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* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Date of Reserve: 15th February, 2023**Date of Pronouncement: 13th March, 2023*

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W.P.(C) 2670/2017 and CM APPL. 11599/2017

A S RAWAT

..... Petitioner

Through: Ms. Jyoti Dutt Sharma, Mr CK Bhatt
and Mr Ayush Bhatt, Advocates (M:
9891077497).

versus

DAWA TASHI

..... Respondent

Through: None.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUDGMENT****Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.
2. The RTI Applicant, Mr. Dawa Tashi, who was a Postgraduate Teacher (Tibetan) at the Central School for Tibetans, Darjeeling, at the time, filed an RTI application on 10th July, 2014 to the Public Information Officer (‘PIO’), Central Tibetan Schools Administration (*hereinafter* ‘CTSA’).

He sought the following information:-

“1. When will I be receiving confirmation letter i.e. substantive capacity letter as the employee of CTSA? If no, why?

2. When will I be receiving Children Education Allowance (CEA) as per rule as the employee of CTSA? If no, why?

3. When will I be given All India LTC benefit as the employee of CTSA? If no, why?

4 Is CTSA agreeing with the Election Commission of India letter no. 30/ID/2010-ERS dated 7th Feb. 2014 where CEOs of all states and UT were instructed to not

to deny voting rights to Tibetans like me, who were born between 26th January, 1950 and before 1st July, 1987. The letter also states "As per Section 3(1) (a) of the Citizenship Act, 1955, the children born to Tibetan Refugees in India shall be treated as Indian Citizens based on their birth in India, on or after 26th January, 1950 and before 1st July, 1987". If no, why?"

3. The RTI Applicant joined services under CTSA from 16th September, 1992. The PIO, Shri. A. S. Rawat, the Education Officer of the CTSA, replied in the following terms on 12th August 2014 -

"I am to refer to your RTI application dated 10.07.14 on the above cited subject and to say that as per RTI Act, 2005 all citizens shall have right to information but as per record your Nationality is Tibetan. Therefore information under RTI Act, 2005 cannot be provided to you. IPO for Rs.10/- (Rs Ten only) bearing No. 01F436238 for fee is return herewith."

4. Thus, the PIO's stand was that since the RTI Applicant was a Tibetan National, he would not be entitled to invoke the provisions of the Right to Information Act, 2005 (hereinafter '*RTI Act*').

5. Thereafter, an appeal was preferred. Mr. Vineet Joshi, the Appellate Authority had confirmed the reply of the PIO on 15th September 2014. On 26th September 2014, the Appellate Authority, Mr. Vineet Joshi, wrote another letter to the RTI Applicant which reads as-

"The question asked by the applicant is not available in the material form. Therefore, same is not provided under the Rule 2(f) of RTI Act, 2005."

6. Thus, the appeal was rejected by the Appellate Authority. The Central Information Commission (hereinafter '*CIC*') directed in second

appeal vide its order dated 5th October, 2016 to provide the information sought by the RTI-Applicant. The directions of the CIC are as under:-

“21. The Commission directs respondent authority to provide point-wise information to the appellant, consider his grievance and give action taken report with detailed reasons on his complaints, and explain why letter referred in point 4 is not implemented, within 21 days from the date of receipt of this order. Second appeal is posted for penalty proceedings and compliance, to 26th October at 12 noon. If there is no response from the respondent officers by that date and if they are not present for explaining the show cause notices, the Commission will be compelled to decide penalty proceedings in their absence.”

7. Simultaneously, the CIC also issued notice to the PIO who is the Petitioner before this Court as to why maximum penalty should not be imposed against him.

8. The said direction is contained in the CIC's order dated 5th October 2016. The operative portion of the said order is extracted below:-

“7. It is most deplorable that Central Tibetan Schools Administration is denying the information to its employee working in a school established/administered under their control, on an excuse that the appellant was Tibetan national though he was born in India. They ignored a fundamental principle that a person born in India attains the citizenship of India, even if his parents are from Tibet. The organisation CTSA, is meant for helping the Tibetans in Delhi. The CPIO, who is an Education officer and FA, who is none other than the director of CTSA did not apply mind and ignored the basic objectives of their organisation and aims of RTI Act, 2005. If they have a genuine doubt that appellant is not citizen of India, they should have enquired into that status, examined the birth certificate

,etc. if the birth certificate shows that he was born in Indian soil that could have answered their doubt. There is no record to show any such effort by public authority. The CPIO submitted to the Commission that he has collected the information to be given and if ordered by CIC it would be given. This reveals their intentions.

8. Article 5, Constitution of India states:

5. Citizenship at the Commencement of the Constitution: At the commencement of this Constitution every person who has his domicile in the territory of India and

(a) who was born in the territory of India ;or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years preceding such commencement, shall be a citizen of India.

9. The Election Commission of India, in its letter No.30/ID/2010/ERS dated 7th February 2014 issued a clarification to all CEOs of all States/UTs, in the light of decision dated 7th August 2013 of Karnataka High Court in Writ Petition No 15437/2013 Tenzin Choephag Ling Rinpochwe vs. Union of India and others, the Election Commission has reconsidered its stand. As per Section 3(1)(a) of Citizenship Act,1955, the children born to Tibetan Refugees in India shall be treated as Indian citizens based on their birth in India, on or after 26th January 1950 and before 1st July 1987.Hence, not withstanding anything contained in Union Home Ministry letter dated 26th August 2011 conveyed to all CEOs vide ECI letter dated 27th September,2011 the Commission clarifies that the EROs concerned should not deny enrolment to the children of Tibetan Refugees where they are satisfied that (1) the applicant was born in India (2) he/she was born on or after 26th January 1950 but before 1st July 1987,and (3) he/she is ordinarily resident in the

constituency in which the application for enrolment has been made.

10. This letter is very clear as to what the CTSA has to do. The CTSA knew this and it has signed a Memorandum employing the appellant. It is within its full knowledge that appellant was citizen of India, working with them under an appointment after due interview and he raised some of the grievance. Still it tried to use the citizenship ground to reject the RTI request of the appellant.

11. There are two facets within Right to information One it is component of Right to life as that includes an aspect of Right to know, which is guaranteed to persons and not confined to citizens only under Article 21 of Constitution of India. Two, it is part of freedom of expression under Article 19(1)(a).

Article 21 states: protection of life and personal liberty No persons shall be deprived of his life or personal liberty except according to procedure established by law.

12. The constitutional Courts of India held several times that RTI is a human right and thus belongs to all human beings. Also, the RTI, is part of Freedom of Speech and Expression as guaranteed to citizens under Article 19(1)(a) of the Constitution which says that all citizen shall have the right to freedom of speech and expression.

13. The public authority cannot deny information on the ground that applicant is not a citizen of India unless it has enquired and found prima facie that he was not citizen of India. The PIOs should study the RTI Act thoroughly to understand that though expression citizen was used in Section 3, in several other sections the Act specifically mentioned person whose application it has to receive and responds as prescribed.

14. The RTI ACT, now where mentions that transparency and accountability in the working of

every public authority as envisaged by the preamble to the RTI Act cannot be extended to a non-citizen if he is affected by such action. Giving a restricted interpretation to deny to applicant on this ground will obliterate the purpose of the Act. Thus, expression citizen is used in preamble and Section 3 which is a declaration of right the whole Act from Section 6 onwards a duty to give information to "person" is prescribed and in several provisions, Act specifically mentions the expression "person". It is a cautious and deliberate insertion of word "person", neither it is accidental nor inadvertent. Moreover, usage word "person" in proviso to Section 7 can be construed to include "person" and is reflective that information concerning life and liberty cannot be held to be applicable only to a citizen; had it been so, it would be constitutionally invalid in terms of Article 21 of constitution. Following is the text of Section- 7.

Section 7. Disposal of request.—(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

The word person also appears in following provisions of the RTI Act, 2005:

Section 4. Obligations of public authorities. — Every public authority shall— (d) provide reasons for its

administrative or quasi-judicial decisions to affected persons.

Section 5. Designation of Public Information Officers.—(1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.

Section 6. Request for obtaining information.—(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed.

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

...18. The appellant has a right to this information in two capacities. First, as an employee of Public Authority; second, as a citizen/person under RTI Act. The Public Authority, more specially the Director has an obligation, in his capacity as employer to provide the information to his employee. The Public Authority also has duty to give information under Section 6 & 7 of RTI Act. Information sought was relating to his employment and discrimination on governance caused by the Director and other officers. Appellant was a person affected by decisions of Director of Public Authority, and under Section 4 (1) (d), the Public Authority shall disclose the reasons for its decisions, to this affected person. Here, the question of his

citizenship is irrelevant. By saying this Public Authority, Director and CPIO violated Section 4 (1)(d). By ignoring the fact that appellant was born in India and thus his citizenship was undisputed, PIO violated Section 3. If he used 'citizenship' issue as a lame excuse to harass the appellant by denying information. Under Section 6 & 7 of RTI Act, PIO should have performed his duty to "person" of appellant, without bothering whether he was citizen or not. As an employee, he was entitled to information, even if he was not citizenship. Thus, PIO and First Appellate Authority have breached their duties. Alleging him as not citizen, without any effort to ascertain whether he was citizen or not.

19. The Commission holds that Public Authority cannot deny information simply on the suspicion that appellant might not be a citizen of India. If it is baseless suspicion, PIO's action will be considered as malicious. Basically every person has right to information because Section 6 & 7 of RTI Act specifically mandated PIOs to give information to persons under RTI Act, Public Authority has to give information not only to citizen, but also to persons. Baseless doubting of 'citizenship' reflects malice. In these circumstances it cannot be a ground for denial of information. If PIO did not make any effort to examine his doubt about appellant's citizenship, he will be guilty of malicious denial of RTI.

20. The questions raised by appellant relates to biased administration in the CTSA where the appellant is allegedly denied his due benefits. The Commission directs the CPIO Mr. A. S. Rawat, Education Officer, and Director Mr. Vineet Joshi FA considering him as deemed CPIO who obstructed the access to information, to **show cause why maximum penalty should not be imposed** against each of them and also

why disciplinary action should not be recommended against them for this wrongful denial of information, within 21 days from date of receipt of this order. The Director Mr. Vineet Joshi is also directed to show-cause why public authority should not be directed to pay compensation to the appellant, for loss and other detriments caused to him due to unreasonable response of the officers as reflected in their replies and contentions."

9. In response to this notice which was issued by the CIC, the CTSA took the position that the penalty would not be liable to be imposed, as the RTI Applicant had, at the time of his appointment, clearly stated that he was a Tibetan National and had declared his nationality to be Tibetan.

10. The reply dated 31st October 2016 addressed to the CIC and copied to the RTI applicant by the PIO- Petitioner is relevant and is set out below:-

“(a) Regarding his confirmation:

It is a fact that the appellant is an employee of the Central School for Tibetans (in short CTSA). He was appointed in Central Tibetan schools Administration (in short CTSA) vide CTSA Memorandum dated 16.9.1992 as a temporary employee (Annexure - I) as Tibetan Language Teacher. As per the Bio- data submitted by Sh. Dawa Tashi in CTSA i.e. at the time of his initial appointment in CTSA, he himself declared his nationality as "Tibetan" and mentioned the R.C. No. SJA/1551/84 (Annexure- II) being a Tibetan National (foreign national). At the time of appointment in CTSA, Sh. Dawa Tashi had submitted his Attestation form giving several mandatory declarations for appointment in Govt., through the Head Master, CST, Kharapathar, dated 18.12.92, wherein he declared his Nationality as "Tibetan" (Annexure - III). Sh. Dawa Tashi was appointed as PGT (Tibetan) w.e.f. 18.9.1995. (Annexure IV).

Till the year 2001 all employees of CTSA (Indian and Tibetan) were in the capacity of regular employees but no one was kept in the substantive capacity....

....The direction of Election Commission which is issued to their sub offices for enrolment in the voting list in India **but Sh. Dawa Tashi declared himself as a Tibetan National** at the time of appointment in CTSA and after that availing all facilities of Tibetan Refugee in India, hence the change of nationality automatically may **not be done** by the appointing authority. **The Ministry of Home affairs vide letter dated 28.08.2011 had also mentioned the provision under para -(v) as hereunder "The children born to Tibetan Refugee in India will not be treated as Indian citizen automatically based on their birth in India before 01.07.1987 under Section 3(1)(a) of the Citizenship Act 1955.** All such persons will have to submit an application, Individually under section 9(2) of the Citizenship Act, 1955 to MHA and thereafter the nationality status of all such children born to Tibetan Refugees in India, will be determined by MHA as per prescribed procedure available under the Citizenship Rules, 2009. All such children, and when their nationality status as an Indian is decided by this ministry, will have to surrender their Tibetan Refugee Certificate and identity Card before accepting Indian Citizenship". The copy of the same is enclosed as (Annexure-VII)....

....As per Service record held in CTSA, Sh. Dawa Tashi **is a Tibetan National.** As per the order of the Govt. of India, **Tibetan Nationals cannot be given the confirmation status in service being foreigners.** Due to this reason and order of the Govt. of India, as a matter of policy of the Govt. of India. Tibetan Nationals working in CTSA have not been given confirmation status in CTSA. As on date, there are 85 Tibetan nationals working in CTSA. Although these 85 employees are working on regular basis, but,

confirmation letter have not been issued to them as a matter of policy of Govt. of India and directions received from the Govt. for this purpose in CTSA..”

11. The CIC after receiving the above reply, however, concluded that the PIOs conduct was *mala fide* and malicious and that it was founded on baseless suspicions about the citizenship of the RTI applicant. Accordingly, the CIC vide its Order dated 22nd November 2016 imposed a penalty of Rs. 25,000/- on the PIO, which is the order under challenge. The relevant paragraphs of the CIC’s order reads as under:-

“ 5. Mr. T. Pritam and Mr. A. S. Rawat Education Officer/CPIO have submitted detailed explanation in response to show cause notice. They claimed that bunch of papers were dispatched to the appellant on 31.10.2016 and proof of dispatch is shown on 02.11.2016. However, the appellant was not informed about today's hearing, hence, he could not be present. When the CIC office contacted him on his Mobile phone with open speaker he claimed that he was yet to receive the information and stated that he would write to the Commission if there is any deficiency in information sought. In response to the question by the Commission, the CPIO stated that he did not have any doubt about the birth of appellant in India. He contended that he was confused with the claim of applicant as Tibetan National and thus denied the information; in addition, he states it was the first RTI application. Further, the CPIO submitted a long written explanation regarding the refusal of information. He gave information only after the adjunct order given on 26.10.2016. Hence, it is proved that the CPIO denied the information sought in 2014, till 26.10.2016 which was dispatched on 31.10.2016. It is clear from his verbal statement that there was no doubt in his mind that appellant was born in India. It is a matter of common knowledge that any person who

takes birth will acquire the citizenship of that state. It is also a part of constitution of India, to which CPIO cannot claim ignorance. It is presumed that law is known to all. The CPIO, who is also an educational Officer, and colleague of the appellant, knowing personally that the appellant was born in India, though he was a Tibetan National, has deliberately denied the information raising a baseless suspicion about citizenship of the appellant. The CPIO has devised this excuse to deny the information. The public authority itself was constituted to help the Tibetan. The appellant was appointed by the public authority with the full knowledge that he was a Tibetan National born in India.

6. On 09.11.2016, the appellant submitted to the Commission that he was given misleading and irrelevant information, and submitted as follows:

I was not given information earlier and this time too, the information sought were not given. The recent reply of CTSA letter F. No. 22/8 - 2015 CTSA (P/E), dated 31.10.2016 was full of unrelated stories and tried their best to hide their malicious intention to deny my rights. Hence, as per their above-mentioned letter, I have responded at my best to explain their malicious intentions based on material evidences.

*7. The RTI Act, Section 3 says that all citizens are entitled to RTI Act. It is a declaration, **but there is no prohibition to provide information to others.** In fact, the law has mentioned expression "persons" in several sections of RTI Act which means "persons" are also having RTI (As specifically mentioned in the main order above). The law is very clear that information can be denied only under Section 8 & 9 or under Section 24. Even under Section 24 information relating to violation to human rights and corruption can be*

provided to any person. The request for information was basically a grievance of the appellant which was a result of bad governance of the public authority.

8. The explanation of the CPIO is not satisfactory. He is trying to justify his denial; hence the Commission finds it is a fit case for imposing maximum penalty of Rs. 25,000/- on Mr. A. S. Rawat Education Officer/CPIO. Accordingly, Mr. A. S. Rawat, Education Officer/CPIO is directed to pay a sum of Rs.25,000/- in 5 equal monthly installment.”

12. A conjoint reading of the orders dated 5th October 2016 and 22th November 2016 shows that the CIC was of the opinion that the RTI Applicant was entitled to the information on two counts –

- First, that the RTI Applicant was a citizen of India owing to the provisions of the Citizenship Act, 1955;
- Secondly, that either way even if the RTI Applicant is considered as a Tibetan national, non-citizens cannot be deprived of information under the RTI Act. The reasoning given by the CIC is that under Section 3, ***all citizens*** are entitled to information under the RTI Act. However, there is no prohibition to provide the information to ***non-citizens***.

13. In the present writ petition the challenge is only to the order dated 22nd November 2016, by which penalty has been imposed. When the present writ petition was listed before this Court on 12th April, 2017, the operation of the impugned order dated 22nd November, 2016 was stayed. Subsequently, the RTI-Applicant has appeared on a couple of occasions and has filed the counter affidavit. However, the appearance on behalf of the RTI-Applicant has been erratic.

14. A counter affidavit has been filed by the RTI Applicant. The primary ground taken in the counter affidavit is that the CIC had held that the question of citizenship is irrelevant in RTI applications when the information sought by the employee pertains to bad governance or biased administration by those responsible for governance and administration. Further, it is stated that the PIO's reply shows that the administration was biased against him. He also claims that this is a case involving bad governance on behalf of the CTSA.

15. The RTI Applicant states in his counter affidavit that he was born on 1st July, 1965 which he claims to also have been mentioned in the bio-data submitted by him in 1992 and thus he is entitled to be treated as a citizen under Section 3(1)(a) of the Citizenship Act, 1955. This fact was not considered by the PIO. The various allowances and other benefits which the RTI Applicant was entitled to, were not extended to him, leading to the filing of the RTI application. Since the PIO was aware of the date of birth of the RTI Applicant, the non-issuance of the information is *mala fide*.

16. The Court has perused the stand of the CTSA in respect of the reply to the CIC wherein, it is clearly claimed that the RTI Applicant was a Tibetan refugee. In this background, the question that arises in this petition is whether the PIO's stand was *malafide*, deserving imposition of penalty.

17. The question of imposition of penalty has to be considered in the light of the legal issues that the CIC has determined, *firstly*, that the RTI Applicant is a citizen and *secondly* that the RTI Act extends to non-citizens as well.

18. Section 3 of the RTI Act reads as under:-

“3. Right to information.—Subject to the provisions of this Act, all citizens shall have the right to information.”

19. The RTI Act was preceded by the Right to Information Bill, 2004 (*‘the Bill’*) the Preamble of which reads as under:

“to provide for setting out the practical regime of right to information for people 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 and for matters connected therewith or incidental thereto.”

20. Clauses 3 and 6 of the Bill read as under:

“3. Subject to the provisions of this Act, all citizens shall have the right to information.

6. (1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(a) the Public Information Officer of the concerned public authority;

(b) the Assistant Public Information Officers,

specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those

that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information, -

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”

21. The Statement of Objects and Reasons of the Bill are extracted herein below:

*“In order to ensure greater and more effective access to information, the Government resolved that the Freedom of Information Act, 2002 enacted by the Parliament needs to be made more progressive, participatory and meaningful. The National Advisory Council deliberated on the issue and suggested certain important changes to be incorporated in the existing Act to **ensure smoother and greater access to information.** The Government examined the suggestions made by the National Advisory Council and others and decided to make a number of changes in the law.*

The important changes proposed to be incorporated, inter alia, include establishment of an appellate machinery with investigating powers to review 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. In view of significant changes proposed in the existing Act, the Government also decided to repeal the Freedom of Information Act, 2002. The proposed legislation will provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India. The Bill seeks to achieve the above objects.”

22. The Notes on Clauses in respect of Clause 3 and 6 are extracted herein below:

“Clause 3 seeks to confer on the citizens a right of access to information held by public authorities.

Clause 6 specifies the manner in which requests may be made by a citizen to the authority for obtaining the information. It also provides for transferring the request to the other concerned public authority who may hold the information.”

23. A perusal of the above extracts from the Bill would show that there is no uniformity in respect of who can exercise the right to information. The Preamble uses the expression *‘for people’*. Clause 3 uses the expression *‘all citizens’*. Clause 6 uses the expression *‘a person’*. The statement of objects and reasons is neutral to the person exercising the right. The notes on clauses, however, are specific to the effect that the rights are conferred on *citizens* and requests can be made by a *citizen*.

24. The Parliamentary Debates on the Right to Information Bill are also educative in the present context. A perusal of the debates would show that the expressions being used at the time when the Bill was moved, was for securing access to information for *people*. During the debates, the words *‘people’* and *‘citizen’* were being used synonymously.

25. When the Bill was debated in the Rajya Sabha it is seen that terms such as '*citizen*', '*people*', '*persons*' etc. have been used interchangeably.

26. The Third Report on the Right to Information Bill, 2004 of the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, notes some important recommendations of the National Advisory Council ('NAC'), at the relevant time. One of the recommendations was that the Right to information should be conferred on all *persons*, whereas the Bill restricts the right to *citizens* only.

27. Even the views put forward by organizations/individuals and the witnesses who deposed before the said Committee, as summarized in the said report, suggest that the applicability of the RTI Act should not be restricted to *citizens* but should cover *non- citizens* as well.

28. The Clause- by- Clause consideration of the Right to Information Bill, 2004 in its meetings held on 1st and 2nd March 2005, regarding Clause 3 reads as-

"Clause -3

14.The clause confers the right to information on all citizens.

14.1The issue who can access information triggered an animated debate. Witnesses in their deposition favoured the idea of extending the coverage of the law to all persons. Examples of some foreign jurisdictions were placed before the committee, which permit the right to access to be exercised by all persons.

14.2 The Committee took note that the Act of 2002 gives the access right to the citizens only. Not only this, the fundamental rights enshrined in the Constitution are exercisable by citizens and not by all. After some discussion, the Committee favored retention of the provision.

14.3The clause is adopted without any change."

Thus, the language in clause 3 to the effect that the right is conferred on *citizens* was not changed.

29. Annexure C to the meeting ‘Gist of the Suggestions received on the Right to Information Bill, 2004 alongwith the Comments of the Ministry’ on clause 3 reads -

<i>Clause</i>	<i>Suggestions</i>	<i>Comments of Ministry</i>
<i>3.Right to Information</i>	<i>The word ‘citizens’ be substituted by the word ‘persons’</i>	<i>Government may accept this amendment in view of the similar laws being implemented in other countries</i>

30. Finally, however, the Act which is now the Right to Information Act, 2005 has the following Preamble:

“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 and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS 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;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.”

31. Further, Section 3 and Section 6 of the RTI Act read as-

“3. Right to information. - Subject to the provisions of this Act, all citizens shall have the right to information.

6. Request for obtaining information. - (1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officers or State Assistant Public Information Officer, as the case may be,

specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those

that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information, -

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date or receipt of the application.”

32. A perusal of the RTI Act shows that the Preamble itself clarifies, in contrast to the Bill, that the right to information is sought to be conferred upon ***citizens***. However, even in the RTI Act, the expressions used are not consistent and uniform. The RTI Act uses the term “***citizen***” in the Preamble.

33. In the backdrop of the above legislative material, there has clearly been a struggle as to whether the Right to Information ought to be conferred only upon ***citizens*** or on ***non-citizens*** as well. The Preamble uses the word ‘***citizens***’ and ‘***informed citizenry***’. Section 3 also confers the Right to Information upon ***citizens***. Section 4 requires public authorities in 4(1)(b) (xv) to publish the particulars of facilities available to ***citizens*** for obtaining information. In the same breath, however, Section 4 also requires public authorities to publish all relevant facts while formulating important policies or announcing the decisions which affect ***public***. Public authorities also have

an obligation under Section 4(1)(d) to provide reasons for their administrative or quasi-judicial decisions to affected *persons*. In Section 4(2), the endeavor of public authorities has to be to take steps to ensure maximum availability of information to the *public* so that the *public* has minimum resort to the use of the procedure under the RTI Act to obtain information. The form and manner of dissemination is also to be easily accessible to the *public* under Section 4(3). Section 5 requires the CPIO's and State PIO's to be designated for providing information to *persons* requesting for information under the RTI Act, who shall deal with requests and render reasonable assistance to *persons* seeking information under the RTI Act.

34. Section 6 also prescribes the procedure for *persons* who desire to obtain any information under the RTI Act or who make a request in writing or through electronic means in such application process. The CPIO or the SPIO have also to render all reasonable assistance to *persons* making the request, in cases where the same cannot be made in writing. Section 7 prescribes the time limit for providing information as 30 days. However, the proviso to Section 7(1) interestingly stipulates that if information is sought in respect of *life or liberty of a person*, the same is to be provided within 48 hours of the receipt of the request. Section 7(3) records that intimation is to be provided to the *person* making the request, where a decision is taken to provide information on payment of any further fee representing the cost of providing the information. If the Applicants are below poverty line such *persons* shall not be charged any fee for the RTI-application in terms of the proviso to Section 7(5). The reasons for rejection are to be communicated to the *persons* making the request under Section 7(8). Section 8 provides all

kinds of information which is exempted from disclosure and uses the word *citizen* in 8(1). The word *person* is used in Section 8(1)(e), (g), (j) and Section 8(3).

35. An appeal can be filed under Section 19 by any *person* who does not receive a decision within the timeline prescribed under section 7 or who is aggrieved by the decision of the CPIO or SPIO. Further, Section 18 deals with complaint from '*any person*'.

36. An analysis of the provisions of the Act does show that in certain provisions, the word "*citizen*" is used and in a majority of provisions, the word "*person*" is used. Clearly in the legislative history of the Right to Information Bill leading to the RTI Act, there was a debate as to whether the word *citizen* should be substituted with *person* or not. In respect of Clause 3, the conferment of the Right to Information was retained without change i.e. the word "*citizen*" was retained.

37. It is in the above background that the finding of the CIC, that the right to information is available to *non-citizens*, would have to be considered.

38. The purpose of the Right to Information Act is to promote transparency and accountability in the working of public authorities. The statement of objects and reasons makes it clear that it was enacted with an intention to ensure smoother and greater access to information.

39. The Constitution of India confers a large gamut of rights upon Indian citizens, but there also exist a smaller bouquet of rights which are also conferred and recognized in respect of non-citizens. Illustrative examples would include travel related permissions, OCI card, Visas, Refugees, Asylum seekers, property related issues concerning persons of Indian origin who may not be citizens, extradition related information, etc. In all these

situations, ***non-citizens*** would have an interface with public authorities and to put an absolute bar, would be contrary to the principles enshrined in the Constitution of India which recognizes some rights of even ***non-citizens***.

40. The RTI Act places enormous emphasis on access to information and such information could also relate to the life or liberty of a person. Article 21 of the Constitution of India, which encompasses Right to Life, is available not merely to ***citizens*** but to all ***persons***. The Proviso to Section 7(1) of the RTI Act, contemplates information relating to life or liberty of a ***person*** to be disclosed within 48 hours, thereby stressing on the need for disclosing such information with alacrity and promptness. Considering that the RTI Act also accords information relating to life or liberty an important and distinct position, it would be inherently contradictory to hold that only ***citizens*** are entitled to the Right to Information. Life or liberty could also relate to ***non-citizens*** including foreigners, NRI's, OCI card holders and such other persons.

41. The importance of rights under Article 14 and 21 *qua non citizens* can be appreciated in the light of the legal position enunciated in Durga Das Basu's, Commentary on the Constitution of India¹, as under:

"The words 'any person' in Art. 14 of our Constitution similarly extend the protection to aliens while within the territory of India. The use of the words "any person" in Art. 14, in the context of legislation in general or executive action affecting group rights is construed to mean persons are similarly situated. The classification of such persons for the purpose of listing the differential treatment must, of course, be intelligible and reasonable-the reasonableness being determined

¹ Durga Das Basu, 2 *Commentary on the Constitution of India* (8th edn, 2007, vol. 2) pp. 1714 – 1715.

with reference to the object for which the action is taken.

The benefit of Art. 14 is not confined to citizens alone, but is available to any person within the territory of India. It was held in the later case, that every person is entitled to equality before law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty except according to procedure established by law. Thus, the State is bound to protect the life and liberty of every "human being" be he a citizen or otherwise.

The International Covenants and Declaration as adopted by the United Nations have to be respected by all signatory States and the meaning given to the provision of these Declaration and Covenants have to be such as would help in effective implementation of those rights. The applicability of Universal Declaration of Human Rights and the principles thereof may have be read, if need be, with the domestic jurisprudence. Our Constitution guarantees all the basic and fundamental human rights set out in Universal Declaration of Human Rights 1948, to its citizens and other person. The chapter dealing with fundamental rights is contained in Part III of the Constitution. The purpose of Part III is to safeguard the basic human rights from the vicissitudes of political controversy and to place them beyond the reach of the political parties, who, by virtue of the, majority, may come to form the Government at the Centre or in the State. The fundamental rights are available to all "citizens" of the country, but a few of them are also available to all person..... The meaning of the word "life" cannot be narrowed down. According to the tenor of the language of article 21, it will be available not only to every citizen of the country, but also to a "person" who may not be a citizen of

the country. Such a person is also entitled to the protection of article 21, even though not a citizen."

What equal protection means in the case of aliens is that in matters in which aliens are under no constitutional disability, the State may not discriminate against a person simply on the ground that he is an alien. [See, further Entry 17, List 1, 7th Sch., post]."

42. Further, the Supreme Court in **CA No. 639 of 2000 (Arising out of SLP (C) No. 16439 of 1998)** titled '**The Chairman Railway Board and Ors v. Chandrima Das and Ors.**' reiterates this position. The operative portion of the said judgement reads as-

"...29. The fundamental rights are available to all the "Citizens" of the country but a few of them are also available to "persons". **While Article 14, which guarantees equality before law or the equal protection of laws within the territory of India, is applicable to "person" which would also include the "citizen" of the country and "non-citizen" both,** Article 15 speaks only of "citizen" and it is specifically provided therein that there shall be no discrimination against any "citizen" on the ground only of religion, race, caste, sex, place of birth or any of them nor shall any citizen be subjected to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hostel and places of public entertainment, or the use of wells, tanks, bathing ghats, roads and place of public resort on the aforesaid grounds. Fundamental Rights guaranteed under Article 15, is therefore, restricted to "citizen". So also, Article 16 which guarantees equality of opportunity, in matters of public employment is applicable only to "citizens". The fundamental rights contained in Article 19, which contains the right to "Basic Freedoms", namely, freedom of speech and expression; freedom to assemble

peaceably and without arms; freedom to form associations or unions; freedom to move freely throughout the territory of India; freedom to reside and settle in any part of the territory of India and freedom to practice any profession, or to carry on any occupation, trade or business, are available only to “citizens” of the country.

...35. On this principles, even those who are not citizens of this country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the Constitutional provisions. They also have a right to “Life” in this country. Thus, they also have the right to live, so long as they are here, with human dignity, just as the state is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of the persons who are not citizens.”

43. In this context, it would be relevant to also consider the decision of the Supreme Court in ‘*Chief Information Commissioner & Ors. v. State of Manipur & Ors., (2011) 15 SCC 1*’ where the Supreme Court, also notices the difference between the terminology used in Sections 3 and 6 of the Act. Under Section 3 of the Act, the Right to Information is conferred upon all *citizens*. However, under Section 6, a *person* who desires to obtain information can file a request. The Supreme Court after noticing this distinction observes as under:

“23. Right to Information has also been statutorily recognised under Section 3 of the Act as follows:

3. Right to information.- Subject to the provisions of this Act, all citizens shall have the right to information.

24. Section 6 in this connection is very crucial. Under Section 6 a person, who desires to obtain any information under this Act, shall make a request in

writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed. Such request may be made to the Central Public Information Officer or State Public Information Officer, as the case may be, or to the Central Assistant Public Information Officer or State Assistant Public Information Officer. In making the said request the applicant is not required to give any reason for obtaining the information or any other personal details excepting those which are necessary for contacting him.

25. **It is quite interesting to note that even though under Section 3 of the Act right of all citizens, to receive information, is statutorily recognised but Section 6 gives the said right to any person. Therefore, Section 6, in a sense, is wider in its ambit than Section 3.**

The above decision of the Supreme Court makes it abundantly clear that Section 6 is wider in its scope and ambit than Section 3 of the RTI Act.

44. The Calcutta High Court in ***‘Dr. Soumen Paul v. Union of India & Ors’*** [2002 SCC Online Cal 62: (2002) 3 Cal LT 329 : (2003) 1 Civ LT 502] decided on 6th February 2002 held that-

“2. In this writ application it is the contention of the petitioner that despite preferring a revision under Section 15 of the Citizenship Act, 1955 challenging the decision refusing the grant of Indian citizenship as passed under Section 5(1)(a) of the Citizenship Act, 1955 (hereinafter referred to as 'the said Act') as communicated by the District Magistrate, South 24-Parganas by his communication order dated 4th June, 2001 as yet, nothing has been communicated to the petitioner about the fate of such revision. At the same time the petitioner has assailed the communication of the District Magistrate, 24-Parganas (South) whereby

and whereunder it was only communicated that the petitioner's application for grant of Indian citizenship was rejected. The learned advocate for the Union of India is present and he frankly submits that no instruction has been received from his clients and accordingly he cannot assist the Court. From the impugned communication of the District Magistrate, 24-Parganas (South) appearing at page 50 of annexure P-5 against which the revision was filed by the petitioner under the said Act, it appears that no reason was assigned as to why the petitioner's application for grant of citizenship in terms of Section 5(1)(a) of the said Act was rejected. Section 5(1)(a) of the said Act only provides satisfaction of two conditions for grant of the citizenship, namely, the person must be of Indian origin and secondly a continuous stay of five years. In the instant case, it appears from the submission that the petitioner's parents were of Indian origin as they were born in undivided India. After partition, parents remained in Pakistan where the present petitioner was born on 30th December, 1955. About 5 years continuous stay in India, it appears from submission of petitioner that taking into account of time as consumed to submit M. Phil thesis as a scholar of University of Pune being duly authorised to do such under Government of India's Scholarship Scheme, 1983-84 and the award of Ph.D from said University in the year 1989 as well as the period of stay till date of application for grant of citizenship, petitioner has satisfied said condition. Hence, for adjudication of any application under the said Act for citizenship the concerned authorities are required to satisfy on those two points. But very surprisingly in the instant case though the petitioner earlier moved this writ Court about the inaction of the authorities, no order assigning the reason rejecting the prayer of the petitioner has been served. **Right to know the reason is a basic fundamental right. Reliance may be placed to the judgment in the case Ravi S. Naik v.**

Union of India and Ors., wherein it has been settled that right to information and right to be informed reason, have its strong ground in terms of Article 21 of the Constitution of India, in the case Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd., reported in AIR 1989 SC 190, the Apex Court on application of Article 21 of the Constitution of India held that right to know is available to the person concerned who would suffer any decision. In the instant case though petitioner is a non-citizen but still Article 21 of the Constitution of India is applicable in his case with full vigour. In terms of the Apex Court judgment passed in the case *Chairman, Railway Board and Ors. v. Chandrima Das (Mrs.) and Ors.*, reported in (2000) 2 SCC 465 wherein while interpreting the word 'life' as appearing in Article 21 of the Constitution of India qua the factum of payment of compensation of rape victim of a Bangladeshi citizen in Railway Yatri Nivas, Howrah, the Court held that in terms of the Article 21 of the Constitution of India, the life of the particular lady was disturbed and/or deprived of without any fair procedure of law. Applying such test, in the instant case, accordingly the authorities concerned were bound to assign the reason to the petitioner. With reference to the decision as reached by them rejecting the application for citizenship”.

45. In contrast, the Madras High Court recently observed in ***W.P.(MD) No. 19811 of 2013 and M.P (MD) No. 1 of 2013*** titled ‘***K.K.C. Balaganesan v. The Managing Director, Tamil Nadu Generation and Distribution Corporation Limited & Ors***’. [Decided on 31.01.2023] that the observation of the Supreme Court in ***Chief Information Commissioner (supra)*** is merely an observation and the same cannot be read in isolation. The Madras High Court goes on to hold as under:

“21. When the Hon'ble Apex Court had traced the right

to receive information is under Article 19(1)(a) of the Constitution of India, then it could be safely presumed that the persons, who are the citizens of India, alone are entitled to seek information, since the right under Article 19(1)(a) of the Constitution of India is only available to a citizen of India.

22. Further, if the contention of the learned counsel for the petitioner that the application under Section 6 of the Act cannot be restricted only to the citizens as adumbrated in Section 3, then would render Section 3 of the Act otiose/redundant. It is the cardinal principles of interpretation of statutes that while reading a statute, a provision of the statute cannot be made otiose or redundant. I am fortified to come to the aforesaid conclusion by placing reliance of the very same judgment (AIR 2012 SCC 864). The relevant paragraph in the aforesaid judgment is extracted hereunder:

"It is well known that the legislature does not waste words or say anything in vain or for no purpose. Thus, a construction which leads to redundancy of a portion of the statute cannot be accepted in the absence of compelling reasons.

In the instant case there is no compelling reason to accept the construction put forward by the respondents.

23. **Hence, the contention raised by the learned counsel for the petitioner that even a non citizen would be entitled to information under the Act, in my view, is untenable. It is the duty of the Court to ascertain the intention of the statute and to whose benefit such a statute has been enacted. The statute could be enacted for a class of persons for their benefit. In the present case, the Act has been enacted to provide information to a citizen alone. Any other person, who is not a citizen of India, cannot invoke the provisions of the Act and seek information.**

24. The reason I come to this conclusion is clearly

elucidated in the Preamble of the Act, which postulates that the democracy requires an informed citizenries and the Act was only to provide for furnishing of certain information to the citizen, who desires to have it. In that context, I find no infirmity in the impugned communication of the third respondent calling upon the petitioner to substantiate that he is the citizen of India. It is not known as to why the petitioner is shying away to produce such information.”

46. The Calcutta High Court in **Dr. Soumen Paul** (*supra*) clearly holds that information can be disclosed to **non-citizens**. The Supreme Court also notes in the **Chief Information Commissioner** (*supra*) that Section 6 is wider in its scope than Section 3. On the other hand, the decision of the Madras High Court in **K.K.C. Balaganesan** (*supra*) holds that only citizens are entitled to information. This Court respectfully disagrees with the Madras High Court. There are several areas where even non-citizens such as Tibetans in the present case, who was serving a teacher in India in a Tibetan School, seek information. It cannot be held that there is a bar on such persons to such information. Thus, the CIC was right in holding that there is no absolute prohibition if the authority deems it fit to disclose the information.

47. Public authorities as defined in the RTI Act, in India, deal with **citizens** and **non-citizens**. While as a general proposition, it would be correct to hold that the right to information is conferred upon **all citizens**, it cannot also be held that there is an absolute prohibition on disclosure of information to **non-citizens**. In the case of such public authorities dealing with issues concerning **non-citizens**, if there is an inaction or lack of transparency in their dealings, it cannot be held that such a **non-citizen** would be disabled from seeking the said information under the RTI Act. It would be left to the

discretion of the authority concerned to decide depending upon the facts, situation and the surrounding circumstances as to whether the information deserves to be disclosed or not. Creating an absolute bar would be contrary to the purpose and object of the RTI Act itself, and such an absolute bar cannot be read into the RTI Act.

48. Restricting the Right to Information to only *citizens* in the light of both terms i.e., *citizens* and *persons* being used in the RTI Act without any discernible distinction would be contrary to spirit of the Constitution as well as to the RTI Act. The view of the Parliamentary Committee which discussed the Bill and favored retention of the right only to *citizens* appears to have been based on a misconception that Fundamental Rights under the Constitution are only available to citizens, which was a wrong premise. Thus, this Court is of the opinion that the Right to Information ought to be available to *citizens* and *non-citizens* depending upon the kind of information which is sought and the recognition of the rights guaranteed to such class of persons under the Constitution of India.

49. The safeguards/exceptions provided in the RTI Act, would apply *qua* any information which is sought, by either *citizens* or *non-citizens* in this context. Whenever information is sought by *non-citizens*, considering that the rights conferred under Section 3 is positively upon *citizens*, it would be on the discretion of the authorities to disclose such information or not.

50. Section 3 would therefore have to be read as positive recognition of the right in favor of *citizens* but not as a prohibition against *non-citizens*.

51. There is a second aspect in the present case. The RTI Applicant was a Tibetan national and stated as such in his RTI application. But he also claimed citizenship under the Citizenship Act, 1955. The PIO however,

proceeded on the basis that Section 3 of the RTI Act would be mandatory, in terms of assuming that only *citizens* are entitled to information under the RTI Act. The PIO also considered the RTI Applicant's stand declaring himself to be a Tibetan national. The question before this Court is not whether the RTI-Applicant was entitled to information or not. The information has already been directed to be provided and has, in fact, been provided by the CTSA before the CIC, as per the Petitioner. Certain grievances have been raised by the RTI Applicant that the order of the CIC has not been complied with and that he is not satisfied with the information provided. If so, the RTI Applicant is free to avail of his remedies in accordance with law.

52. It is stated that the RTI-Applicant had declared that he was a Tibetan National in several documents including in his bio-data where he has been recognised as a Tibetan national. The RTI Applicant is stated to have enjoyed privileges as a Tibetan refugee with an Identity card as a Tibetan. The PIO's approach of assuming that a *non-citizen* would not be entitled to information under the RTI Act cannot be held to be malicious and could be considered at best as a circumspect approach in these circumstances, especially in view of the wording of Section 3 of the RTI Act. However, the PIO did not consider the applicability of Section 3(1)(a) of the Citizenship Act, 1955 whereby the RTI applicant born in 1965 is entitled to citizenship by birth, which has been decided by the CIC relying upon the decision of the Karnataka High Court in *W.P. 15437/2013* titled '*Tenzin Choephag Ling Rinpoche Vs. UOI*' dated 7th August 2013.

53. In the backdrop of the above position, the CIC's finding that the approach of the PIO is malicious and *mala fide* is what is challenged before

this Court. The information having already been stated to have been provided to the RTI-Applicant, the approach of the PIO cannot be faulted to such a great extent as to be considered as malicious and *mala fide* merely on the ground that information was initially rejected as the RTI-Applicant had declared himself to be a Tibetan national. The legal question raised was complex in nature, considering the legislative history of the RTI Act.

54. The judgment of this Court in **WP(C)11271/2009** titled '**Registrar of Companies and Ors. V. Dharmendra Kumar Garg and Anr.**' pertains to a case where, in a similar situation, this Court held that the PIO's conduct of non-disclosure of information by the Registrar of Companies could not be held to be malicious. The relevant portion of the said judgment reads as under:-

"60. I may also observe that the approach of the Central Information Commission in seeking to invoke Section 20 of the RTI Act in the facts of the present case is wholly unjustified. By no stretch of imagination could it have been said that PIOs of the ROC had acted 'without any reasonable cause' or 'malafidely denied the request for information or knowingly gave incorrect, incomplete or misleading information, or destroyed information, which was the subject of the request, or obstructed in any manner the furnishing of information'. The PIOs were guided by the departmental circular No. 1/2006 dated 24.01.2006 in the view that they communicate to the respondent-querist. This view was taken by none other than the Director Inspection & Investigation in the Ministry of Company Affairs, Government of India and circulated to all Regional Directors of Registrar of Companies and all Official Liquidators. There was nothing before the PIOs to suggest that the said view had been disproved by any judicial or quasi-judicial authority.

Clearly, the PIOs acted bonafide and without any malice.

61. Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a show-cause notice under Section 20 of the RTI Act and the imposition of penalty. The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to

unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”

55. In the present case, the finding of the CIC that the PIO's conduct is *mala fide* and the imposition of penalty in these facts is not sustainable. Accordingly, the imposition of penalty is set aside.

56. However, considering that though the RTI Applicant has been described as Tibetan national, in view of the provisions of the Citizenship Act 1955 and the decision dated 7th August 2013 in '*Tenzin Cheophag Ling Rinpoche (supra)*', the order of the CIC directing the Petitioner to give the point-wise reply in terms of the order dated 5th October, 2016 would be liable to be complied with by the Petitioner, if not already complied with. The said order dated 5th October 2016 is not the subject matter of the present writ petition. If the same has attained finality, the Petitioner is bound to comply with the same and furnish the information to the RTI applicant, if not already given.

57. The petition is, accordingly, allowed in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

MARCH 13, 2023
MR/rp