

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: February 03, 2017

+ LPA 168/2015 & C.M.No.5470/2015

UNION OF INDIA THR. THE SECRETARY,
MINISTRY OF LAW & JUSTICE

..... Appellant

Versus

SUBHASH CHANDRA AGGARWAL

..... Respondent

+ LPA 199/2015 & C.M.No.6347/2015

UNION OF INDIA

..... Appellant

Versus

R.K. JAIN

..... Respondent

Present:- Mr.Sanjay Jain, ASG with Mr.Jasmeet Singh, CGSC with Mr.Srivats Kaushal, Ms.Noor A.Chawla & Mr.Mohan Vidur, Advocates for the appellant/Union of India in LPA 168/2015.

Mr. Sanjay Jain, ASG with Mr.Vikram Jetly, CGSC for the appellant/ Union of India in LPA 199/2015.

Mr.Prashant Bhushan, Mr.Pranav Sachdeva & Ms. Neha Rathi, Advts. for respondent in LPA 168/2015.

Mr.J.K.Mittal & Mr.Rajveer Singh, Advts. for respondent in LPA 199/2015.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

G. ROHIN, CHIEF JUSTICE:

1. By Common order dated 10.03.2015 in W.P.(C) No.1041/2013 and W.P.(C) No.1665/2013, the learned Single Judge held that the office of Attorney General of India (AGI) is a "public authority" within the meaning

of Section 2(h) of the Right to Information Act, 2005 (for short 'the RTI Act').

2. Aggrieved by the same, these two appeals have been preferred by the Union of India.

3. We have heard Sh.Sanjay Jain, the learned ASG appearing for the appellant. We have also heard Sh.Prashant Bhushan, the learned counsel appearing for the respondent in LPA No.168/2015 and Mr. J.K. Mittal, the learned counsel appearing in LPA No.199/2015.

4. Facts are not in dispute. The application made by the respondent in LPA No.168/2015 to provide certain information relating to the office of AGI was returned by the office of the AGI on the ground that AGI is not a public authority and there is no CPIO in the office of AGI. On a complaint by the respondent under Section 18 of RTI Act, the Central Information Commission (CIC) had also held that AGI is not a public authority within the meaning of Section 2(h) of the RTI Act. The application dated 07.01.2013 made by the respondent in LPA No.199/2015 seeking information regarding the representation/petition received from Indirect Tax Practitioners Association, Bangalore was also rejected on the same ground.

5. The said orders on being assailed before this Court were set aside by the learned Single Judge by the order under appeal holding that the office of AGI is a "public authority". Accordingly, the matters were remanded to the CIC for reconsideration of the applications of the writ petitioners/respondents herein.

6. As is evident from order under appeal, the contention of the writ petitioners was that AGI being an authority under the Constitution, falls

within the definition of "public authority" under Section 2(h) of the RTI Act. Per contra, it was contended on behalf of the Union of India/the respondent in the writ petitions that AGI having been appointed under Article 76 of the Constitution of India to give advice to the Government of India upon the legal matters, the relationship between AGI and the Government of India is that of a lawyer and client and therefore, the office of AGI does not fall within the definition of "public authority" under the RTI Act.

7. While rejecting the contention on behalf of the Union of India, the learned Single Judge had accepted the plea of the writ petitioners that the office of AGI is covered by the definition of "public authority" under Section 2(h) of the RTI Act. The relevant paragraphs from the order under appeal may be reproduced hereunder for ready reference:

“19. It is apparent from the above that the role of the AGI is not limited to merely acting as a lawyer for the Government of India as is contended by the respondent; the AGI is a constitutional functionary and is also obliged to discharge the functions under the Constitution as well as under any other law.

20. Although, it cannot be disputed that AGI is a constitutional functionary, the point in issue is whether he can be termed as an “authority”. The respondent has relied heavily on the decisions of the Supreme Court in ***Sukhdev Singh*** (supra) and ***Som Prakash Rekhi*** (supra) to contend that the AGI cannot be considered as an authority since the office of Attorney General of India does not have the power to alter, by his own will directed to that end, the rights, duties; liabilities or other legal relations, either of himself or of other.

21. I am unable to accept the aforesaid contention, for the reason that the term “authority” as used in the opening sentence of Section 2(h) of the Act cannot be interpreted in a restrictive sense. The expression “authority” would also

include all persons or bodies that have been conferred a power to perform the functions entrusted to them. Merely because the bulk of the duties of the AGI are advisory, the same would not render the office of the AGI any less authoritative than other constitutional functionaries. There are various bodies, which are entrusted with 'staff functions' (i.e. which are advisory in nature) as distinct from 'line functions'. The expression "authority" as used in Section 2(h) cannot be read as a term to exclude bodies or entities which are, essentially, performing advisory functions.

22. In my view, the expression "authority" as used in Section 2(h) of the Act would encompass any office that is conferred with any statutory or constitutional power. The office of the AGI is an office established under the Constitution of India; the incumbent appointed to that office discharges functions as provided under the Constitution. Article 76(2) of the Constitution expressly provides that the AGI would perform the duties of a legal character and also discharge the functions conferred on him under the Constitution or any other law in force. Indisputably, the appointee to that office is, by virtue of the constitution, vested with the authority to discharge those functions.

23. A Coordinate Bench of this Court in **IFCI Limited v. Ravinder Balwani**: (175) 2010 DLT 84 had expressly held that *"Given the fact that there is a specific definition of what constitutes a 'public authority' for the purposes of the RTI Act, there is no warrant for incorporating the tests evolved by the Supreme Court in Pradeep Kumar Biswas for the purposes of Article 12 of the Constitution is likely to be a 'public authority' under the RTI Act, the converse need not be necessarily true. Given the purpose and object of the RTI Act the only consideration is whether the body in question answers the description of a 'public authority' under Section 2(h) of the RTI Act. There is no need to turn to the Constitution for this purpose, particularly when there is a specific statutory provision for that purpose."*

24. I respectfully concur with the aforesaid view that reference to the definition of an authority under Article 12 of the Constitution is not necessary in determining the scope of Section 2(h) of the RTI Act. The expression “authority” as used under Section 2(h) of the RTI Act, also necessarily takes colour from the context of the said Act. An office that is established under the Constitution of India would clearly fall within the definition of Section 2(h) of the RTI Act. Even in common parlance, the AGI has always been understood as a constitutional authority.

25. The decisions of the Supreme Court in *Sukhdev Singh* (supra) and *Som Prakash Rekhi* (supra) are rendered under Article 12 of the Constitution of India and it may not be apposite to apply them for interpreting Section 2(h) of the RTI Act. The question before the Supreme Court in *Sukhdev Singh* (supra) was whether certain statutory corporations should be considered as “State” under Article 12 of the Constitution of India. In *Som Prakash Rekhi* (supra), the Supreme Court was concerned with the issue whether The Bharat Petroleum Corporation Ltd., a Government Company, was “State” under the constitution. The Supreme Court held that certain corporation/ companies could be considered as ‘other authorities’ under Article 12 of the Constitution as they acted as instrumentality of the State. One of the reasons that persuaded the Supreme Court to take this view was the functions that were performed by the Corporations in question. In *Sukhdev Singh* (supra), the Supreme Court observed that “*a public authority is a body which has public or statutory duties to perform and which performs those duties and carries out its transaction for the benefit of the public and not for private profit*”.

26. In *Som Prakash Rekhi* (supra), the Supreme Court referred to law lexicon or British India (1940) by P. Ramanatha Aiyar and noted that ‘authority’ is a body having jurisdiction in certain matters of public nature.

27. It is apparent from the above that the public nature of the activities being carried on by the statutory corporations and

the Government companies, in question persuaded the Courts to hold them as 'other authorities' under Article 12 of the Constitution of India. It is not disputed that the functions of the AGI are also in the nature of public functions. The AGI performs the functions as are required by virtue of Article 76(2) of the Constitution of India. In *B.P. Singhal (supra)*, a Constitution Bench of the Supreme Court held the office of the AGI to be a public office. In this view also, the office of the AGI should be a public authority within the meaning of Section 2(h) of the RTI Act."

8. Assailing the order under appeal, it is contended by the learned ASG that AGI who maintains a fiduciary relationship with the Government of India and does not occupy an office of profit cannot be held to be a "public authority" within the meaning of Section 2(h) of the RTI Act. It is also contended that none of the functions of AGI involve authority/power to alter the relations or rights of others and therefore, the definition of "public authority" under Section 2(h) is not attracted at all. To substantiate the said submission, the learned ASG has relied upon *Som Prakash Rekhi v. Union of India & Anr.*, (1981) 1 SCC 449. Placing reliance upon *P.N.Duda v. P.Shiv Shankar*, (1988) 3 SCC 167 and *Institute of Chartered Accountants of India v. Shaunak H. Satya & Ors.* (2011) 8 SCC 781, it is also submitted by the learned ASG that AGI who is appointed under the Constitution of India occupies a position of great importance and relevance and in some respects acts as the friend, philosopher and guide of the Court and thus maintains only a fiduciary relationship.

9. On the other hand, the learned counsel for the respondents/writ petitioners while supporting the conclusion of the learned Single Judge, has contended that having regard to the admitted fact that AGI performs various

important public functions apart from extending legal advice and appearing on behalf of the Government of India, whether AGI has acted in fiduciary capacity or not has to be decided in the facts and circumstances of a given case in the light of the information sought by the applicant, but he cannot be altogether excluded from the purview of definition under Section 2(h) of RTI Act. In support of his submission that though there is an element of lawyer - client relationship between the AGI and the Government of India, he holds a public office and thus falls within the definition of Section 2(h) of the Act, the learned counsels relied upon ***B.P. Singhal v. Union of India (2010) 6 SCC 331***.

10. We have given our thoughtful consideration to the controversy involved.

11. The Right to Information Act, 2005 has been enacted 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. It is aimed at providing an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India.

12. The Apex Court in ***Thalapalam Service Cooperative Bank Limited and Others vs. State of Kerala and Others (2013) 16 SCC 82*** while reiterating the well-settled principle of law that right to information is a facet of freedom of "speech and expression" contained in Article 19(1)(a) of the Constitution of Indian and thus right to information is a fundamental right, further explained as under:

" 56. The Right to Information Act, 2005 is an Act which provides for setting up 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. Preamble of the Act also states 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. Citizens have, however, the right to secure access to information of only those matters which are "under the control of public authorities", the purpose is to hold "Government and its instrumentalities" accountable to the governed. Consequently, though right to get information is a fundamental right guaranteed under Article 19(1)(a) of the Constitution, limits are being prescribed under the Act itself, which are reasonable restrictions within the meaning of Article 19(2) of the Constitution of India."

13. We may now notice Section 3 of the RTI Act which provides for right to information as well as Section 2(h) and Section 2(j) which define "public authority" and "right to information" respectively.

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

Section 2(h) - "**public authority**" means any authority or body or institution of self- government established or constituted-

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government, and includes any—
- (i) body owned, controlled or substantially financed;

- (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;"

Section 2(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 the right to—

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"

14. As is evident from the language of Section 3 of the RTI Act and as explained in *Thalapalam Service Cooperative Bank Limited and Others* (supra), the right to information under the RTI Act is not an unlimited and unrestricted right but it is subject to the provisions of the Act itself. The expression "right to information" has been defined under Section 2(j) as the right to information accessible under the Act which is held by or under the control of any public authority. Thus, it is clear that the right to information provided to the citizens under the RTI Act is the right to secure access to information held by or under the control of public authorities. The expression "public authority" has also been specifically defined under Section 2(h) of the RTI Act thereby making it clear that only those categories which are specifically included under Section 2(h), answer the description of a "public authority" for the purpose of RTI Act.

15. Para 30 of the *Thalapalam Service Cooperative Bank Limited and Others* (supra) may be extracted hereunder in this regard:

“30. The legislature, in its wisdom, while defining the expression “public authority” under Section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions “means” and “includes”. When a word is defined to “mean” something, the definition is prima facie restrictive and where the word is defined to “include” some other thing, the definition is prima facie extensive. But when both the expressions “means” and “includes” are used, the categories mentioned there would exhaust themselves. The meanings of the expressions “means” and “includes” have been explained by this Court in *DDA v. Bhola Nath Sharma* [(2011) 2 SCC 54 : (2011) 1 SCC (Civ) 344] (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions.”

16. We may now note the functions that the Attorney General of India performs. The duties of an the AGI are stated in Article 76(2) of the Constitution. Article 76 of the Constitution reads as follows:-

“76. Attorney General for India - (1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney General for India

(2) It shall be the duty of the Attorney General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force

(3) In the performance of his duties the Attorney General shall have right of audience in all courts in the territory of India

(4) The Attorney General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.”

17. Union of India in exercise of powers conferred under the proviso to Article 309 read with Article 76 of the Constitution has framed the Law Officers (Condition of Service) Rules 1972. The duties of a law officer are stated in the said Rules as follows:-

“5. Duties- It shall be the duty of a Law Officer –

(a) to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time, be referred or assigned to him by the Government of India.

(b) to appear, whenever required, in the Supreme Court or in any High Court on behalf of the Government of India in cases (including suits, writ petitions, appeal and other proceedings) in which the Government of India is concerned as a party or is otherwise interested;

(c) to represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution; and

(d) to discharge such other functions as are conferred on a Law Officer by or under the Constitution or any other Law for the time being in force.”

18. The Rules state that the functions of the AGI are to advise the Government of India upon legal matters, to appear whenever required in the Supreme Court or in the High Court on behalf of the Government of India, to represent Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution and to discharge

such other functions as conferred on a law officer by or under the Constitution or any other law for the time being in force.

19. A perusal of the above constitutional and statutory provision shows that essentially the AGI performs the duties of giving advice to the Government of India upon legal matters and also to appear before the Supreme Court or any High Court on behalf of the Government of India apart from other duties.

20. The learned Single Judge, however, noted a few functions of the AGI which may be other than as stated above i.e. to advise the government upon legal matters or to appear on behalf of the government before the Supreme Court or High Court. The order under appeal noted that under Section 15 of the Contempt of Courts Act, the Supreme Court may take an action for criminal contempt on a motion made by the AG or the Solicitor General. It also noted that the AGI is an *ex officio* member of the Bar Council of India and is also considered as a leader of the Bar. Thus, the learned Single Judge concluded that the role of the AGI is not limited to merely acting as a lawyer of the Government of India.

21. However, it cannot be ignored that the predominant function of the AGI is to give advice upon legal matters, to appear in court as stated, i.e. perform the duties akin to an Advocate/Senior Advocate. The acts which have been noted by the learned Single Judge as not forming part of the duties as an Advocate, namely, that the Supreme court may take action for criminal contempt on a motion made by the AGI or that the AGI is an *ex officio* member of the Bar Council of India represent a small proportion of the duties of an AGI. Essentially, the function being that akin to an

Advocate of the Government of India, he is in a fiduciary relationship with the Government of India and cannot put in the public domain his opinions or the materials forwarded to him by the Government of India.

22. Reference in this context may be had to Section 126 of the Evidence Act which reads as follows:-

“126. Professional communications.—No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client’s express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure—

(1) Any such communication made in furtherance of any 1[illegal] purpose; 2[illegal] purpose;"

(2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment. It is immaterial whether the attention of such barrister, 2[pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client. Explanation.—The obligation stated in this section continues after the employment has ceased.”

23. In a catena of judgments, the Supreme Court has reiterated that a lawyer acts in a fiduciary capacity with his client. Reference may be had to the judgment of the Supreme Court in the case of *Central Board of*

Secondary Education & Anr. vs. Aditya Bandopadhyay &Ors., (2011) 8 SCC 497. That was a case where the petitioner in the writ petition had made an application for inspection and re-evaluation of the answer book. While dealing with the contention of the CBSE that the examining body holds the evaluated answer books in a fiduciary relationship, the Supreme Court held as follows:-

“41. In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in an examination, as a government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words 'information available to a person in his fiduciary relationship' are used in Section 8(1)(e) of RTI Act in its normal and well recognized 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 - a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically/infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a director of a company with reference to a share-holder, an executor with reference to a legatee, a receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer-books, that come into the custody of the examining body.”

24. Similarly in the case of ***Kokkanda B. Poondacha & Ors. vs. K.D.Ganapathi & Anr., (2011) 12 SCC 600*** the Supreme Court held as follows:-

“12. At this stage, we may also advert to the nature of relationship between a lawyer and his client, which is solely founded on trust and confidence. A lawyer cannot pass on the confidential information to anyone else. This is so because he is a fiduciary of his client, who reposes trust and confidence in the lawyer. Therefore, he has a duty to fulfil all his obligations towards his client with care and act in good faith. Since the client entrusts the whole obligation of handling legal proceedings to an advocate, he has to act according to the principles of uberrima fides, i.e., the utmost good faith, integrity, fairness and loyalty.”

25. Reference may also be had to the judgment of the Supreme Court in the case of ***Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Satyen Bhowmick & Ors., AIR 1981 SCC 917***. That was a case in which the accused was charged under the Official Secrets Act. The Magistrate directed the lawyer to produce his notebook. The Magistrate permitted the defence lawyer to take copies of the statement of the witness in order to be in a position to cross-examine the witness. Subsequently, the Magistrate directed the lawyer to produce his notebook to examine that only a summary of the evidence has been taken by the lawyer not in extenso in violation of Section 14. The lawyer claimed privilege under Section 126 of the Act. The Supreme Court held as follows:-

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4. That there was absolutely no impropriety on the part of the Magistrate in not taking action against the defence lawyer for his refusal to 'show his register because the lawyer had rightly claimed privilege under Section 126 of the Evidence Act as the register contained instructions given by the client which being privileged could not be disclosed to the Court. On a parity of reasoning we find no impropriety on the conduct of the lawyer in refusing to show the statement of witnesses recorded by the Court in extenso in order to prepare himself for an effective cross-examination of the witnesses. Hence the strictures passed by the High Court on the Magistrate as also on the lawyer of the defence were, in our opinion, totally unwarranted.

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26. Similarly, in a recent judgment in the case of ***Reserve Bank of India & Ors. vs. Jayantilal N. Mistry & Ors., (2016) 3 SCC 525*** the Supreme Court while dealing with the defence of RBI that it was in the fiduciary relationship with the Bank noted as follows:-

“55. The Advanced Law Lexicon, 3rd Edition, 2005, defines fiduciary relationship as "a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the fiduciary relationship. Fiduciary relationship usually arise 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 or give advice to another on matters falling within the scope of the relationship, or (4) when there is specific relationship that has traditionally be recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer.

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57. The term fiduciary relationship has been well discussed by this Court in the case of *Central Board of Secondary Education*

and Anr. v. Aditya Bandopadhyay and Ors. (supra). In the said decision, their Lordships referred various authorities to ascertain the meaning of the term fiduciary relationship and observed thus:

20.1) Black's Law Dictionary (7th Edition, Page 640) 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, 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 recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.”

27. In this scenario, can the AGI be termed to be “Public authority” as defined in the RTI Act is the question that needs to be answered by us.

28. In *Som Prakash Rekhi vs. Union of India & Anr.*, (1981) 1 SCC 449 the Supreme Court in the context of determining as to whether the respondent therein was a State as stated in Article 12 of the Constitution held as follows:-

“27. Control by Government of the corporation is writ large in the Act and in the factum of being a government company. Moreover, here, Section 7 gives to the government company mentioned in it a statutory recognition, a legislative section and a status above a mere government company. If the entity is no more than a

company under the Company Law or society under the law relating to registered societies or co-operative societies you cannot call it an authority. A ration shop run by a cooperative store financed by Government is not an authority, being a mere merchant, not a sharer of State power. 'Authority' in law belongs to the province of power:

“Authority (in Administrative Law) is a body having jurisdiction in certain matters of a public nature. The Law Lexicon of British India, P. Ramanatha Aiyar, 1940 (P. 101). Therefore, the "ability conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties, liabilities or other legal relations, either of himself or of other persons" Salmond, Jurisprudence, 10th Edn. p. 243 must be present ab extra to make a person an 'authority', when the person is an 'agent or instrument of the functions of the State' the power is public. So the search here must be to see whether the Act vests authority, as agent or instrument of the State, to affect the legal relations of oneself or others.”

29. The essential services provided by the AGI are to advice the Government upon legal matters and perform other duties such of a legal character as may be assigned. AGI is not a functionary reposed with any administrative or other authority which effect the rights or liabilities of persons. The objects of the RTI Act have been noted by the Supreme Court in the case of *Instituted of Chartered Accountants of India vs. Shaunak H.Satya & Ors.*, (2011) 8 SCC 781 as under:-

“23. The information to which 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 RTI Act; and (ii) other information held by public authorities not falling under Section 4(1)(b) and (c) of RTI Act. In regard to information falling under the first category, the public authorities owe a duty to disseminate the information widely *suo moto* to the public so as to make it easily accessible to the public. In regard to information enumerated or required to be enumerated under Section 4(1)(b) and (c) of RTI Act, necessarily and naturally, the competent authorities under the RTI Act, will have to act in a pro-active 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 Section 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 RTI Act is to harmonize 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.”

30. Looking at the object of the Act, it appears to us that it would not have envisaged encompassing an office like that of an AGI to be covered under Section 2(h) of the RTI Act.

31. For the aforesaid reasons, we are unable to agree with the conclusion of the learned Single Judge that the office of AGI falls within the description of “public authority”.

32. In the result, we set aside the order under appeal and dismiss Writ Petition Nos.1041/2013 and 1665/2013.

33. Both the appeals are accordingly allowed. There shall be no order as to costs.

CHIEF JUSTICE

JAYANT NATH, J

FEBRUARY 03, 2017

pmc