

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

Contempt Petition (C) No.928 of 2016

In

(Transfer Case (C) No.95 of 2015)

GIRISH MITTAL

.... Petitioner

Versus

PARVATI V. SUNDARAM & ANR.

.... Respondent (s)

With

Contempt Petition (C) No.412 of 2016

In

(Transfer Case (C) No.96 of 2015)

And

Contempt Petition (C) No.59 of 2017

In

(Transfer Case (C) No.95 of 2015)

J U D G M E N T

L. NAGESWARA RAO, J.

1. The three Contempt Petitions are filed complaining of wilful and deliberate disobedience of the directions issued by this Court in the judgment dated 16.12.2015 in Transfer Case (Civil) No.96 of 2015.

2. The subject matter of the judgment in ***Reserve Bank of India v. Jayantilal N. Mistry***¹ is whether the information sought under the Right to Information Act, 2005 (hereinafter referred to as the 'RTI Act') can be denied by the Reserve Bank of India (RBI) and the other banks on the ground of economic interest, commercial confidence, fiduciary relationship or public interest. The facts of all the 11 Writ Petitions which were transferred to this Court are similar. The information that was sought by the Respondents in the transfer cases was refused on the ground that there was a fiduciary relationship between the RBI and the other banks, and hence, the information cannot be disclosed in view of the exemption under Section 8(1)(d) and (e) of the RTI Act. In all the cases that were transferred to this Court, the Central Information Commissioner directed the RBI to disclose the information sought for by the Respondents in the transfer cases. The RBI assailed the orders passed by the Central Information Commission by filing Writ Petitions in the High Courts which were transferred to this Court and decided by the judgment dated 16.12.2015. In the said judgment dated 16.12.2015, this Court held that the Right to Information Act, 2005 overrides all earlier laws in order to achieve its objective and the only

¹ 2016 (3) SCC 525

exceptions to access to information were those which were contained in Section 8 of the RTI Act. The argument of the RBI that the information sought for by the Respondents therein was rightly refused on the ground of fiduciary relationship, was rejected by this Court. It was observed by this Court that there is no fiduciary relationship between the RBI and the financial institutions and by attaching an additional 'fiduciary' label to the statutory duty, regulatory authorities have intentionally or unintentionally created an *in terrorem* effect. This Court further emphasized that RBI has a statutory duty to uphold the interests of the public-at-large, the depositors and the country's economy and the banking sector. This Court was also of the opinion that the RBI should act with transparency and not hide information that might embarrass the individual banks and that the RBI is dutybound to comply with the provisions of the RTI Act and disclose the information sought by the Respondents therein. The submission made on behalf of the RBI that the disclosure would hurt the economic interests of the country was found to be totally misconceived. While referring to Section 2(f) of the RTI Act, this Court was of the opinion that the intent of the Legislature was to make available to the general public such information which had

been obtained by the public authorities from private bodies. On the basis of the above observations, it was held that the RBI is liable to provide information regarding inspection reports and other documents to the general public.

3. Being alive to Section 8(1) of the RTI Act, under which information can be denied to the public to guard national security, sovereignty, national economic interest and relations with foreign states etc. this Court observed that not all the information that the Government generates shall be given to the public. Matters of national economic interest, disclosure of information about currency or exchange rates, interest rates, taxes, the regulation or supervision of banking, insurance and other financial institutions, proposals for expenditure or borrowing and foreign investments could in some cases harm the national economy, particularly, if released prematurely. However, lower-level economic and financial information like contracts and departmental budgets should not be withheld under this exemption, according to this Court in the judgment dated 16.12.2015. On the basis of the above findings, the transfer cases filed by the RBI were dismissed and the orders passed by the Central Information Commission were upheld.

Contempt Petition (C) No.412 of 2016

4. The Petitioner filed an application dated 12.10.2010 seeking information from the RBI regarding the loss to the nation in the foreign derivative contract cases. According to him, there was a loss of Rs 32,000/- crores. The Petitioner also sought for a bank-wise breakup of the mark-to-market (MTM) losses. In all, the Petitioner sought information for 10 queries in his application. No reply was given to query numbers 1, 2, 9 and 10. The Appellate Authority under the RTI Act directed the RBI to provide information for queries 2, 9 and 10. Incomplete information was given for queries 2, 9 and 10 according to the Petitioner. The Central Information Commission directed the RBI to furnish information in respect of queries 1, 2, 9 and 10. In obedience to the direction issued by the Central Information Commission, RBI furnished information for queries 2, 9, 10. However, the RBI filed a Writ Petition in the High Court aggrieved by the directions issued by the Central Information Commission qua query No.1. After the judgment of this Court on 16.12.2015, RBI provided the information for query No.1. Query No. 1 pertained to information regarding the market

losses on account of currency derivatives to the tune of 32,000/- crores as stated by the RBI in an affidavit filed before the Orissa High Court. The Petitioner sought a bank-wise breakup of the MTM losses. The reply given by the RBI was that there was no reference to losses of more than 32,000/- crores on account of currency derivatives in the affidavit filed by RBI in Writ Petition (Criminal) No. 344 of 2009 in the High Court of Orissa. The relevant paragraph of the affidavit filed in High Court of Orissa was also furnished to the Respondent. Not satisfied with the said information and being convinced that the RBI was intentionally withholding information in spite of the directions issued by this Court, this Contempt Petition is filed.

Contempt Petition (C) No.59 of 2017

5. The Petitioner filed an application under the RTI Act seeking details of the Show Cause Notices and fines imposed by the RBI on various banks. The information was not disclosed by the RBI by claiming exemption under Section 8(1)(a), (d) and (e) of the RTI Act on the ground that the disclosure would affect the economic interest of the country, the competitive position of the banks, and that the information cannot be disclosed by the RBI as

it received the same in a fiduciary capacity. The RBI uploaded a Disclosure Policy on 30.11.2016 on its website by which the Public Information Officers were directed not to disclose virtually all kinds of information. The Petitioner has filed the above contempt case aggrieved by the disclosure policy dated 30.11.2016, which according to him, is in direct contravention of the directions issued by this Court by its judgment dated 16.12.2015. One of the exemptions in the disclosure policy relating to the department of banking regulation was that information relating to specific supervisory issues emanating from inspection or scrutiny reports received from other supervisory departments are exempted from disclosure. Similar exemption was given to the inspection reports falling within the purview of the 'department of banking supervision'. Any information obtained from/submitted by banks/Financial Institutions and held by the RBI in a fiduciary capacity was also exempted from disclosure. The learned counsel for the Petitioner submitted that the exemptions from disclosure mentioned in the disclosure policy are contrary to the directions issued by this Court in its judgment dated 16.12.2015.

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6. The Petitioner filed an application under the RTI Act on 18.12.2015 seeking information relating to the inspection reports of ICICI bank, AXIS bank, HDFC bank and State Bank of India from 01.04.2011 to the date of filing of the application. The Petitioner sought further information relating to the Sahara Group of Companies and Bank of Rajasthan. The information sought by the Petitioner was not given by the Central Public Information Officer of the RBI in view of the exemption from disclosure under Section 8(1)(a) and (b) as the disclosure was not in economic interest of the State, and would adversely affect the competitive position of the third party. Though the Petitioner was not a party to the judgment of this Court dated 16.12.2015, he filed the contempt petition as non-furnishing the information that he sought for was in contravention of the directions issued by this court by its judgment dated 16.12.2015.

7. Mr. Jaideep Gupta, learned Senior Counsel appearing for the contemnors made a valiant effort to impress upon us that the judgment of this court dated 16.12.2015 needs reconsideration. He submitted that there is no intention on the part of the Respondents to disobey the directions given by this Court in the

judgment dated 16.12.2015. In respect of Contempt Petition (C) No. 412 of 2016, he referred to the relevant material to submit that the only query which remained to be answered by the RBI was query No.1. After the judgment of this Court, the information sought for was given to the Petitioner on 18.02.2016. A contempt petition is not maintainable merely because the Petitioner is not satisfied with the information given to him. According to Mr. Gupta it is open to the Petitioner to file another application for further information if he is of the opinion that the entire information sought by him was not furnished. In any event, according to Mr. Gupta, the Contempt Petition is not-maintainable. In so far as the disclosure policy dated 30.11.2016 is concerned, he argued that the said policy is superseded and no complaint can be filed against the implementation of the disclosure policy as the said policy does not exist. Moreover, Mr. Gupta submitted that issuance of the said policy cannot be held to be a violation of the directions given in the judgment dated 16.12.2015 inviting a contempt petition. If the Petitioner is aggrieved by the policy, he has to challenge the policy by resorting to the remedies available to him in law. He informed us that the policy dated 30.11.2016 is replaced by another policy

which would be put on the website of the RBI. Mr. Gupta strenuously submitted that a leeway was given to the RBI in the matter of providing information on certain issues that were mentioned in paragraph 77 of the judgment. He referred to the said paragraph to support the disclosure policy. He finally submitted that if this Court feels that the policy is in violation of the directions issued by this Court, it would be taken off the website. The main submission made by Mr. Gupta is that any application filed under the RTI Act shall have to be dealt with separately on its own merits.

8. There is an element of public policy in punishing civil contempt, since administration of justice would be undermined if the order of any Court of law could be disregarded with impunity.² There is no ambiguity in the judgment of this Court dated 16.12.2015. After holding that there is no fiduciary relationship between the RBI and the other banks, this Court stressed the importance of the RTI Act, and held that it is in the interest of the general public that the information sought for by the Respondents therein has to be furnished. There is a specific reference to the inspection reports and the other materials, which were directed to be given to the Respondents therein.

² Attorney General v. Times Newspapers Ltd. (1973) 3 All ER 54 (HL)

The only exception that was carved out by this Court is in paragraph 77 of the judgment, particularly, information which has a bearing on the security of the State etc. We are not persuaded to accept the submission of Mr. Gupta that the judgment dated 16.12.2015 requires reconsideration as we cannot consider the said submission while deciding the contempt petitions. After hearing the learned counsel for the parties, judgment was reserved in this case on 02.04.2019. The new disclosure policy was uploaded on the RBI website on 12.04.2019. Mr. Pranav Sachdeva, learned counsel for the petitioner is right in submitting that the new policy which replaces the disclosure policy dated 30.11.2016 directs various departments not to disclose information that was directed to be given by the judgment of this Court on 16.12.2015. The Respondents, in our opinion, have committed contempt of this Court by exempting disclosure of material that was directed to be given by this Court. In all fairness, Mr. Gupta has submitted that the disclosure policy shall be deleted from the website.

9. We do not agree with Mr. Gupta that a contempt petition is maintainable only at the behest of a party to the judgment. The directions issued by this Court are general in nature and any

violation of such directions would enable an aggrieved party to file a contempt petition.³

10. Though we could have taken a serious view of the Respondents continuing to violate the directions issued by this Court, we give them a last opportunity to withdraw the disclosure policy insofar as it contains exemptions which are contrary to the directions issued by this Court. The Respondents are dutybound to furnish all information relating to inspection reports and other material apart from the material that was exempted in para 77 of the judgment. Any further violation shall be viewed seriously by this Court.

11. The contempt petitions are disposed of with the above directions.

.....J.
[L. NAGESWARA RAO]

.....J.
[M.R. SHAH]

**New Delhi,
April 26th 2019**

³ Priya Gupta v. Ministry of Health & Family Welfare, (2013) 11 SCC 404