे हैं कि श्री नरेन्द्र मोदी जी के पास कोई डिग्री नहीं है। ऐसे में पूरे देश की जनता सच्चाई जानना चाहती है। फिर भी आपने उनकी डिग्री से संबंधित जानकारी सार्वजनिक करने से मना कर दिया। आपने ऐसा क्यों किया? यह तो गलत है।

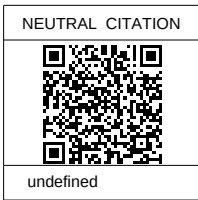
आप मेरी तो सारी जानकारी सार्वजनिक करना चाहते हैं, जिसमें मुझे कोई आपत्ति नहीं है। लेकिन प्रधानमंत्री श्री नरेन्द्र मोदी जी की डिग्री से जुड़ी जानकारी भी छुपाना चाहते हैं, इस पर मुझे आश्चर्य है।

ऐसा करने से जनता के मन में शंका पैदा होती है कि क्या कमीशन वाकई ही निष्पक्ष है? मेरा आपसे निवेदन है कि मुझ से सम्बन्धित सारी जानकारी सार्वजनिक करने के साथ-साथ आप प्रधानमंत्री श्री नरेन्द्र मोदी जी की डिग्री से जुड़ी जानकारी सार्वजनिक करने की हिम्मत दिखाएं।

अरविंद केजरीवाल
6, पल्लेगस्टाफ रोड,
सिविल लाइन्स
दिल्ली- 110054

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama-Place, New Delhi 110068)



Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)
Information Commissioner
CIC/SA/C/2015/000275
Adjunct Order
Arvind Kejriwal (Applicant)

in

Neeraj Saxena V. District Election Officer, GNCTD

Complainant: Neeraj Saxena
Respondent: District Election Officer
Date of hearing: 28.04.2016
Date of Decision: 29.4.2016

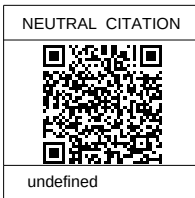
Parties Present:

1. Complainant is present with Mr. Sanjeev Gupta. Mr. Mohan Lal, AERO, Mr. V. K. Bajaj, HC represented public authority DEO, and Mr. Rishikesh Kumar, Mohd. Irshad, Advocates, represented Mr Arvind Kejriwal.

2. During the course of hearing, Mr. Arvind Kejriwal, Chief Minister of GNCTD made a written submission in which he requested the Commission to order Delhi University to facilitate disclosure of information about education degree of PM, Mr. Narendra Modi. He also alleged that the Commission did not allow the disclosure of the information about the degree of Mr. Narendra Modi. He has also attached a clipping of Times of India newspaper which reported briefly the decision of CIC while disposing of a second appeal in the matter of Hans Raj Jain vs. Delhi University

3. In Hans Raj Jain v. Delhi University, CIC/SA//2014/001424, Mr. Hans Raj filed a complaint (not second appeal) against Delhi University for not furnishing the information sought, within time.

4 In that complaint case the CPIO of Delhi University explained that the admission details are generally available based on the roll no. of candidates. The information sought is too general as the complainant wanted to know details of all candidates bearing name starting with letters M(Modi) and N(Narendra). The CPIO represented that it will be very difficult to search with the starting letters of the names. Even with the full name Narendra, it may not be possible to secure the details especially when there no mention of specific roll number along with the year-number in which degree was allotted. Same was informed to the appellant. The FAA also confirmed the answer of the PIO. He approached the Commission in complaint seeking imposition of penalty on First Appellate Authority for delaying hearing of first appeal. But there is no provision under RTI to penalize the First Appellate Authority Information sought could not be provided because no specific



admission number or degree number was given, which is required to trace the position of the degree out of lakhs of external candidates in 1978. The complainant was not insisting on penalty against PIO. Even if he sought penalty against PIO, it was not a fit case to do so. As per law, the CIC cannot impose penalty on First Appellate Authority. Hence it was rejected. In a complaint information is neither demanded nor furnished.

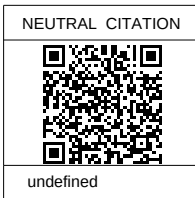
5. In this second appeal the main issue was supply of information about transportation request of Electoral Photo Identity Card (EPIC) of Mr Arvind Kejriwal. The Commission thought it is reasonable to give opportunity to Mr Kejriwal to express his views on possibility of holding position of a legislator and Legislature Party as public authority under RTI Act. He has expressed no objection for disclosing the information about him as contained in records. But he was silent on the main part of the notice, for which his representatives were given some more time.

6. Meanwhile, in the response, Mr Kejriwal raised a demand for information about Prime Minister Narendra Modi's educational qualifications referring to Hans Raj Jain case, In which complaint about information of Mr Modi's graduation was a subject matter He stated that while CIC wanted Mr Kejriwal's information to be given, CIC was obstructing the Information about degrees of Mr. Modi, the Prime Minister He expressed surprise over this and also doubted objectivity of the Commission.

7. Hence, the Commission considers the response of Mr Kejriwal, the Chief Minister of Delhi, as application under RTI in his capacity as a citizen.

8. The educational qualifications related information about public authority or public servant or political leader occupying constitutional position is not hit by any exception under Section 8 of RTI Act. It cannot be stated as personal or private information also, In fact, the information about educational degrees of Prime Minister is already in public domain. It is a matter of profuse reporting in print, electronic and social media. In an interview to a senior journalist, Mr Rajiv Shukla, Mr Narendra Modi explained that he completed High School and on the advice of an elderly personality he obtained degree and PG through external examinations without stepping into the colleges. (Clip relating to education, <https://www.youtube.com/watch?w=fullInterview> <https://www.youtube.com/watch?w=fullInterview>)

9. This generated lot of curiosity among the people, who expressed their feelings in various social media and newspaper websites in the form of comments. The curiosity cannot be equated with public interest. Just because the public is interested in it, it does not mean that it is in public Interest. There is no educational qualification prescribed for contesting any electoral position under law. The



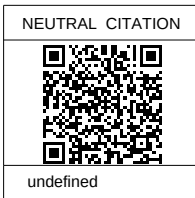
election to Lok sabha or Prime Ministership cannot be questioned on the point of educational qualification Where there is a prescribed educational qualification for a position, and its existence was doubted, its disclosure will be in public interest. That is not the point in this case.

10. Here I would like to recall the comment of my father, Freedom Fighter, Late M. S. Acharya, when Telugu University wanted his educational qualifications as part of bio-data to draft a citation to present Telugu Pratibha Purskaram to him for being an eminent Telugu Journalist. When asked what did you study? he took pride in saying "I studied 'Raghu Vamsha' and 'Megha Dootha', 'Kumara Sambhava' of Maha Kavi Kalidas". I said 'they are not degrees offered by universities'. "So what, they give better education than many degrees awarded by Universities". His citation had finally referred to those Mahakavyas as his qualifications.

11. During Constituent Assembly Debates, Mr. H.V. Kamath noted the extent of illiteracy in the country and the dangers it presented, and expressed regret that the franchise itself had not been restricted on grounds of literacy

Alladi Krishnaswamy Ayyar noted: "More than any other provision in the Constitution. I should think the boldest step taken by this Assembly is in the matter of universal adult suffrage with a belief in the common man and in his power to shape the future of the country."

Subsequently, during the final debates on 23rd November 1949, he observed that "in spite of the ignorance and illiteracy of the large mass of the Indian people, the Assembly has adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule and in the full belief that the introduction of democratic government on the basis of adult suffrage will bring enlightenment and promote the well-being, the standard of life, the comfort and the decent living of the common man. The principle of adult suffrage was adopted in no lighthearted mood but with the full realisation of its implications. If democracy is to be broad based and the system of governments that is to function is to have the ultimate sanction of the people as a whole, in a country where the large mass of the people are illiterate and the people owning property are so few, the introduction of any property or educational qualifications for the exercise of the franchise would be a negation of the principles of democracy... This Assembly deserves to be congratulated on adopting the principle of adult suffrage and it may be stated that never before in the history of the world has such an experiment been so boldly undertaken."



Not prescribing the educational (degree based) qualification for contesting electoral offices is one of the great features of Indian Democracy What needed is education not degrees.

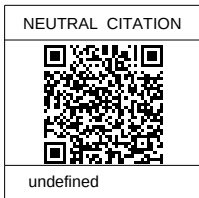
12. However, when a citizen holding the position of Chief Ministership wants to know the degree related information of the Prime Minister, it will be proper to disclose.

13. Hence, the Commission requires the PMO to provide specific number and year of the degree and PG degree to the Delhi University and the Gujrat University offices so that it will be easy for them to search and provide any documents relating to it The Commission directs the PIOs of Delhi University and Gujarat University, Ahmadabad to make best possible search for the information regarding degrees, in the name of "Mr. Narendra Damodar Modi" in the year 1978 (Graduation in DU) and 1983 (Post Graduation in GU) and provide it to the appellant Mr Kejriwal, as soon as possible. (The time limit is not prescribed keeping In view the difficulty in searching without specific number).

(M. Sridhar
Acharyulu)
Information
Commissioner"

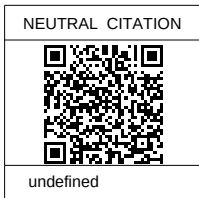
18. From a bare perusal of the order of the CIC would go to show that it was passed in a second appeal proceeding under the Right to Information Act, 2005 by taking *suo motu* cognizance of the letter dated 28.04.2016 written by the appellant herein, wherein certain information pertaining to the appellant was sought.

19. It is noteworthy that during the course of hearing of the second appeal, where the main issue was supply of information about the transportation request of Electoral Photo Identity Card of the appellant, while dealing with the application filed under the RTI Act seeking the said information, the CIC called for the response of the appellant to express his view and if he has no objection for disclosing the information about him as containing in the records.



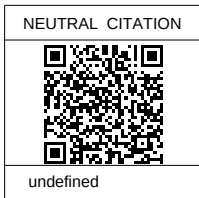
20. While responding the said notice of the CIC, the appellant raised a demand for information about the Prime Minister's educational qualification referring to some other case agitating that the CIC was obstructing the information about the degree of the Prime Minister. It is noted in the order of the CIC that during the course of hearing, a written submission was also made by the appellant herein requesting the Commission to order Delhi University to facilitate disclosure of information about the educational degree of the Prime Minister with the allegations that the Commissioner did not allow disclosure of the information about the degree of Mr. Narendra Modi. He also attached a clipping of the Times of India newspaper, which reported briefly the decision of the CIC while disposing of the second appeal in the matter of Hansraj Jain v/s. Delhi University, in which the complaint about the information of Modi's graduation was the subject matter.

21. This letter/response of the appellant was considered as an RTI application under the RTI Act, 2005 of the appellant in his capacity as a citizen, and by referring to Section 8 of the RTI Act, it was held that the educational qualifications related information about the public authority or public servant or political leader occupying Constitutional position is not hit by any exception under Section 8 of the RTI Act and that such information cannot be said to be personal or private information. Further, while noticing that the information about the educational degrees of the Prime Minister is already in public domain and citing some comments of his own father and the constitutional assembly debates, the Information Commissioner, on his own personal notions, acceded to the demand of the appellant in the letter dated 28.04.2016 to issue directions in paragraph No. '13', as extracted hereinabove, to provide information to the appellant, as sought for.



22. It may also be noted that the respondent No.2/appellant herein filed a review petition seeking for review of the judgment impugned on the ground that there were errors apparent on the face of record. As noted in the order of rejection of the review petition dated 09.11.2023, it was submitted that the statement made by the original petitioner/University before the Court that the degree was displayed on the website, is factually incorrect. The observations made by the Court that the respondent No.2 could not have persisted with the request when the degree was displayed by the University is, thus, an error apparent on the face of the record. The contention was that the imposition of cost by the Court is, thus, based on wrong factual assertions and also the observations of the Court that the respondent No.2 "used on appeal against him to kickstart and trigger upon the controversy for filling within the purview of RTI Act" and that the applicant had made an "absolutely casual application", are factually incorrect, as the applicant was only a respondent in the proceedings before the CIC. The CIC took *suo motu* cognizance, which clearly indicates that the respondent No.2 never persisted with the matter.

23. It is sought to be submitted by the learned Solicitor General of India appearing for the respondent University/original petitioner that the review petition was filed on merits and was not confined to the cost directions. It was vehemently argued that in the review petition that the observations made in paragraph Nos. '10', '28' and '40' of the judgment are error and mistakes apparent on the face of the record, which are pertaining to the abuse of provisions of the Act by the CIC in passing the order on the request made by the respondent No.2 while justifying the order of the CIC.

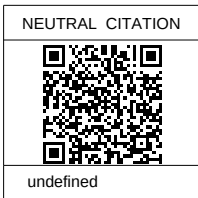


24. Taking note of the above facts and circumstances of the present case, the manner in which the matter was proceeded before the CIC in the second appeal filed by a third party seeking information against the appellant and the contents of the order of the CIC, we are afraid to accept the submissions of the learned senior counsel for the appellant to expunge the observations made in paragraph Nos. '40' and '41' of the judgment impugned.

25. We may also add to what has been observed by the learned single Judge in the judgment impugned that the statutory authorities and the Courts should not be treated as a public platform to ventilate the political vengeance. A political leader holding the public office cannot use the statutory proceedings for their political motives. The manner in which the appellant responded to the CIC in the proceedings against him and further pursued the matter by filling the written submissions speaks of itself and need no further comments or observations from us.

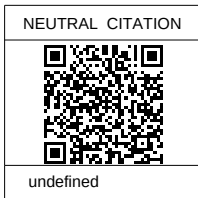
26. Coming to the submissions made by the learned Solicitor General of India on the merits of the controversy, we find it fit and proper in the interest of justice to address the controversy pertaining to the procedure and the manner in which the proceedings under the RTI Act, 2005 are to be conducted and further to address the reasoning of the CIC in the order impugned dated 29.04.2016 for passing the order for providing information to the respondent No.2/appellant herein vis-a-vis the scope and effect of Section 8 of the RTI Act.

27. The long title of the enactment would read that it is an Act to



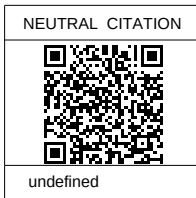
provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission or State Information Commissions and for matters connected therewith and incidental thereto. It further says that the democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. It further says that revelation of information in actual practice is likely to conflict with other public interests including efficient operation of the Government etc. and it is to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal; the Act contemplates that it is expedient to provide for furnishing certain information to citizens who desire to have it.

28. If we look to the historical background in which the Right to Information Act, 2005 was enacted, it may be noted that the RTI Act, 2005 replaced the Freedom of Information Act, 2002 enacted by the Parliament on the suggestions of the National Advisory Council that the erstwhile Act be made more progressive, participatory and meaningful. The Statement of object and reasons of the RTI Act, 2005 incorporates that the Legislation was brought to provide an effective framework for effectuating the right of information recognised under Article 19 of the Constitution of India by incorporating the provisions for establishment of appellate machinery with investigating powers to review the decisions of the Public Information Officers; penal provisions for failure to provide information as per law; provisions to ensure maximum disclosure



and minimum exemptions consistent with the constitutional provisions and effective mechanism for access to information and disclosure by authorities etc.. The laudable object with which the Act was enacted are found in the constitutional scheme under Article 19 for protection of rights of citizens regarding freedom of speech and expression, aimed at ensuring transparency and to bring in accountability with the revelation of information by the public institutions.

29. In order to meet these objectives, the Act provides for right of information and obligations on public authorities under Chapter-II. Section 3 of the Right to Information Act provides that all citizens shall have right to information subject to the provisions of the Act. Section 4(1)(b) and (c) of the Act, 2005 provide for obligations of the Public authority to publish information as enumerated therein after enactment of the RTI Act. It further contains provisions for making an application by a person who is desirous to obtain any information under the Act in writing, accompanying by such fees as may be prescribed, specifying the particulars of the information sought by him or her. For obtaining information as per Section 6(1), a person has to make a request in writing or through electronic means, with the prescribed fee to the Public Information Officer of the concerned public authority. Section 7 provides the timeline within which an information is to be provided by the Public Information Officer on receipt of a request under Section 6, on payment of such fee as may be prescribed or reject the request for any of the reasons specified in Sections 8 and 9 of the Act and the manner in which the requisite information applied for may be provided.



30. The decision to reject the request is to be communicated to the person making the request with the reasons for such rejection, also intimating the period within which the appeal may be preferred with the particulars of the appellate authority. Two levels of appeals are provided under Section 19 of the Act, to an officer senior in rank to the Public Information Officer in each public authority and a second appeal to the Central Information Commissioner or State Information Commissioners constituted under Sections 12 and 15 of the RTI Act, 2005; respectively.

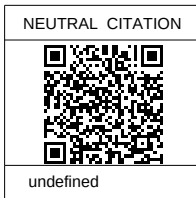
31. Section 8, as contained in Chapter-III, provides exemption from disclosure of information starts with *non obstante* clause. For ready reference, relevant provisions of Section 8 of the RTI Act, pressed into service by the learned Solicitor General of India, are extracted hereinunder :-

"8(1)(e) information available to a person in his fixicuary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.

"8(1)(j) Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invassion of the privacy of the invidual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information."[before its substitution by the digital person data protection act, 2023 (22 of 2023)]

32. Clause(j) of Section 8(1) has been amended by Digital Personal Data Protection Act, 2023 (22 of 2023) and now reads as under :-

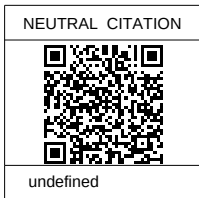
"Information which relates to personal information"



33. The issues which are agitated by the learned Solicitor General of India arising before us are as under :-

- (i) whether the Board/University is exempted from disclosing information pertaining to the educational qualification/results/marksheets/degrees of an individual by virtue of Section 8(1)(a) and 8(1)(b) and/or Section 8(1)(j);
- (ii) whether the phrase "larger public interest" justifies the disclosure of information pertaining to educational qualification of an individual like in the present case;
- (iii) whether in absence of any proper application under Section 6(1) of the RTI Act having been made to the Public Information Officer of the respondent University, the CIC could have *suo motu* taken cognizance on any oral request made by the respondent in another matter at the second appellate stage, even in a proceeding where the public body or the university was not a party.

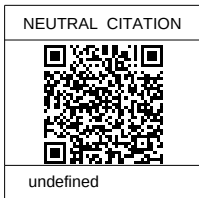
34. Answering the last question first, we have no hesitation to hold that in view of the procedure prescribed under Section 6(1) of the RTI Act, 2005 requiring a person desiring information to make representation in writing through physical mode or in electronic means in the form of an application accompanied with the fee prescribed, specifying the particulars of the information sought by him, there was no question of entertaining any request at the second appellate stage by the Central Information Commission, which has been given power to receive and inquire into complaint from any person, who has been refused access to any information requested under the Act or information provided to him is



incomplete, misleading or false information.

35. The powers and functions of the Central Information Commissioner or the State Information Commissioners, as the case may be, aligned in Section 18 and the provisions of appeal prescribed in Section 19 put the Information Commissioner in the position of a rectifying authority, as prescribed in Section 20 of the RTI Act, 2005 at the time of deciding any complaint or appeal. The Central Information Commissioner or State Information Commissioner may even impose penalty upon the Public Information Officer, who refused or has not furnished the information within the time specified under the Act without any reasonable cause; or *mala fide* denies the request for information or knowingly given incorrect, incomplete or misleading information or destroyed the information, which was subject matter of request or obstructed in any manner in furnishing the information, after giving a reasonable opportunity of being heard to the Public Information Officer concerned and also recommend for disciplinary action against such officer under the service rules applicable to him.

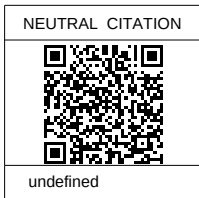
36. From the Scheme of the Act, as contained in Chapter-V in Sections 18 to 20 of the Act, as noted hereinabove, read with Sections 6 to 8 in Chapter-II, it is evident that the Act prescribes a procedure as to how :- (a) a request to obtain any information under the Act would be received, processed and how information would be provided within the timeline; (b) to promote transparency and accountability, the Act prescribes for penalty for refusal to provide information without any reasons or *mala fide* action of the Public Information Officer of the concerned public authority



denying the request; (c) a hierarchy of statutory remedies in the shape of first appeal and second appeal in the case of refusal to provide any information, is contemplated under the Scheme of the Act; (d) further placing right of citizen to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority and the preservation of confidentiality of sensitive information, competing or conflicting public interest, as well as securing the personal information relating to any individual, the exemptions are provided in Section 8 of the Act, 2005.

37. From the Scheme of the Act, it is evident that access to secure information under the control of public authorities, the right to seek specific information is to be exercised by a person, who is desirous to obtain such information under the Act. In any case, in absence of a proper request in writing submitted to the Public Information Officer of the concerned public authority, there is no question for any authority established under the RTI Act, 2005 to provide any information to anyone. The act of the CIC in taking *suo motu* cognizance to pass the Adjunct order treating the respondent No.2 as an applicant based on the letter dated 28.04.2016 written by him and the written submissions submitted in a proceeding before him, is completely outside the scope of the RTI Act, 2005.

38. The Apex Court in **Institute of Chartered Accountants of India v/s. Shaunak H. Satya and Others [(2011) 8 SCC 81]** has observed that though in regard to information enumerated or required to be enumerated under Section 4(1)(b) and (c) of the RTI Act, necessarily and naturally, the obligation is upon the competent authorities under the RTI Act to act in a proactive manner so as to

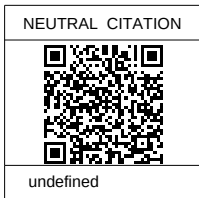


ensure accountability and ensure that the fight against corruption goes on relentlessly. However, with regard to other information which do not fall under Sections 4(1)(b) and (c) of the Act, there is a need to proceed with circumspection as it is necessary to find out whether they are exempted from disclosure.

39. In view of the above, the learned single Judge is found justified in observing that the act of the statutory authority exercising quasi-judicial powers at the second appellate stage is nothing but an act of clear transgression of the jurisdiction vested with the Commissioner under the provisions of the RTI Act and is completely unsustainable in the eye of law.

40. A perusal of the judgment of the writ court indicates that the learned senior counsel appearing for the respondent No.2 before the writ court had stressed upon the Right of Voters/citizens of the country to know about the educational qualifications of a candidate seeking election to a public office. Referring to the provisions of the Representations of the People's Act, 1951 and the Rules made therein, it was argued therein that the Conduct of Election Rules, 1961 cast obligation on the candidate to give information about his educational qualification to the public at large and, thus, educational information re: educational qualification of a candidate assumes a character of public information and would be available to the citizens under the Right to Information Act.

41. But the fact remains that the applicant is seeking information under the Right to Information Act, 2005, which is guided by the statutory scheme, which is a Code in itself. To interpret the nature

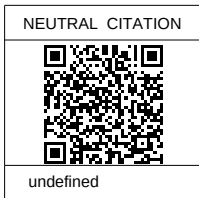


of the information sought by a citizen whether exempted under Section 8 of the RTI Act, 2005 and the procedure for providing information as requested is guided by the provisions of the RTI Act, 2005. The evaluation of any order passed under the RTI Act, by the Public Information Officer or the Information Commissioner in the first appeal or second appeal, thus, has to be made keeping in mind the scheme of the RTI Act, 2005.

42. In any case, the RTI Act, 2005 cannot be used as a tool to ventilate personal grudges or political vendetta against an individual even if he or she is holding a public office, and information sought may be refused by the RTI authorities, unless the information requested is falling within the scope of Section 3 of the RTI Act, conferring right upon the citizen to have such information, and not an information(s) enumerated and required to be published under Section 4(1)(b) & (c) of the RTI Act, 2005. .

43. With the above, at least, we reach at an irresistible conclusion that the manner in which the Information Commissioner, Central Information Commission has acted in the present case from the very inception and making observations on his own notions expanding the scope of the procedure for dealing with the request for seeking information, he has simply crossed the boundaries within which he was supposed to act.

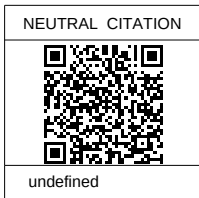
44. However, more relevant are the questions as to whether the Board or University can be asked to reveal information of an individual relating to his educational qualification, merely for the fact that the said individual is holding a public office or a



constitutional post, on an application moved under the RTI Act, 2005 and whether the phrase "larger public interest" justifies disclosure of the information falling within the purview of Section 8(1)(e) and/or Section 8(1)(j) (unamended) of the RTI Act, 2005.

45. The learned single Judge has held that the educational documents including degrees, would fall within the ambit of personal information of a citizen, disclosure of which is exempted under Section 8(1)(j) of the RTI Act. The said information is held by the University and the Board in its fiduciary capacity on behalf of their students, which is exempted under Section 8(1)(e) of the RTI Act.

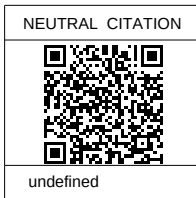
46. Further, on the language of Section 8(1)(j), it was considered by the writ court as to whether there is any public purpose in disclosing of such information under the provisions of the RTI Act, merely for the reason that the information is about a person holding a constitutional posts, the position of the Prime Minister of the country. It is noted therein that the Commissioner itself recorded in its order impugned that the information sought for was neither for any public interest nor the same was relatable to accountability or transparency in discharge of public function performed by the Prime Minister of India. However, by merely giving a cryptic reasoning that the educational qualification relating to the public authorities, public servant or political leader occupying constitutional position, is not hit by any exception under Section 8 of the RTI Act, without any supporting reasons thereto, direction was issued to the University to provide the information to the respondent No.2/appellant herein considering the oral request of the appellant as an application holding that "when a citizen



holding the position of Chief Ministership wants to know the degree related information about the Prime Minister, it will be proper to disclose".

47. Answering to the first question posed to us about the scope of Section 8(1)(e), we are further required to look into the relationship between the student and the examining body/University vis-a-vis a third party, namely a citizen, who is seeking disclosure of information from a Board or University about the educational qualification, educational document such as marksheet/degree etc. of another individual.

48. The learned Solicitor General of India relied upon the decision of the Apex court in **Central Board of Secondary Education and Another v/s. Aditya Bandopadhyay and Others [(2011) 8 SCC 497]** to submit that the Apex Court therein was examining the question as to whether the application moved by the examinee for inspection of his answer books was rightly rejected on the premise that information sought was exempted under Section 8 (1)(e) of the RTI Act, since the examining body in a fiduciary relationship, when it has evaluated and is entitled to maintain confidentiality on both manner and method of evaluation and that the larger interest does not warrant the disclosure of such information. While answering the said question, the Apex Court has considered the provisions of Section 8(1)(e) in light of the dispute "where the examining body holds the evaluated answer books in its fiduciary relationship" and considered the meaning of the terms "fiduciary" and "fiduciary relationship" in paragraph Nos. '38' and '39' as under :-



"38. The terms "fiduciary" and "fiduciary relationship" refer to different capacities and relationship, involving a common duty or obligation.

38.1 *Black's Law Dictionary* (7th Edn., p. 640) defines "fiduciary relationship" thus:

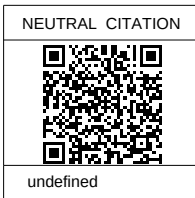
"Fiduciary relationship.—A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships—such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client—require the highest duty of care. Fiduciary relationships usually arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognised as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer."

38.2 *American Restatement* (Trusts and Agency) define "fiduciary" as one whose intention is to act for the benefit of another as to matters relevant to the relation between them. *Corpus Juris Secundum* (Vol. 36-A, p. 381) attempts to define "fiduciary" thus:

"A general definition of the word which is sufficiently comprehensive to embrace all cases cannot well be given. The term is derived from the civil, or Roman law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the transaction, refers to the integrity, the fidelity, of the party trusted, rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others, and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations.

The word 'fiduciary', as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee, with respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires; a person having the duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person, trust or estate. Some examples of what, in particular connections, the term has been held to include and not to include are set out in the note."

38.3 *Words and Phrases*, Permanent Edn. (Vol. 16-A, p. 41) defines



“fiducial relation” thus:

“There is a technical distinction between a ‘fiducial relation’ which is more correctly applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, and other similar relationships, and ‘confidential relation’ which includes the legal relationships, and also every other relationship wherein confidence is rightly reposed and is exercised.

Generally, the term ‘fiduciary’ applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another, as well as technical fiduciary relations.”

38.4 In *Bristol and West Building Society v. Mothew* [1998 Ch 1 : (1997) 2 WLR 436 : (1996) 4 All ER 698 (CA)] the term “fiduciary” was defined thus: (Ch pp. 14-15)

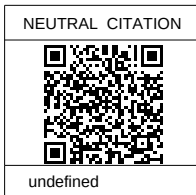
“A *fiduciary* is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. ... A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal.”

(emphasis supplied)

38.5 In *Wolf v. Superior Court* [107 Cal App 4th 25 (2003)] the California Court of Appeals defined “fiduciary relationship” as under:

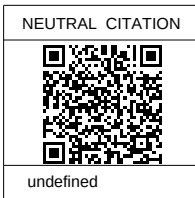
“any relationship existing between the parties to the transaction where one of the parties is duty-bound to act with utmost good faith for the benefit of the other party. Such a relationship ordinarily arises where confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interests of the other party without the latter's knowledge and consent.”

39. The term “fiduciary” refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term “fiduciary relationship” is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or



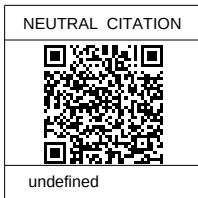
transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party."

49. Noticing various examples of the fiduciary relationship such as a partner vis-à-vis another partner and an employer vis-à-vis employee etc. it was observed therein that "in a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination". The words "information available to a person in his fiduciary relationship" are used in Section 8(1)(e) of the RTI Act in its normal and well-recognised sense, that is, "to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary". Answering in the negative, it was held that the examining body cannot be said to be in fiduciary relationship either with reference to the examinee who participates in the examination and whose answer books are evaluated by the examining body. However, on the question whether examining body would be entitled to claim exemption under Section 8(1)(e) of the RTI Act, it was held that in view of the language employed in the said provision, the exemption would only mean that even if the relationship is fiduciary, the exemption would operate in regard to giving access to the information held in fiduciary relationship to third parties and there is no question of the fiduciary withholding information relating to the beneficiary, from the beneficiary himself.



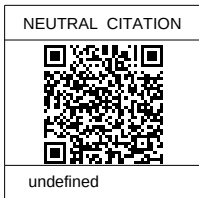
50. It was, thus, held that if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8(1)(e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it.

51. In **Institute of Chartered Accountants of India v/s. Shaunak H. Satya and Others (supra)** the Apex Court while considering the question pertaining to the information sought under the RTI Act claimed to be exempted under Section 8 of the RTI Act, has observed that the object of the Act is to harmonise the conflicting public interest, i.e to ensure transparency to bring in accountability and at the same time to ensure revelation of information, in actual practice does not harm or adversely affect other public interest which include efficient functioning of the government, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information on the other hand. It was observed that exemption of certain information from being disclosed under Section 8 should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interest essentially for the fulfillment of and preservation of democratic ideals. **The competent authorities under the RTI Act will not read the exemptions under Section 8 in a restrictive manner, but in a practical manner so that other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding other public interest.**



52. In **ICAI (supra)**, the Court was dealing with an application of a candidate who appeared in the examination for enrollment as an Chartered Accountant conducted by the Institute of Chartered Accountant of India, seeking information under various heads, such as, (i) Instructions issued to the examiners and moderators, oral as well as written, if any; (ii) Model answers, if any, given to the examiners and moderators, if any; (iii) Number of times that the Council has revised the marks of any candidate, or any class of candidates, in accordance with Regulation 39(2) of the Chartered Accountants Regulations, 1988, the criteria used for such discretion, the quantum of such revision, the authority that decides such discretion, and the number of students along with the quantum of revision affected by such revision in the last 5 exams, held at all levels (*i.e. PE-1/PE-2/PCC/CPE/Final with break-up*).", including other information.

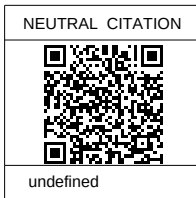
53. The defence of the ICAI in seeking exemption under Section 8 was that though some information was provided, but others were refused they being confidential. One of the questions framed by the Apex Court was "whether the instructions and solutions to questions are information made available to examiner and moderators in their fiduciary capacity and therefore exempted under Section 8(1)(e) of the RTI Act, 2005". While answering the said question, it was noted that the instructions and solutions to questions issued to the examiner and moderators in connection with the evaluation of answer scripts is the intellectual properties of the ICAI. The examiner and moderators are in the position of agents and ICAI is in the position of principal in regard to such information which ICAI gives to examiner and moderators to achieve uniformity, consistency and exactness of evaluation of answer scripts. The examiner and moderators are holding answer



scripts in confidence and are required to maintain absolute secrecy. When anything is given and taken in trust or in confidence, requiring or expecting secrecy and confidentiality to be maintained in that behalf, it is held by the recipient in a *fiduciary relationship*.

54. Taking note of the words "information available to a person in his fiduciary relationship", under Section 8(1)(e) it was held that the use of the word "person" therein shows that the holder of the information in a fiduciary relationship need not only be a "public authority" as the word "person" is of much wider import than the words "public authority". Anything given and taken in confidence expecting confidentiality to be maintained will be information available to a person in fiduciary relationship. As a consequence, it was held that the instructions and solutions to questions communicated by the examining body to the examiners, Head Examiners and moderators, are information available to such persons in their fiduciary relationship and, therefore, exempted from disclosure under Section 8(1)(d) of the RTI Act.

55. It was held therein that while Sections 3 and 4 seek to achieve the first objective, to bring about transparency of information to contain corruption and bring out accountability, Sections 8, 9, 10 and 11 seek to achieve the second objectives to harmonise the conflicting public interest, i.e. ensuring transparency to bring in accountability and containing corruption on the one hand and at the same time ensuring that the revelation of information in actual practice, does not harm or adversely affect the other public interest. The observations in paragraph No. '23', '24', '25' and '26' of the said decision are relevant to be extracted to



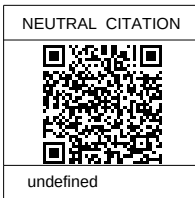
understand the purport and scope of the provisions of Sections 3 to 11 contained in Chapter-II of the Right to Information Act, 2005. :

“23. The information to which the RTI Act applies falls into two categories, namely, (i) information which promotes *transparency and accountability* in the working of every public authority, disclosure of which helps in containing or discouraging corruption, enumerated in clauses (b) and (c) of Section 4(1) of the RTI Act; and (ii) other information held by public authorities not falling under Sections 4(1)(b) and (c) of the RTI Act. In regard to information falling under the first category, the public authorities owe a duty to disseminate the information widely suo motu to the public so as to make it easily accessible to the public. In regard to information enumerated or required to be enumerated under Sections 4(1)(b) and (c) of the RTI Act, necessarily and naturally, the competent authorities under the RTI Act will have to act in a proactive manner so as to ensure accountability and ensure that the fight against corruption goes on relentlessly. But in regard to other information which do not fall under Sections 4(1)(b) and (c) of the Act, there is a need to proceed with circumspection as it is necessary to find out whether they are exempted from disclosure.

24. One of the objects of democracy is to bring about transparency of information to contain corruption and bring about accountability. But achieving this object does not mean that other equally important public interests including efficient functioning of the governments and public authorities, optimum use of limited fiscal resources, preservation of confidentiality of sensitive information, etc. are to be ignored or sacrificed. The object of the RTI Act is to harmonise the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective.

25. Therefore, when Section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals. Therefore, in dealing with information not falling under Sections 4(1)(b) and (c), the competent authorities under the RTI Act will not read the exemptions in Section 8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding the other public interests.

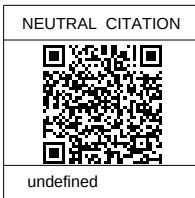
26. Among the ten categories of information which are exempted from disclosure under Section 8 of the RTI Act, six categories which are described



in clauses (a), (b), (c), (f), (g) and (h) carry absolute exemption. Information enumerated in clauses (d), (e) and (j) on the other hand get only conditional exemption, that is, the exemption is subject to the overriding power of the competent authority under the RTI Act in larger public interest, to direct disclosure of such information. The information referred to in clause (i) relates to an exemption for a specific period, with an obligation to make the said information public after such period. The information relating to intellectual property and the information available to persons in their fiduciary relationship, referred to in clauses (d) and (e) of Section 8(1) do not enjoy absolute exemption. Though exempted, if the competent authority under the Act is satisfied that larger public interest warrants disclosure of such information, such information will have to be disclosed. It is needless to say that the competent authority will have to record reasons for holding that an exempted information should be disclosed in larger public interest."

56. Proceeding further, we may take note of the decision of the Constitution Bench of the Apex court in **Central Public Information Officer, Supreme Court of India v/s. Subhash Chandra Agarwal [(2020) 5 SCC 481]**, wherein the Apex Court has dealt with the various aspects of the RTI Act, 2005 to answer the question as to "how transparent is transparent enough" under the Right to Information Act, 2005 in the context of the information sought by the respondent therein from the Central Public Information of the Supreme Court of India. While dealing with the point of "fiduciary relationship under Section 8(1)(e) of the RTI Act", the Apex Court has noticed the meaning of the expression assigned in *CBSE v/s. Aditya Bandhopadhyay* (supra) and has observed in paragraph No. '43' as under (*Justice Sanjiv Khanna speaking for the Bench*):-

"43. This Court in *Aditya Bandopadhyay [CBSE v. Aditya Bandopadhyay, (2011) 8 SCC 497 : 6 SCEC 25]* held that the exemption under Section 8(1)(e) of the RTI Act does not apply to beneficiaries regarding whom the fiduciary holds information. In other words, information available with the public authority relating to beneficiaries cannot be withheld from or denied to the beneficiaries themselves. A fiduciary would, ergo, be duty-bound to make thorough disclosure of all relevant facts of all transactions between them in a fiduciary relationship to the beneficiary. In the facts of the said case, this Court had to consider whether an examining body, the Central



Board of Secondary Education, held information in the form of evaluated answer-books of the examinees in fiduciary capacity. Answering in the negative, it was nevertheless observed that even if the examining body is in a fiduciary relationship with an examinee, it will be duty-bound to disclose the evaluated answer-books to the examinee and at the same time, they owe a duty to the examinee not to disclose the answer-books to anyone else, that is, any third party. This observation is of significant importance as it recognises that Section 8(1)(j), and as noticed below — Section 11, encapsulates another right, that is, the right to protect privacy and confidentiality by barring the furnishing of information to third parties except when the public interest as prescribed so requires. In this way, the RTI Act complements both the right to information and the right to privacy and confidentiality. Further, it moderates and regulates the conflict between the two rights by applying the test of larger public interest or comparative examination of public interest in disclosure of information with possible harm and injury to the protected interests.

57. It was further noted in paragraph No. '44' with reference to the decision of the Apex Court in **RBI v/s. Jayantilal N. Mistry [(2016) 3 SCC 523]** as under :-

"44. In *RBI [RBI v. Jayantilal N. Mistry, (2016) 3 SCC 525 : (2016) 2 SCC (Civ) 382]* this Court had expounded upon the expression "*fiduciary relationship*" used in clause (e) to sub-section (1) of Section 8 of the RTI Act by referring to the definition of "*fiduciary relationship*" in the *Advanced Law Lexicon*, 3rd Edn., 2005, which reads as under : (SCC p. 559, para 57)

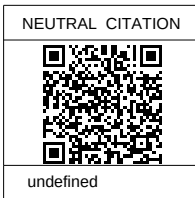
"57. [...] *Fiduciary relationship*.—A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the fiduciary relationship.... Fiduciary relationship usually arises in one of the four situations : (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognised as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer."

Thereafter, the Court had outlined the contours of the fiduciary relationship by listing out the governing principles which read : (SCC p. 559, para 58)

"58. [...] (i) *No conflict rule*—A fiduciary must not place himself in a position where his own interest conflicts with that of his customer or the beneficiary. There must be "real sensible possibility of conflict".

(ii) *No profit rule*—A fiduciary must not profit from his position at the expense of his customer, the beneficiary.

(iii) *Undivided loyalty rule*—A fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position

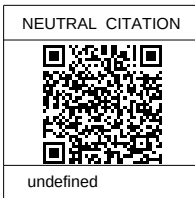


where his duty towards one person conflicts with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer's affairs.

(iv) *Duty of confidentiality*—A fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person.”

58. Paragraph No. '45' of the Constitution Bench judgment further reads that :-

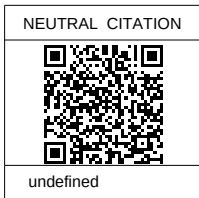
"45. Fiduciary relationships, regardless of whether they are formal, informal, voluntary or involuntary, must satisfy the four conditions for a relationship to classify as a fiduciary relationship. In each of the four principles, the emphasis is on trust, reliance, the fiduciary's superior power or dominant position and corresponding dependence of the beneficiary on the fiduciary which imposes responsibility on the fiduciary to act in good faith and for the benefit of and to protect the beneficiary and not oneself. Section 8(1)(e) is a legal acceptance that there are ethical or moral relationships or duties in relationships that create rights and obligations, beyond contractual, routine or even special relationships with standard and typical rights and obligations. Contractual or non-fiduciary relationships could require that the party should protect and promote the interest of the other and not cause harm or damage, but the fiduciary relationship casts a positive obligation and demands that the fiduciary should protect the beneficiary and not promote personal self-interest. A fiduciary's loyalty, duties and obligations are stricter than the morals of the marketplace and it is not honesty alone, but the *punctilio* of an honour which is the most sensitive standard of behaviour which is applied (see Opinion of Cardozo, J. in *Meinhard v. Salmon* [*Meinhard v. Salmon*, (1928) 164 NE 545, 546 : (1928) 249 NY 456]). Thus, the level of judicial scrutiny in cases of fiduciary relationship is intense as the level of commitment and loyalty expected is higher than non-fiduciary relationships. Fiduciary relationship may arise because of the statute which requires a fiduciary to act selflessly with integrity and fidelity and the other party, that is, the beneficiary, depends upon the wisdom and confidence reposed in the fiduciary. A contractual, statutory and possibly all relationships cover a broad field, but a fiduciary relationship could exist, confined to a limited area or an act, as relationships can have several facets. Thus, relationships can be partly fiduciary and partly non-fiduciary with the former being confined to a particular act or action which need not manifest itself in entirety in the interaction and relationship between two



parties. What would distinguish non-fiduciary relationship from fiduciary relationship or an act is the requirement of trust reposed, higher standard of good faith and honesty required on the part of the fiduciary with reference to a particular transaction(s) due to moral, personal or statutory responsibility of the fiduciary as compared to the beneficiary, resulting in dependence of the beneficiary. This may arise due to superior knowledge and training of the fiduciary or the position he occupies.

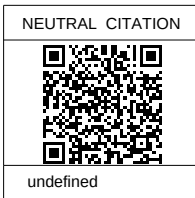
59. From a reading of the aforesaid observations of the Apex Court, we may note that though it was noticed therein that the information available with the public authority relating to the beneficiaries cannot be withheld or denied to the beneficiaries themselves and a fiduciary would, therefore, be duty bound to make thorough disclosure of all the relevant facts of all transactions between them in a fiduciary relationship to the beneficiary, but at the same time they owe a duty to the beneficiary not to disclose the information to any one else i.e. any third party. The Constitution Bench while noticing the observations of the Apex Court in **CBSE v/s. Aditya Bandhopadhyay (supra)**, has, thus, noted that the said observations is of significant importance, as it recognises Section 8(1)(i) and Section 11 of the RTI Act, encapsulating another right i.e. right to protect privacy and confidentiality by barring furnishing of information to a third party except when the public interest as prescribed so requires.

60. In this way, the RTI Act complements both the right to privacy and confidentiality. Further, it moderates and regulates the conflict between the two rights by applying the test of larger public interest or comparative examination of public interest in disclosure of information with possible harm and injury to the protected interests.



61. Elaborating further on the Right to Privacy under Section 8(1)(j) and confidentiality under Section 11 of the RTI Act, it was held that if one's right to know is absolute, then the same may invade another's right to privacy and breach confidentiality and, therefore, the former right has to be harmonised with the need for personal privacy, confidentiality of information and effective governance. The RTI Act captures this interplay of the competing rights under clause(j) of Section 8(1) and Section 11, while clause(j) to Section 8(1) refers to personal information as distinct from information relating to public activity or interest and seeks to exempt disclosure of such information as well, as such information which, if disclosed, would cause unwarranted invasion of privacy of an individual, unless public interest warrants its disclosure, Section 11 exempts the disclosure of "information or record ... which relates to or has been supplied by a third party and has been treated as confidential by that third party". By differently wording and inditing the challenge that privacy and confidentiality throw to information rights, the RTI Act also recognises the interconnectedness, yet distinctiveness between the breach of confidentiality and invasion of privacy.

62. The said principles were further fortified by the Apex Court with reference to the Nine Judges Constitution Bench's judgment in **K.S.Puttaswamy (Privacy-9 J.) v/s. Union of India [(2017) 10 SCC 1]** to note that privacy as observed in **K.S.Puttaswamy(supra)** is essential for liberty and dignity. Individuals have the need to preserve an intrusion-free zone for their personality and family. This facilitates individual freedom. It was noted that the question of invasion of personal liberty, the main judgment has referred to a threefold requirement in the

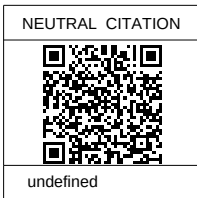


form of — (i) legality, which postulates the existence of law (the RTI Act in the present case); (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality, which ensures a rational nexus between the objects and the means to be adopted to achieve them. The third requirement, as was observed, is achieved in the said case by Sections 8(1)(j) and 11 of the RTI Act. It was observed that the RTI Act also defines the legitimate aim, that is, a public interest in the dissemination of information which can be confidential or private (or held in a fiduciary relationship) when larger public interest or public interest in disclosure outweighs the protection or any possible harm or injury to the interest of the third party.

63. It was further observed in paragraph Nos. '58' & '64' as under :-

“58. Clause (j) to sub-section (1) of Section 8 of the RTI Act specifically refers to invasion of the right to privacy of an individual and excludes from disclosure information that would cause unwarranted invasion of privacy of such individual, unless the disclosure would satisfy the larger public interest test. This clause also draws a *distinction* in its treatment of *personal information*, whereby disclosure of such information is exempted if such information has no relation to public activity or interest. We would like to, however, clarify that in their treatment of this exemption, this Court has treated the word “information” which if disclosed would lead to invasion of privacy to mean personal information, as distinct from public information. This aspect has been dealt with in the succeeding paragraphs.

64. While clause (j) exempts disclosure of two kinds of information, as noted in para 58 above, that is, “personal information” with no relation to public activity or interest and “information” that is exempt from disclosure to prevent unwarranted invasion of privacy, this Court has not underscored, as will be seen below, such distinctiveness and treated personal information to be exempt from disclosure if such disclosure invades on balance the privacy rights, thereby linking the former kind of information with the latter kind. This means that information, which if disclosed could lead to an



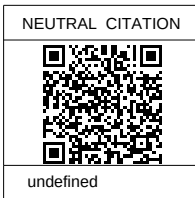
unwarranted invasion of privacy rights, would mean personal information, that is, which is not having co-relation with public information.”

64. It was, thus, clarified by the Constitution Bench that what mean as "personal information", which if disclosed would lead to unwarranted invasion on privacy right, i.e. which is not having co-relation with the public information. For our purposes, the observations in paragraph Nos. '69' and '70' are relevant to be noted hereinunder :-

“69. Reference can also be made to *Aditya Bandopadhyay* [CBSE v. *Aditya Bandopadhyay*, (2011) 8 SCC 497 : 6 SCEC 25] , as discussed earlier in paras 42 and 43, where this Court has held that while a fiduciary could not withhold information from the beneficiary in whose benefit he holds such information, he/she owed a duty to the beneficiary to not disclose the same to anyone else. This exposition of the Court equally reconciles the right to know with the rights to privacy under clause (j) to Section 8(1) of the RTI Act.

70. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive.

65. Justice N.V.Ramanna, as then he was, while supplementing, has observed in paragraph No. '133' that before analysing the provisions of Section 8 of the RTI Act providing exemption to right to information, one basic principle that

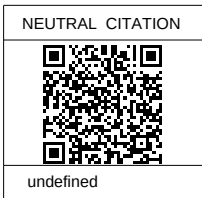


exemption clause need to be construed strictly, is to be kept in mind. It was noted that by now it is well settled that the exemption clause under Section 8 of the RTI Act is to be given proper meaning in terms of the intention of the Legislature while referring to **Commissioner of Customs v/s. Dilip Kumar [(2018) 9 SCC 40]** and **English Law-Rechnungshof v/s. Österreichischer Rundfunk [joined Cases C-465/00, C-138/01 and C-139/01]**. It was further observed in paragraph No. '134' therein that the exemption of right to information for confidential information is covered under Section 8(1)(d), exemption from right to information under a fiduciary relationship is covered under Section 8(1)(e) and the exemption from private information is contained under Section 8(1)(j) of the RTI Act.

66. Justice D.Y.Chandrachud, as he then was, while supplementing, further elaborated the concept of "fiduciary relationship" occurring in Section 8(1)(e) of the RTI Act, noticing the meaning of the phrase in paragraph Nos. '237', '238' and '239' as under :-

"237.Black's Law Dictionary [Black's Law Dictionary, Tenth Edn., p. 744] , defines "fiduciary relationship" thus:

"A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships — such as trustee-beneficiary, guardian-ward, principal-agent, and attorney-client — require an unusually high degree of care. Fiduciary relationships usually arise in one of four situations : (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognised as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer."



(emphasis supplied)

238. In *Words and Phrases* [*Words and Phrases*, Vol. 16-A, St. Paul : West Pub. Co, 1940] the term “fiduciary” is defined:

“Generally, the term ‘fiduciary’ applies to any person who occupies a position of peculiar confidence towards another... It refers to integrity and fidelity... It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction... The term includes those informal relations which exist *whenever one party trusts and relies upon another, as well as technical fiduciary relations.*”

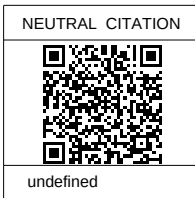
(emphasis supplied)

239. In *Corpus Juris Secundum* [*Corpus Juris Secundum : A Complete Restatement of the Entire American Law As Developed by All Reported Cases*, Vol. 36-A, p. 38] “fiduciary” is defined thus:

“A general definition of the word which is sufficiently comprehensive to embrace all cases cannot well be given. The term is derived from the civil, or Roman law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the transaction, refers to the integrity, the fidelity, of the party trusted, rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others, and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations.

The word ‘fiduciary’, as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee, with respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires; a person having the duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person, trust or estate. Some examples of what, in particular connections, the term has been held to include and not to include are set out in the note.”

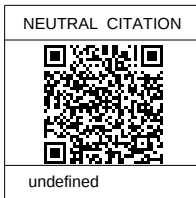
67. Further decisions of the Apex Court in **CBSE v/s. Aditya Bandopadhyay (supra)** and **RBI v/s. Jayantilal N. Mistry (supra)** were noted and while referring to the Canadian Supreme Court judgment in **Robert L. Hodgkinson v/s. David L. Simms [1994 SCC OnLine SC 80]** and Dr. Paul Finn’s comprehensive work on “Fiduciary Obligations” in paragraph Nos. '240' to '243', it was held in paragraph Nos. '244' to '246' as under :-



"244. A fiduciary must be entrusted with a degree of discretion (power) and must have freedom to act without resorting to prior approval of the beneficiary. [Tamar Frankel, *Fiduciary Law*, Oxford University Press, 2011] The greater the independent authority to be exercised by the fiduciary, the greater the scope of fiduciary duty. [Scott, Austin W. "The Fiduciary Principle", *California Law Review* 37, No. 4 (1949) : 539-55.] The person so entrusted with power is required to determine how to exercise that power. [Tamar Frankel, *Fiduciary Law*, Oxford University Press, 2011] Fiduciaries are identified by ascendancy, power and control on the part of the stronger party and therefore, a fiduciary relationship implies a condition of superiority of one of the parties over the other. [Ken Coghill, Charles Sampford and Tim Smith "Fiduciary Duty and the Atmospheric Trust", Ashgate (2012)] It is not necessary that the relationship has to be defined as per law, it may exist under various circumstances, and exists in cases where there has been a special confidence placed in someone who is bound to act in good faith and with due regard to the interests of the one reposing the confidence. Such is normally the case with, inter alia, attorney-client, agent-principal, doctor-patient, parent-child, trustees-beneficiaries [Section 88, Indian Trusts Act, 1882] , legal guardian-ward [Section 20, Guardians and Wards Act, 1890] , personal representatives, court appointed receivers and between the Directors of company and its shareholders. In *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.* [*Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*, (1981) 3 SCC 333] and *Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan* [*Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan*, (2005) 1 SCC 212] , this Court held that the Directors of the company owe a fiduciary duty to its shareholders. In *P.V. Sankara Kurup v. Leelavathy Nambiar* [*P.V. Sankara Kurup v. Leelavathy Nambiar*, (1994) 6 SCC 68] , this Court held that an agent and power of attorney can be said to owe a fiduciary relationship to the principal.

245. Other structural properties of the fiduciary relationship are dependence and vulnerability, where the beneficiary is dependent upon the fiduciary to exercise power and impact the practical interests. [Gold, Andrew S.; Miller, Paul B. "Philosophical foundations of fiduciary law", Oxford University Press, 2016.] Once a fiduciary relationship is established, fiduciary duties include the duty of loyalty and duty of care towards the interests of the beneficiaries. [Tamar Frankel, *Fiduciary Law*, Oxford University Press, 2011]

246. From the discussion above, it can be seen that a fiduciary is someone who acts for and on behalf of another in a particular matter giving rise to a relationship of trust and confidence. A fiduciary relationship implies a condition of superiority of one of

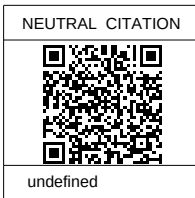


the parties over the other, where special confidence has been reposed in an individual to act in the best interests of another.

68. From the above, we may note that a fiduciary is someone who acts for and on behalf of another in a particular matter giving rise to relationship of trust and confidence and a fiduciary relationship implies a condition of superiority of one of the parties over the other, where special confidence has been reposed in an individual to act in the best interests of another. The RTI Act contains certain safeguards by providing exemption from disclosure of certain information including the information which would cause unwarranted invasion on the privacy of an individual, except where the larger public interest justifies the disclosure of such information. There can be no doubt that personal records such as markesheets, decrees and other documents pertaining to the qualification of an individual is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. [reference para-70 of **Subhash Chandra Agrawal (supra)**].

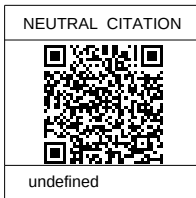
69. We may further note what Nine-Judges Constitution Bench in **K. S. Puttaswamy (supra)**, has held in paragraph No. '479' on the right to privacy :-

"479. Both the learned Attorney General and Shri Sundaram next argued that the right to privacy is so vague and amorphous a concept that it cannot be held to be a fundamental right. This again need not detain us. Mere absence of a definition which would encompass the many contours of the right to privacy need not deter us from recognizing privacy interests when we see them. As this judgment will presently show, these interests are broadly classified into interests pertaining to the physical realm and interests pertaining to the mind. As case law, both in the US and India show, this concept has travelled far from the mere right to be let alone to recognition of a large number of privacy interests,



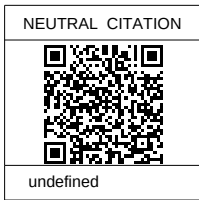
which apart from privacy of one's home and protection from unreasonable searches and seizures have been extended to protecting an individual's interests in making vital personal choices such as the right to abort a foetus; rights of same sex couples including the right to marry; rights as to procreation, contraception, general family relationships, child-bearing, education, data protection etc. This argument again need not detain us any further and is rejected. [Emphasis Supplied]

70. Keeping in mind the dictum of the Apex Court in the abovenoted decisions, we have no hesitation to hold that the educational qualification documents, such as marksheet and degree of an individual, falls within the ambit of the personal information of the said individual, disclosure of which is exempted under the amended Section 8(1)(j) of the RTI Act though unamended operated with exceptions. Further, the said information is held by the Universities/Boards/Examining Bodies in a fiduciary capacity on behalf of their ex-students, which is again exempted under Section 8(1)(e) of the RTI Act subject to when the disclosure necessitated on a larger public interest. As held by the Apex Court, exemptions under the RTI Act are to be applied with circumspection, which means in so far as the information covered within the exemption clause(e) of sub-section(1) of Section 8, the person or the authority with whom the information is available in his/its fiduciary capacity, shall have no obligation to give such information to any citizen, unless such person/authority is satisfied that the larger public interest warrants the disclosure of such information. Any information exempted under Section 8 is protected from disclosure under the Act and such information may be denied by the Public Information Officer on an application received as per Section 6(1) of the RTI Act.



71. In the instant case, both the exemption under clauses (e) and (j) (even amended) of sub-section(1) of Section 8 are satisfied, and it is to be held that the University is possessing information pertaining to educational qualification of its students in its fiduciary relationship and the information relating to the degree/educational qualification being personal information are exempted under clause(j). Both the clauses require disclosure of such information only in a case "the larger public interest" justifies the disclosure of such information. No public interest much less larger public interest would require seeking of information of the educational qualification of the Prime Minister of India, who is an elected representative of the people and when his educational qualification has no bearing on his election to the Constitutional post.

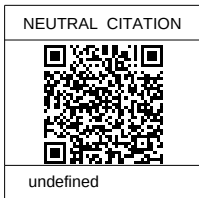
72. The order passed by the CIC does not contain any reason as to why disclosure of such information is necessary within the meaning of clause (e) and (j) of Section 8(1) of the RTI Act. The casual remark made in the order that educational qualifications related information about the public authority or public servant or political leader occupying Constitutional position, is not hit under Section 8 of the RTI Act is in teeth of the Constitution Bench decision of the Apex Court in **Subhash Chandra Agarwal (supra)** and **K.S.Puttaswamy (supra)**, wherein it is categorically held that the professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. (only indicative not exhaustive) are



personal information, which are entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied.

73. Right to privacy protected in clauses (e), (g), (j) of Section 8(1) are based on the rights guaranteed under Article 21. Section 8(1)(j) has been amended and substituted by Section 44(3) of the Digital Protection Personal Data Protection Act, 2023 and in the amended provision, there is an absolute exemption to any information, which relates to personal information. This amendment is in line with the protection of the right to privacy guaranteed under Article 21 of the Constitution of India (as held by the Nine-Judges Constitution Bench in **K.S.Puttaswamy (supra)**].

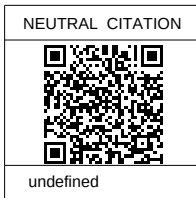
74. We are further required to examine as to whether disclosure of information directed to be provided by the CIC, in the instant case, can be said to be in the public interest or in the larger public interest. To answer the same, we have to look to the observations in paragraph Nos. '85' to '96' of the decision in **Subhash Chandra Agarwal (supra)**, wherein the Apex Court has considered the meaning of the words "public interest". It was held therein that the object and purpose behind the specific exemption vide clause (j) to Section 8(1) is to protect and shield oneself from unwarranted access to personal information and to protect facets like reputation, honour, etc. associated with the right to privacy. The public interest test in the context of the RTI Act would mean reflecting upon the object and purpose behind the right to information, the right to privacy and consequences of invasion, and breach of confidentiality and possible harm and injury that would be caused to the third



party, with reference to a particular information and the person. This delicate balance requires identification of public interest behind each exemption, and then cumulatively weighing the public interest in accepting or maintaining the exemption(s) to deny information in a particular case, against the public interest in disclosure in that particular case. The test of "motive and purpose" was applied to hold that while determining public interest test in case of qualified exemptions and where it is found that the motive and purpose of the RTI application is *mala fide*, vexatious and oppressive or in abuse of law, then the same would be a negative factor in warranting disclosure of the said information on the ground of overwhelming public interest. (reference para-95).

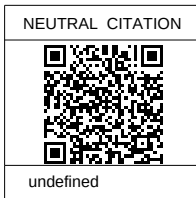
75. It was held therein that in the RTI Act, in the absence of any positive indication as to the considerations which the Public Information Officer has to bear in mind while making a decision, the legislature had intended to vest a general discretion in the Public Information Officer to weigh the competing interests, which is to be limited only by the object, scope and purpose of the protection and the right to access information and in Section 11(1), the "possible" harm and injury to the third party. It imports a discretionary value judgment on the part of the Public Information Officer and the appellate forums as it mandates that any conclusion arrived at must be fair and just by protecting each right which is required to be upheld in public interest. There is no requirement to take a fortiori view that one trumps the other. (reference para-96).

76. In view of the above discussion, we reach at a considered opinion that for the mere fact that the personal



information about the educational degree sought was that of the Prime Minister of the Country, it does not mean that the said information would automatically fall within the purview of ambit or the "public interest or larger public interest", the exception to the exemptions under Section 8 (1)(e) and (j) of the Act. The fact that the information about the educational degree of the Prime Minister is already in the public domain, as noted by the CIC has no relevance in so far as the consideration of obligations under the RTI Act. The directions issued by the Information Commissioner requiring the PMO (Prime Minister Office) to provide specific number and year of the degree and PG degree to the Delhi University and Gujarat University office so as to facilitate the University to search and provide any documents relating to it, and further directing the Public Information Officer of the Delhi University and also the Gujarat University (the original petitioner) to search for the information regarding the degrees and provide them to the appellant herein, is directly hit by Section 8(1)(e) and (j) of the RTI Act, 2005. None of the information directed to be disclosed can be said to be necessary for disclosure in public interest or larger public interest.

77. No satisfaction whatsoever has been recorded by the CIC in the order dated 29.04.2016 about fulfillment of the requirements of both the exemptions under Section 8(1)(e) & (j) of the RTI Act. As far as the observations relating to general curiosity among the people, one of the reasons for issuance of direction, the disclosure of the information should have been left to the discretion of the individual concerned, who is holding the public office. Even a public servant being a citizen of the country cannot be compelled to disclose his personal



information to the public merely because he is holding a public office or is a public servant, unless and until there is an obligation upon him to disclose or the public authority with whom the information is available, is obliged to disclose under the RTI Act, 2005.

78. Balancing two intersecting rights, namely, the right of privacy of an individual and the right to seek information of a citizen under the RTI Act, 2005, we are of the firm opinion that disclosure of the information, as directed by the CIC, in the instant case, was exempted personal information of an individual falling within the ambit of Section 8(1)(e) and (j) of the RTI Act, 2005 and the respondent University cannot be asked to disclose the same. On both the counts, i.e. on the ground of absolute lack of jurisdiction of the CIC to pass the order dated 24.09.2016 in absence of any proper application under Section 6(1) of the RTI Act, 2005 and the information directed to be disclosed being exempted under Section 8(1)(e) and (j) of the RTI Act, 2005, the decision of the writ court is liable to be confirmed.

79. In the totality of the facts and circumstances of the present case, no error on any of the submissions of the appellant herein, can be found in the judgment impugned. The appeal stands dismissed, accordingly, with no further order as to costs. The Civil Application for stay is disposed of.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

C.M. JOSHI