

केन्द्रीय सूचना आयोग  
**Central Information Commission**  
बाबा गंगनाथ मार्ग, मुनिरका  
**Baba Gangnath Marg, Munirka**  
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No.:- CIC/SEBIH/A/2017/139953-BJ

Mr. Murugappa Krishnan

....अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO

Securities & Exchange Board of India  
SEBI Bhawan, Plot No. C 4 – AG Block  
Bandra Complex Bandra Mumbai – 400051

...प्रतिवादीगण /Respondent

Date of Hearing : 02.03.2020  
Date of Decision : 04.03.2020

Date of RTI application	30.12.2015
CPIO's response	29.01.2016
Date of the First Appeal	24.02.2016
First Appellate Authority's response	21.03.2016
Date of diarised receipt of Appeal by the Commission	09.06.2017

**ORDER**

**FACTS:**

The Appellant vide his RTI application sought information on 03 points regarding the information for each distinct FII who had ever traded, each date when new masks had been applied together with old and new masks including date of change of mask; old mask and new mask.

The CPIO, vide its reply dated 29.01.2016 denied disclosure of information u/s 8 (1) (d) and (j) of the RTI Act, 2005. Dissatisfied by the response of the CPIO, the Appellant approached the FAA. The FAA, vide its order dated 21.03.2016 concurred with the response of the CPIO.

**HEARING:**

**Facts emerging during the hearing:**

The following were present:

**Appellant:** Ms. Vineeta Bajaj and Ms. Harini Raghupathy (Adv.), Appellant's representatives, in person;

**Respondent:** Mr. G. P. Garg, Chief General Mgr. & CPIO, Mr. Achal Singh, GM and Ms. Promila Sridhar, DGM through VC;

The Appellant's representatives reiterated the contents of the RTI application and stated that the information sought was incorrectly denied by the Respondent under Section 8 (1) (d) and (j) of the RTI Act, 2005. It was submitted that they did not have any objection to the masking of the identity of FPIs/ FII per se, but found the action of the Respondent Public Authority to be arbitrary since the masks were changed every month which was resulting in impediment to academic research being carried out by researchers such as the Appellant due to misleading data resulting in mistakes being made by Academic and PhD students. It was their suggestion that the SEBI could keep the masks stable while preserving the privacy of investors. In this context, the Appellant's representatives referred to the practice being followed by the NSE which also maintained such data base for a period of 15 years. In support of their contention, the Appellant's representatives referred to the decision of the Apex Court dated 16.12.2015 as per which the regulator held the data not in fiduciary capacity but only because of a legal mandate. The regulator was required to serve the public interest and facilitate academic research into financial markets. A reference was also made to point No. 01 of the RTI application wherein the Appellant had sought the date of change of mask for which exemption under Section 8 (1) (d) and (j) was incorrectly claimed by the Respondent without providing any reasons. In its reply, the Respondent reiterated the response of the CPIO / FAA as also their written submissions and submitted that the decision of the Apex Court cited by the Appellant dated 16.12.2015 was not applicable to the instant matter since exemption under Section 8 (1) (e) was not claimed by them. Moreover, as mentioned in their written submission all information except FPI registration number, Sub-Account Registration Number and Broker Registration Number was available on the website which was sufficient in order to carry out any academic research regarding the transactions done by the FPIs/ FIIs. While explaining the purpose behind changing the mask, the Respondent stated that the same was done periodically to ensure that the identity of any particular FPI/ FII was not revealed by analyzing the disclosures made by the FIIs in public domain. Hence it was their submission that disclosure of information would infringe on the privacy as well as the competitive position of the FPIs/ FIIs since sensitive information revealing their identity would be made if the disclosure was allowed. On being queried by the Commission regarding the policy followed by the Public Authority for masking and the contention raised by the Appellant regarding the practice followed by the NSE for not changing masks, the Respondent stated that they would consider the suggestions of the Appellant and upload the masking policy on their website as also take up the matter with the NSE separately to ascertain the practice followed by them.

The Commission was in receipt of a written submission from the Appellant dated 27.02.2020 wherein it was inter alia stated that the crux of the matter was that very stale FII trading data was made available by SEBI as a result of the response to the parliamentary query by then Rajya Sabha Member Shri Shyam Benegal. It was stated that they had no quarrel with masking the identity of the FIIs if that was intended to preserve privacy as other regulators around the world would also do so but the difficulty was with SEBI arbitrarily changing the masks every month which was never contemplated by Shri Benegal and was not done by any other regulator in the world since it made the data much less useful for academic research. While referring to the decision of the Hon'ble Supreme Court dated 16.12.2015, the Appellant stated that the regulator holds the data not in the fiduciary capacity but only because of the legal mandate and that the regulator was only required to serve the larger public interest and not maximize the welfare of the regulates even at the expense of the public interest. The Appellant further submitted that academic research into financial markets was regarded throughout the world as serving the public interest as one pillar in an edifice of checks and balances. While contesting that arbitrarily changing the masks made the data misleading, the Appellant stated that the same led to

academics and PhD students making mistakes The Appellant in the alternative prayed to keep the mask stable which will be sufficient to preserve privacy.

The Commission was also in receipt of written submissions from the Appellant dated 27.02.2020, 28.02.2020 and 03.03.2020 wherein he contested the written/ oral submissions made by the Respondent.

The Commission was in receipt of a written submission from the Respondent dated 28.02.2020 wherein it was inter alia stated that the transaction details of FPIs/ FIIs were disseminated on SEBI website with a 06 months lag after masking certain data fields. The masking was dynamically by SEBI so as to ensure prevention of disclosure of identity of any particular FPI. Furthermore, the reports disclosed by SEBI on its website contained 19 heads relating to the transactions carried out by FPIs/ FIIs out of which 3 heads were masked namely FPS registration no., Sub Account Registration Number and the Broker Registration Number. Furthermore, the mask was changed on a monthly basis in the first week of every month and the purpose to change the mask periodically was to ensure that the identity of any particular FPI/ FII was not revealed by analyzing any disclosures made by the FII in the public domain (shareholding pattern, disclosures under SAST/ PIT Regulations). While contesting the submissions of the Appellant, it was stated that the information sought was entity specific involving commercial confidence of the FPI/ FII disclosure of which may hamper the level playing field for the entities and may adversely affect their competitive position by exposing their investment strategies. Also, the information was personal in nature disclosure of which may cause unwarranted invasion of the privacy of the FPI/FII hence information was exempted u/s 8 (1) (d) and (j) of the RTI Act, 2005. The Respondent thereafter referred to the decisions of the Apex Court in Bihar Public Service Commission vs Saiyed Hussain Abbas Rizvi (2012) 13 SCC 61, Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Ors and CBSE and Anr. Vs. Aditya Bandopadhyay and Ors. It was also stated that the copy of the written submission had been endorsed to the Appellant by email.

The Commission referred to the definition of information u/s 2(f) of the RTI Act, 2005 which is reproduced below:

*“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”*

Furthermore, a reference can also be made to the relevant extract of Section 2 (j) of the RTI Act, 2005 which reads as under:

*“(j) right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes .....*”

In this context a reference was made to the Hon’ble Supreme Court decision in 2011 (8) SCC 497 (CBSE Vs. Aditya Bandopadhyay), wherein it was held as under:

*35..... “It is also not required to provide ‘advice’ or ‘opinion’ to an applicant, nor required to obtain and furnish any ‘opinion’ or ‘advice’ to an applicant. The reference to ‘opinion’ or ‘advice’ in the definition of ‘information’ in section 2(f) of the Act, only*

*refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.”*

Furthermore, the Hon’ble Supreme Court of India in Khanapuram Gandaiah Vs. Administrative Officer and Ors. Special Leave Petition (Civil) No.34868 OF 2009 (Decided on January 4, 2010) had held as under:

6. “...Under the RTI Act “information” is defined under Section 2(f) which provides:

*“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”*

*This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed.”*

7. “...the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the “public authority” under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him.”

The Commission also observed that a voluntary disclosure of all information that ought to be displayed in the public domain should be the rule and members of public who *having to seek* information should be an exception. An open government, which is the cherished objective of the RTI Act, can be realised only if all public offices comply with proactive disclosure norms. Section 4(2) of the RTI Act mandates every public authority to provide as much information *suo-motu* to the public at regular intervals through various means of communications, including the Internet, so that the public need not resort to the use of RTI Act.

The Hon’ble Supreme Court of India in the matter of CBSE and Anr. Vs. Aditya Bandopadhyay and Ors 2011 (8) SCC 497 held as under:

*“37. The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under Clause (b) of Section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption.”*

The Commission also observes the Hon'ble Delhi High Court ruling in WP (C) 12714/2009 Delhi Development Authority v. Central Information Commission and Another (delivered on: 21.05.2010), wherein it was held as under:

*“16.It also provides that the information should be easily accessible and to the extent possible should be in electronic format with the Central Public Information Officer or the State Public Information Officer, as the case may be. The word disseminate has also been defined in the explanation to mean - making the information known or communicating the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet, etc. It is, therefore, clear from a plain reading of Section 4 of the RTI Act that the information, which a public authority is obliged to publish under the said section should be made available to the public and specifically through the internet. There is no denying that the petitioner is duty bound by virtue of the provisions of Section 4 of the RTI Act to publish the information indicated in Section 4(1)(b) and 4(1)(c) on its website so that the public have minimum resort to the use of the RTI Act to obtain the information.”*

Furthermore, High Court of Delhi in the decision of General Manager Finance Air India Ltd & Anr v. Virender Singh, LPA No. 205/2012, Decided On: 16.07.2012 had held as under:

*“8. The RTI Act, as per its preamble was enacted to enable the 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. An informed citizenry and transparency of information have been spelled out as vital to democracy and to contain corruption and to hold Governments and their instrumentalities accountable to the governed. The said legislation is undoubtedly one of the most significant enactments of independent India and a landmark in governance. The spirit of the legislation is further evident from various provisions thereof which require public authorities to:*

*A. Publish inter alia:*

- i) the procedure followed in the decision making process;*
- ii) the norms for the discharge of its functions;*
- iii) rules, regulations, instructions manuals and records used by its employees in discharging of its functions;*
- iv) the manner and execution of subsidy programmes including the amounts allocated and the details of beneficiaries of such programmes;*
- v) the particulars of recipients of concessions, permits or authorizations granted. [see Section [4\(1\)\(b\)](#), (iii), (iv), (v); (xii) & (xiii)].*

*B. Suo moto provide to the public at regular intervals as much information as possible [see Section [4\(2\)](#)].”*

**DECISION:**

Keeping in view the facts of the case and the submissions made by both the parties, the Commission directs the Respondent to disclose the guidelines pursued by the Respondent Public Authority in respect of application of masking together with old and new masks in the public domain within a period of 15 days from the date of receipt of this order as agreed. No further intervention of the Commission is required in the matter.

The Appeal stands disposed accordingly.

**(Bimal Julka) (बिमल जुल्का)**  
**(Information Commissioner) (सूचना आयुक्त)**

Authenticated true copy  
(अभिप्रमाणित सत्यापित प्रति)

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Copy to:-

1. The Secretary, Department of Economic Affairs, Ministry of Finance, North Block, New Delhi - 110001
2. The Chairman, Securities and Exchange Board of India, SEBI Bhawan, Plot No. C-4A, G Block, Bandra Kurla Complex, Bandra (E) Mumbai-400 051, Maharashtra.