

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 3386 OF 2014**

The Securities and Exchange
Board of India

....Petitioner.

V/s

Arun Kumar Agrawal
and another

..... Respondents.

Mr. D. J. Khambatta, Senior Counsel alongwith Dr. Poornima Advani, Mr. Om Prakash Jha, Mr. Anubhav Ghosh i/b The Law Point for the Petitioner.

Mr. Arun Kumar Agrawal – Respondent No1, party in person.

**CORAM: V. M. KANADE &
REVATI MOHITE DERE, JJ.**

**Order reserved on : 09/02/2015
Order pronounced on : 13/02/2015**

P.C.:- (Per V.M. Kanade, J.)

1. By this Petition which is filed under Article 226 of the Constitution of India, Petitioner – Securities and Exchange Board of India (“SEBI”) is challenging the judgment and order dated 28/11/2014 passed by the Central Information Commission directing the Petitioner – SEBI to provide the information sought and which is mentioned in para 2(a) and (b) of the impugned order to the appellant within four

weeks from the date of receipt of the order. Paras 2(a) and (b) of the said order read as under:-

“2(a) The assets and liabilities statement of Mr. U.K. Sinha, Chairman SEBI for the last three years, or for the period declared by him; and

(b) the total present emoluments of Mr. U.K. Sinha, Chairman SEBI along with perquisites on which he has been employed with SEBI.”

2. Mr. Khambatta, the learned Senior Counsel appearing on behalf of the Petitioner - SEBI inter alia submitted that Respondent No.1 had initially filed four applications seeking the information against the Chairman of the Petitioner. The said applications were dismissed and the appeals against that order were also dismissed by the Appellate Authority. Respondent No.1, therefore, preferred second appeals to the Central Information Commission and while disposing the said second appeals by a common judgment and order dated 06/11/2012, the Central Information Commission came to the conclusion that since the information which was sought by Respondent No.1 in respect of disclosure of assets and liabilities statement of the Chairman, SEBI and in respect of his total present emoluments fell within the realm of

personal information, there was an exemption from disclosing this information under section 8(1)(j) of the Right to Information Act. He submitted that thereafter the matter was remanded back by the Delhi High Court and when the matter was remanded back, Central Information Commission in the impugned order came to the conclusion that the Petitioner should disclose the information in larger public interest. He submitted that though the order passed by the Central Information Commission was contrary to its earlier order, no reasons were assigned why it was necessary to disclose the said information in larger public interest and how the reasons given by the Commission in its earlier order dated 6/11/2012 were incorrect. He submitted that reason why the said information was required by Respondent No.1 was that Mr. U.K. Sinha, Chairman, SEBI had given up a job of very high emoluments and this was done to dilute the cases of some major defaulters in capital market. He submitted that this issue was concluded by the observations made by the Apex Court in para 84 of its judgment in *Arun Kumar Agrawal vs. Union of India and Others*¹. He submitted that the said Petition was also filed by Respondent No.1 herein wherein he had challenged the appointment of Mr. U.K. Sinha Chairman of SEBI. Petitioner - SEBI has also challenged the impugned order on various other grounds.

3. Respondent No.1 - Mr. Arun Kumar Agrawal who is

¹ (2014) 2 SCC 609

appearing in person has candidly stated that reasons ought to have been given by the Central Information Commission while passing the impugned order and that the position in law in that regard is quite well settled. He, however, submitted that instead of remanding the matter back, the matter may be decided by this Court.

4. In our view, in the impugned order no reasons have been given by the Central Information Commission. The Central Information Commission in paras 11 and 12 of its impugned order has observed as under:-

“11. This Commission recognizes the perspective brought out on public interest in section 8(2) of the Act in the course of the hearing. The appellant underlined the dimensions of public interest overriding the protected interest, i.e. the protection given to the 'fiduciary' and 'personal information' elements. However, the other side argued that the appellant is overstating the public interest. The appellant said that Shri Sinha gave up a job of very high emoluments, which was done to dilute the cases of some major defaulters in the capital market, hence, the need to know, in the public interest, about the assets and liabilities of Shri Sinha.”

“12. Taking into account the arguments of the appellant, this

appears to be fit case where the requested information should be disclosed in larger public interest.”

It is obvious that the Central Information Commission while allowing the appeal of Respondent No.1 has not given any reason whatsoever for taking a view which is contrary to the view taken by it earlier. Therefore, on this ground alone, the impugned order will have to be set aside. The Apex Court in *S.N. Mukherjee vs. Union of India*¹ has observed in para 35 as under:-

“35. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons

¹ (1990) 4 SCC 594

would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency."

5. In view of the above, impugned order is set aside and the matter is remanded back to the Central Information Commission. All contentions of both the parties are kept open. Central Information Commission shall expeditiously decide the said appeal after giving personal hearing to the parties.

6. Petition is accordingly disposed of.

(REVATI MOHITE DERE, J.)

(V.M. KANADE, J.)