

SYNOPSIS

1. The Petitioner herein prefers the present petition in public interest, under Article 32 of the Constitution of India 1950, challenging the constitutional validity of the Right to Information (Amendment) Act, 2019 and its accompanying rules namely the 'Right to Information (Term of Office, Salaries, Allowances and Other Terms and Conditions of Service) Rules, 2019, on the grounds, inter-alia that Impugned amendments: -
 - I. Are violative of object of the parent statute itself. There is no rational *nexus* between the Amendment Act/Rules and the object of the Act itself.
 - II. It infringes fundamental rights guaranteed under Articles 14, 19(1)(a) and 21 of the Constitution.
 - III. There is non-application of mind in enacting the impugned amendments.
 - IV. The impugned amendments have been enacted based on extraneous considerations.
 - V. Contrary to the law laid down by this Hon'ble Court.
2. The RTI Act 2005 is a salutary piece of legislation aimed at promoting transparency in public administration and empowering the common citizen. The said Act created Central and State Public Information Officers ('**PIOs**') for disclosure of information as well as Central Information Commission ('**CIC**') and State Information Commissions

(**'SIC'**), consisting of 'Information Commissioners' to adjudicate on denial of information.

3. The RTI Act contained several in-built safeguards to ensure the independence of Information Commissioners appointed to the CIC or SICs which are as follows :-

3.1 A non-partisan procedure of appointment of the CIC and the SICs under Section 12(3) and 15(3) respectively of the RTI Act that includes a member of the opposition party in the selection committee.

3.2 A fixed tenure of service of 5 years or till the attainment of 65 years of age [whichever is earlier] for a Central Information Commissioner or State Information Commissioner under Section 13 and 16 respectively of the RTI Act.

3.3 The salaries and allowances payable to and other service conditions of Chief Central Information Commissioners were fixed as equivalent to that of a Chief Election Commissioner and those of Central Information Commissioners made equivalent to that of Election Commissioners under Section 13(5) of the Act.

3.4 The salaries and allowances payable to and service conditions of Chief State Information Commissioners were fixed as equivalent to that of Election Commissioners and

those of State Information Commissioners made equivalent to that of a Chief Secretary of State under Section 16(5) of the Act.

- 3.5 Section 27 of the Act was marked by a conspicuous absence of the rule making power to central or state governments over service conditions of Central or State Information Commissioners.

4 The Impugned Right to Information Amendment Act, 2019 [Act 24 of 2019]

- 4.1 The passage of the Right to Information Amendment Act, 2019 [Act 24 of 2019 - Hereinafter “**Amendment Act**”] which received Presidential Assent on 01.08.2019, is *de hors* the aims and object of the parent statute itself.

- 4.2 The Amendment Act has four (4) sections. Section 2 of the Amending Act amends Section 13 of the RTI Act. Section 3 amends Section 16 of the parent Act. And Section 4 of the Amendment Act inserts Section 27 in the parent RTI Act.

- 4.3 Sections 2(a) and 2(b) of the Amendment Act supra, alters the erstwhile fixed tenure of 5 years of the Central Information Commissioners under Sections 13(1) and 13(2) of the RTI Act, to a tenure to be prescribed by the Central Government.

4.4 Similarly, Sections 3(a) and 3(b) of the Amendment Act supra alters the erstwhile fixed tenure of 5 years of the state information commissioners under Sections 16(1) and 16(2) of the Act to a tenure to be prescribed by the Central Government.

4.5 Section 2(c) of the Amendment Act grants absolute power to the Central Government to prescribe the salaries, allowances, and terms and conditions of service of the central information commissioners that in the pre-amended Act was fixed to be on par with election commissioners under Section 13(5) of the RTI Act.

4.6 Similarly, the Central Government under section 3(c) of the Amendment Act is also granted with absolute powers to prescribe the salaries, allowances and terms and conditions of the state information commissioners that were previously fixed to be on par with an election commissioner for chief state information commissioners and on par with the chief secretary of a state for state information commissioners under Section 16(5) of the RTI Act.

4.7 Section 4 of the Amendment Act explicitly grants rule making power to the government over fixing the tenure,

salaries and service conditions of Information Commissioners under Section 27 of the pre-amended Act.

- 4.8 The ostensible reasons for such amendments, as per the Statement of Objects and Reasons, is for “*rationalizing*” the service conditions.

5. **The Impugned Right to Information Rules, 2019**

- 5.1 The Petitioner submits that pursuant to the amendment of Section 27 of the RTI Act [as amended by the RTI Amendment Act], Respondent No. 2, on 24.10.2019, notified the Right to Information (Term of Office, Salaries, Allowances and Other Terms and Conditions of Service of Chief Information Commissioner, Information Commissioners in the Central Information Commission, State Chief Information Commissioner and State Information Commissioners in the State Information Commission) Rules 2019 (**RTI Rules**”). Even assuming the RTI Amendment Act merely delegated rule making power to the Central Government without thwarting the independence of Information Commissioners, its accompanying RTI Rules complete the destruction of the independence of Information Commissioners as further described under:

5.2 **Rule 3 and Rule 12:** These rules prescribe a tenure of 3 years for the office of Central Information Commissioners [Rule 3] as well as State Information Commissioners [Rule 12]. The tenure of Information Commissioners is therefore solely subject to the will of the Central Government.

5.3 **Rule 5 and Rule 14:** These rules prescribe the salaries of the Central Information Commissioners [Rule 5] and the State Information Commissioners [Rule 14]. The salaries of Information Commissioners are also at the sole pleasure of the Central Government.

5.4 **Rule 21:** Under this rule, the Central Government is granted with absolute power to decide the “conditions of service” of Information Commissioners of the CIC and SIC not expressly covered under the rules [Residuary Power].

5.5 Further, the decision of the Central Government is binding upon the Information Commissioners. This allows unbridled and uncanalized discretionary power to the Central Government that jeopardizes the independence of Information Commissioners. Given that post retirement benefits, pensions and allowances are not explicitly in these rules, the Central Government is granted absolute power to change these from time to time.

5.6 **Rule 22:** Under this rule, the Central Government has been empowered with the discretionary “power to relax” the applicability of the provisions of RTI Rules for any class or category of persons in the CIC and SIC, thereby raising concerns about the government’s potential to invoke these excessive powers to determine selective tenures, terms and conditions for different CICs and ICs at the time of appointment, as per its whims and fancies.

5.7 **Rule 23:** Under this rule, the final interpreter of all the rules rest with the central government. This grants the central government excessive power over governing the salaries, allowances and service conditions of information commissioners.

6. **Law laid down by this Hon’ble Court qua the Constitutional Validity of the Amending Act/Statutes**

6.1 The Statement of Objects and Reasons (SOR) of the RTI Act, 2005 states as hereunder: -

- (i) To provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India (“**COI**”).
- (ii) To ensure greater and more effective access to information.
- (iii) To include establish an appellate machinery with investigating powers to review decisions of Public Information Officers.

- (iv) To provide for penal provisions for failure to provide information as per law.
- (v) To ensure maximum disclosure and minimum exemptions

6.2 A perusal of the impugned amendments herein would reveal that there is no rational nexus with the object of the Act. It is vitiated by non-application of mind and motivated by extraneous considerations so as to negate, stultify and virtually render ineffective, the constitutionally guaranteed “Right to Information” under Article 19 of the COI.

6.3 Although the ostensible object of the Impugned amendments may portray that the same are intended for *rationalizing* the act, the real object of the amendment is to denude the authorities under the RTI of their independence and impartiality. The Government feels threatened by the authorities under RTI that are not answerable to it and hence, the real purpose of the impugned amendments is to clip the independence and impartiality of the authorities under the act. This can be seen from the several decisions passed by the authorities under the RTI act fearlessly both at the state and central level which makes these decisions unpalatable to the central government.

6.4 Recently, a Constitution Bench of this Hon’ble Court in **‘Rojer Mathew v. South Indian Bank Ltd’ - [2019 SCC**

Online SC 1456] was called upon to adjudicate, inter-alia, the validity of the rules framed under Section 184 of the Finance Act 2017, which sought to amend the powers and functions of various Tribunals constituted under their respective Acts eg Central Administrative Tribunal (CAT), NCLT, FEMA, DRT etc [as enumerated in Sections 158-182 in Part XIV of the Finance Act 2017]. Act. It was held by this Hon'ble Court in *Roger Mathew supra* that the real sequitur to the rules was excessive interference by the Executive in the appointment of members and presiding officers of tribunals which is detrimental to the *independence* of the judiciary [Para 57].

6.5 The above judgment in *Roger Mathew* (supra) followed various earlier decisions by this Hon'ble Court such as "***R.K. Jain v. Union of India***" – [(1993) 4 SCC 119] wherein it was held that independence in appointment and administration of Tribunals was needed to maintain public trust.

6.6 In "***Supreme Court Advocates-on-Record Association v. Union of India***"- [(2016) 5 SCC 1], this Hon'ble Court held that exclusion of the Judiciary in the process of selection amounted to taking away its independence, since the State is the largest litigating party and hence, cannot be a dominant participant in judicial appointments.

Applying the same principles to the facts of the Rojer Mathew Case (supra), this Hon'ble Court held that exclusion of the executive control over quasi-judicial bodies such as tribunals is compulsory as it leads to executive encroachment on judicial independence. [Pl see paras 167 and 168 of Rojer Mathew case (supra)].

6.7 Another Constitution Bench of this Hon'ble Court in "**Madras Bar Association v. Union of India**"- [(2011) 11 SCC 1] while upholding the Constitutional validity of the Companies (Second amendment) Act, 2002 providing for constitution of National Company law tribunals and appellate tribunals, passed directions to amend Part I-B and I-C of the act insofar as they were ultra vires the Constitution. The provisions relating to service conditions and appointments were directed to be changed since they impacted the independence of the judiciary. [Para 120]

6.8 This Hon'ble Court in "**Haribilas Rai Bansal vs. State of Punjab & Anr**"- [(1996) 1 SCC 1], was called upon to adjudicate upon the validity of the East Punjab Urban Rent Restriction (Amendment) Act, 1956 which sought to amend Section 13 of the East Punjab Urban Rent Restriction Act, 1949 by taking away the right of the landlord to evict his tenant from a non-residential building on the ground of

bona-fide requirement for his own use. This Hon'ble Court was pleased to hold the following:-

“13.the amendment has created a situation where a tenant can continue in possession of a non-residential premises for life and even after the tenant's death his heirs may continue the tenancy. We have no doubt in our mind that the objects, reasons and scheme of the Act could not have envisaged the type of situation created by the amendment which is patently harsh and grossly unjust for the landlord of a non-residential premises.”

6.9 The above judgment was followed by this Hon'ble Court in ***“Andhra Pradesh Dairy Development Corporation Federation vs. B. Narasimha Reddy and Others”- [(2011) 9 SCC 286]*** wherein this Hon'ble Court, while examining the vires of the Andhra Pradesh Mutually Aided Cooperative Societies (Amendment) Act, 2006 amending the Andhra Pradesh Cooperative Societies Act, 1964. This Hon'ble Court again held that

“52. The impugned provisions have no nexus with the object of enforcing the three-tier structure inasmuch as, The impugned provisions are arbitrary and violative of Article 14 as they deprived the dairy cooperative societies of the benefit of the basic principles of cooperation. The amendments are contrary to the national policy on cooperatives. They obstruct and frustrate the object of development and growth of vibrant cooperative societies in the state”

...

“63.the Act is vitiated by non-application of mind and irrelevant and extraneous considerations”

6.10 Recently, this Hon'ble Court in "**Hindustan Construction Company Limited v. Union of India**"- [2019 SCC Online SC 1520] followed *Harbilas* (Supra) while adjudicating the validity of Section 87 of the Arbitration and Conciliation Act, 1996 ("**Act of 1996**") as inserted by Section 13 of the Arbitration and Conciliation (Amendment) Act, 2019 ("**the Amendment Act**") and repeal of Section 26 of the Act of 1996 which was brought in by way of Section 15 of the amendment Act. It was held that the amendment suffers from 'manifest arbitrariness' under Article 14 of the Constitution [Paras 56, 57 and 59]

6.11 In this light, a constitutional bench of this Hon'ble Court in "**L Chandra Kumar v. Union of India**"- [(1997) 3 SCC 261] observed that the sole vesting of executive control over the tenure, salaries, allowances and service conditions of members strikes at the independence of adjudicatory bodies. This position was subsequently reaffirmed by this Hon'ble Court in "**Supreme Court Advocates-on Record Association v. Union of India**"- [(2016) 5 SCC 1]

6.12 Even assuming the office of the Information Commissioner has been reduced from a Constitutional functionary to a statutory functionary, a 3-judge bench of this Hon'ble Court in "**K.B. Nagur M.D. vs. Union of India**"- [(2012) 4 SCC

483] held that '*statutory or constitutional independence is a pre-requisite*' to the functioning of even statutory bodies.

6.13 Thus, the law that is clearly discernible from the above judicial pronouncements is that this Hon'ble Court has time and again held an amendment to a statute to be ultra vires the parent Statute, in case of the following 4 broad principles :-

- (i) If the amendment runs contrary to the object, reasons and scheme of the Act.
- (ii) If the amendment obstructs or frustrates the object of the Act.
- (iii) If the amendment is ultra vires any of the rights guaranteed under Part III of the Constitution of India.
- (iv) In case the amendment suffers from manifest arbitrariness.

6.14 In the present case, due to the impugned amendments to the RTI Act, 2005, the very objects of the Act as enumerated in Para 6.2 herein would be frustrated due to the independence of the CIC and SIC being completely taken away.

7. The Petitioner submits that the Hon'ble Supreme Court in "**Anjali Bhardwaj & Ors. v. Union of India & Ors**"- **[(2019) SCC Online SC 205]** has unequivocally alluded to the adjudicatory functions of information commissioners in

deciding complaints, disputes and appeals related to non-compliance of public authorities under the RTI Act. Given the role of the information commissioners and the architecture of the RTI Act, independence of such commissioners lies at the core of the RTI Act.

8. The authorities under the RTI Act are Tribunals and perform quasi-judicial functions and are not mere executive appointments. They can succeed to achieve the object of the RTI Act only on a guarantee of impartiality and remaining uninfluenced by the central government of the day. Independence of authorities under the RTI is the *sine qua non* for the object, reasons and proper implementation of the Act itself.

Hence the instant Writ Petition.

LIST OF DATES

12.10.2005 The Right to Information Act, 2005 was promulgated.

31.07.2012 The Right to Information Rules, 2012 were passed by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) only for Regulation of Fee and Cost.

22.07.2019 The Right to Information Amendment Bill, 2019 passed by Lok Sabha amidst protests by the Opposition.

01.08.2019 RTI Amendment Act, 2019 received assent from the President and thereupon was passed by Respondent No. 1 (Legislative Department)

24.10.2019 Respondent No. 2 issued a notification and passed the Right to Information (Term of Office, Salaries, Allowances and Other Terms and Conditions of Service) Rules, 2019.

IN THE SUPREME COURT OF INDIA
[EXTRAORDINARY ORIGINAL JURISDICTION]
WRIT PETITION (C) NO. OF 2019

[UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA]

PUBLIC INTEREST LITIGATION

IN THE MATTER OF:

MR. JAIRAM RAMESH

Member of Parliament, (Rajya Sabha)
C-1/9, Lodhi Garden, Rajesh Pilot Marg,
New Delhi -110003

...PETITIONER

VERSUS

**1. UNION OF INDIA,
MINISTRY OF LAW AND JUSTICE**

Through its Secretary,
4th Floor, A-Wing, Shastri Bhawan,
New Delhi 110001

...RESPONDENT NO. 1

2. THE UNION OF INDIA

Ministry of Personnel,
Public Grievances and Pensions,
Through its Secretary
North Block, New Delhi-110001

... RESPONDENT NO.2

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA FOR A WRIT IN THE NATURE OF
CERTIORARI OR ANY OTHER APPROPRIATE ORDER OR
DIRECTION, TO DECLARE AND SET ASIDE THE 'RTI
AMENDMENT ACT, 2019' AND THE 'RTI (TERM OF OFFICE,
SALARIES, ALLOWANCES AND OTHER TERMS AND
CONDITIONS OF SERVICE) RULES, 2019' AS ULTRA-VIRES
ARTICLES 14, 19, AND 21 OF THE CONSTITUTION OF INDIA**

TO,
HON'BLE THE CHIEF JUSTICE
OF INDIA AND HIS COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF
THE PETITIONER ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. The Petitioner herein is a member of the Rajya Sabha and is constrained, in public interest, to challenge the constitutionality of the Right to Information Amendment Act, 2019 and the Right to Information (Term of Office, Salaries, Allowances and Other Terms and Conditions of Service) Rules, 2019 which collectively violate the fundamental right to information of all citizens, guaranteed under Articles 19 and 21 of the Col.
2. The Petitioner has no personal interest, private/oblique motive nor any mala-fides or ulterior motives in filing the instant Petition. The Petition is not guided by malafide self-gain or for malafide gain of any other person/institution/body and is guided by no motive other than protecting the right to information of citizens, under the Constitution and the Right to Information Act, 2005, of which this Constitutional Court is the guardian and custodian of.
3. The instant Public Interest Litigation is on behalf of all other citizens across the territory of India, whose fundamental right to information as guaranteed under the Constitution is being violated. The Petitioner herein is an Indian Economist and Politician belonging to the Indian National Congress. He is a member of Parliament representing Andhra Pradesh State in the Rajya Sabha. In July 2011,

the Petitioner was elevated to the Union Council of Ministers of India and appointed Minister of Rural Development and Minister [additional charge] of the New Ministry of Drinking Water and Sanitation. He was previously the Minister of State [Independent Charge], of the Ministry of Environment and Forests, from May 2009 to July 2011. The Petitioner has been associated with various public organization in India and abroad; He has received the distinguished alumnus award from IIT, Bombay; Has special knowledge of foreign affairs relating to China; Is an honorary fellow of the institute of Chinese studies, New Delhi since 2002; Has worked in the Prime Minister's office, Ministry of Finance, Ministry of Industry, Planning Commission, Advisory Board on energy and been associated with other government departments at senior levels from 1980 to 1998. He also served on the economic development council of Rajasthan, 1999 to 2003; has been a columnist for Business Standard, Business Today, The Telegraph, The Times of India and India Today.

4. That the details of the Petitioner are as under:-
5. Respondent No.1 is the Union of India, Ministry of Law and Justice, which is concerned with advising the various Ministries of the Central Government on legal matters and drafting of principal legislation for the Central Government..

6. That Respondent No. 2 is the Union of India through Ministry of Personnel, Public Grievances and Pensions. It has issued the notification to publish the RTI Rules and is concerned the terms, salaries and other service related terms and conditions of Government employees and government appointed officials

7. The facts leading to the filing of the present Writ Petition are as under:

1. The unamended RTI Act contained several in-built safeguards to ensure the independence of Information Commissioners appointed to the CIC or SICs which are as follows :-

- (i) A non-partisan procedure of appointment of the CIC and the SICs under Section 12(3) and 15(3) respectively of the RTI Act, that includes a member of the opposition party in the selection committee.
- (ii) A fixed tenure of service of 5 years or till the attainment of 65 years of age [whichever is earlier] for a Central Information Commissioner or State Information Commissioner under Section 13 and 16 respectively of the RTI Act.

- (iii) The salaries and allowances payable to and other service conditions of chief central information commissioners were fixed as equivalent to that of a Chief Election Commissioner and those of Central Information Commissioners made equivalent to that of Election Commissioners under Section 13(5) of the Act.
- (iv) The salaries and allowances payable to and service conditions of Chief State Information Commissioners were fixed as equivalent to that of Election Commissioners and those of State Information Commissioners made equivalent to that of a Chief Secretary of State under Section 16(5) of the Act.
- (v) Section 27 of the Act was marked by a conspicuous absence of the rule making power to central or state governments over service conditions of central or state information commissioners.
- (vi) The aforesaid provisions fixed the tenure of information commissioners and ensured their service conditions and allowances were insulated from their decision making, to preserve their independence. This evidences that the independence of information commissioners, central and state, were foundational

to the scheme of the Act, sans which the right to information itself is bound to become illusory.

2. On 22.07.2019, the Right to Information Amendment Bill, 2019 is passed by Lok Sabha amid protests by the Opposition. True copy of the Right to Information Amendment Bill, 2019 is annexed herewith and marked as **ANNEXURE P-1 [Pg to]**. True copy of the Statement of Objects and Reasons to the Right to Information Amendment Bill, 2019 is annexed herewith and marked as **ANNEXURE P-2 [Pg to]**.

3. The passage of the Right to Information Amendment Act, 2019 (**“Amendment Act”**) on 01.08.2019, has substantially altered the architecture of independence of information commissioners in the following manner:

- (i) Sections 2(a) and 2(b) of the Amendment Act alters the erstwhile fixed tenure of 5 years of the central information commissioners under Sections 13(1) and 13(2) of the RTI Act, to tenure to be prescribed by the Central Government.
- (ii) Similarly, Sections 3(a) and 3 (b) of the Amendment Act alters the erstwhile fixed tenure of 5 years of the state information commissioners under Sections

16(1) and 16(2) of the Act to a tenure to be prescribed by the Central Government.

(iii) Section 2(c) of the Amendment Act grants absolute power to the Central Government to prescribe the salaries, allowances, and terms and conditions of service of the Central Information Commissioners that in the pre-amended Act was fixed to be on par with Election Commissioners under Section 13(5) of the RTI Act.

(iv) Similarly, the Central Government under section 3(c) of the Amendment Act is also granted with absolute powers to prescribe the salaries, allowances and terms and conditions of the State Information Commissioners that were previously fixed to be on par with an Election Commissioner for Chief State Information Commissioners and on par with the Chief Secretary of a State for State Information Commissioners under Section 16(5) of the RTI Act.

(v) Section 4 of the Amendment Act explicitly grants rule making power to the government over fixing the tenure, salaries and service conditions of Information Commissioners under Section 27 of the pre-amended Act.

- (vi) The ostensible reasons for such amendments, as per the Statement of Objects and Reasons, is for “*rationalizing*” the service conditions.

True copy of the RTI Amendment Act, 2019 is annexed herewith and marked as **ANNEXURE P-3 [Pg to]**.

4. The Petitioner submits that pursuant to the amendment of Section 27 of the RTI Act [as amended by the RTI Amendment Act], Respondent No. 2, on 24.10.2019, notified the Right to Information (Term of Office, Salaries, Allowances and Other Terms and Conditions of Service of Chief Information Commissioner, Information Commissioners in the Central Information Commission, State Chief Information Commissioner and State Information Commissioners in the State Information Commission) Rules 2019 (hereinafter referred to as “RTI Rules”). Even assuming the RTI Amendment Act merely delegated rule making power to the central government without thwarting the independence of information commissioners, its accompanying RTI Rules complete the destruction of the independence of information commissioners as further described under:

- i. **Rule 3 and Rule 12:** These rules prescribe a tenure of 3 years for the office of central information

commissioners [Rule 3] as well as state information commissioners [Rule 12]. The tenure of information commissioners is therefore solely subject to the will of the Central Government.

ii. **Rule 5 and Rule 14:** These rules prescribe the salaries of the central information commissioners [Rule 5] and the state information commissioners [Rule 14]. The salaries of information commissioners are also at the sole pleasure of the Central Government.

iii. **Rule 21:** Under this rule, the Central Government is granted with absolute power to decide the “conditions of service” of information commissioners of the CIC and SIC not expressly covered under the rules [Residuary Power].

iv. Further, the decision of the central government is binding upon the information commissioners. This allows unbridled and uncanalized discretionary power to the Central Government that jeopardizes the independence of information commissioners. Given that post retirement benefits, pensions and allowances are not explicitly in these rules, the Central Government is granted absolute power to

change these from time to time as per its own discretion.

- v. **Rule 22:** Under this rule, the Central Government has been empowered with the discretionary “power to relax” the applicability of the provisions of RTI Rules for any class or category of persons in the CIC and SIC, thereby raising alarming concerns about the government’s potential to invoke these excessive powers to determine selective tenures, terms and conditions for different Chief and Information Commissioners at the time of appointment, as per its whims and fancies.

- vi. **Rule 23:** Under this rule, the final interpreter of all the rules rest with the central government. This grants the central government excessive power over governing the salaries, allowances and service conditions of information commissioners.

True copy of the Right to Information (Term of Office, Salaries, Allowances and Other Terms and Conditions of Service) Rules, 2019 are annexed herewith and marked as **ANNEXURE P-4 [Pg to]**.

8. The Right to Information [“**RTI**”], Act, 2005, was enacted on 10.12.2005 with a view “*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 RTI Act's passage on 10.12.2005 fulfilled the positive obligation on the State under Article 19(1)(a) of Col to further enable citizens to access their right to information from public authorities.

9. The scheme of the RTI Act, 2005 created central and state public information officers to serve the disclosure of information on behalf of central and state public authorities respectively. The RTI Act also created a Central Information Commission ('CIC') and State Information Commissions ('SIC'), consisting of 'information commissioners', to serve as adjudicatory bodies to decide appeals and complaints against public authorities for their non-compliance with the RTI law. It is submitted that in order to guard against undue executive or state interference in the unfettered dissemination of public information, parliament made explicit statutory provision in the RTI Act to ensure the independence of Information Commissioners appointed to the CIC or SICs. The statutory safeguards over independence of Information Commissioners in the RTI Act can be summarized as under:

- i) A non-partisan procedure of appointment of the Central Information Commissioners and State Information Commissioners under Section 12(3) and

15 (3) respectively of the Act, that includes a member of the opposition party in the selection committee.

- ii) A fixed tenure of service of 5 years or till the attainment of 65 years of age [as earlier] for a Central Information Commissioner or State Information Commissioner under Section 13 and 16 respectively of the Act.
- iii) The salaries and allowances payable to and other service conditions of Chief Central Information Commissioners were fixed as equivalent to that of a Chief Election Commissioner and those of Central Information Commissioners made equivalent to that of Election Commissioners under Section 13(5) of the Act.
- iv) The salaries and allowances payable to and service conditions of Chief State Information Commissioners were fixed as equivalent to that of Election Commissioners and those of State Information Commissioners made equivalent to that of a Chief Secretary of State under Section 16(5) of the Act.
- v) Section 27 of the Act was marked by a conspicuous absence of the rule making power to Central or State

Governments over service conditions of Central or State Information Commissioners.

10. The aforesaid provisions fixed the tenure of Information Commissioners and ensured their service conditions and allowances were insulated from their decision making, to preserve their vital independence. In this regard, the independence of Information Commissioners, Central and State, being foundational to the scheme of the Act and the Right to Information itself is clearly evident.

The Right to Information Amendment Act, 2019

11. On 01.08.2019, the Right to Information Amendment Act, 2019 [**"Amendment Act"**], was passed. This Amendment Act altered the architecture of independence of Information Commissioners in the following manner:

- i) Sections 2(a) and 2(b) of the Amendment Act altered the erstwhile fixed tenure of 5 years of the central information commissioners under Sections 13(1) and 13(2) of the RTI Act, to a tenure to be prescribed by the Central Government. Similarly, Sections 3(a) and 3(b) of the Amendment Act altered the erstwhile fixed tenure of 5 years of the state information commissioners under Sections 16(1) and 16(2) of the

Act to a tenure to be prescribed by the Central Government.

- ii) Sections 2(c) of the Amendment Act granted absolute power to the Central Government to prescribe the salaries, allowances, and terms and conditions of service of the central information commissioners that in the pre-amended Act was fixed to be on par with Election Commissioners under Section 13(5) of the RTI Act. Similarly, the Central Government under section 3(c) of the Amendment Act was also granted absolute powers to prescribe the salaries, allowances and terms and conditions of the State Information Commissioners that were previously fixed to be on par with an Election Commissioner for Chief State Information Commissioners and on par with the Chief Secretary of a State for State Information Commissioners under Section 16(5) of the RTI Act.
- iii) Section 4 of the Amendment Act explicitly granted rule making power to the government over fixing the tenure, salaries and service conditions of information commissioners under Section 27 of the pre-amended Act.

12. A perusal of the statement of objects and reasons of the RTI Amendment Act bears out that the absolute vesting of power to fix the term of office, salaries and service conditions of Information Commissioners in the Central Government was to further the “rationalization” of their service conditions which were to be made distinct from service conditions of election commissioners. This distinction was purportedly made on the basis that information commissioners being statutory functionaries cannot be placed on par with election commissioners and Supreme Court judges who are constitutional functionaries. This distinction is not only artificial, given that Information Commissioners perform constitutional functions in pursuance of the states’ constitutional obligations, but also completely devoid of any legal basis.

Right to Information Rules, 2019

13. It is submitted that pursuant to the amendment of Section 27 of the RTI Act [as amended by the RTI Amendment Act], Respondent No. 2, on 24.10.2019, notified the Right to Information (Term of Office, Salaries, Allowances and Other Terms and Conditions of Service of Chief Information Commissioner, Information Commissioners in the Central Information Commission, State Chief Information Commissioner and State Information Commissioners in the State Information Commission) Rules 2019.

14. The RTI Amendment Act and its accompanying RTI Rules collectively abrogate the independence of information commissioners as described under:

- i) **Rule 3 and Rule 12:** These rules prescribe a tenure of 3 years for the office of Central Information Commissioners [Rule 3] as well as State Information Commissioners [Rule 12]. The tenure of Information Commissioners is therefore solely subject to the will of the Central Government.
- ii) **Rule 5 and Rule 14:** These rules prescribe the salaries of the Central Information Commissioners [Rule 5] and the State Information Commissioners [Rule 14]. The salaries of Information Commissioners are also at the sole pleasure of the Central Government.
- iii) **Rule 21:** Under this rule, the Central Government is granted with absolute power to decide the “conditions of service” of Information Commissioners of the CIC and SIC not expressly covered under the rules [Residuary Power]. Further, the decision of the Central Government is binding upon the Information Commissioners. This allows unbridled and uncanalized discretionary power to the Central Government that jeopardizes the independence of

Information Commissioners. Given that post retirement benefits, pensions and allowances are not explicitly in these rules, the Central Government is granted absolute power to change these from time to time as per its own discretion.

iv) **Rule 22:** Under this rule, the Central Government has been empowered with the discretionary “power to relax” the applicability of the provisions of RTI Rules for any class or category of persons in the CIC and SIC, thereby raising alarming concerns about the government’s potential to invoke these excessive powers to determine selective tenures, terms and conditions for different Chief and Information Commissioners at the time of appointment, as per its whims and fancies.

v) **Rule 23:** Under this rule, the final interpreter of all the rules rest with the Central Government. This grants the Central Government excessive power over governing the salaries, allowances and service conditions of Information Commissioners.

15. The Petitioner submits that the RTI Amendment, 2019 and its accompanying RTI Rules described above unarguably compromises the independence of Information Commissioners under the RTI Act by granting the Central

Government with uncanalized and excessive powers to decide the tenure of the salaries, qualification and benefits for the Chief and Information Commissioners of CIC and SIC. This in turn threatens the fundamental right to information guaranteed under Articles 19(1)(a) and 21 of the Constitution and even the very objective of the RTI Act itself.

16. The source of the knowledge of facts alleged in the Writ Petition is the Petitioner himself. Since the Petitioner is challenging the constitutional validity of particular statutes, he has not made any representation to authorities regarding the reliefs sought herein, since such representation would have no bearing.
17. That the Petitioner has paid the requisite Court fees on this Petition.
18. The Petitioner has not filed any other petition in this Court or any other High Court or in the Supreme Court of India in respect of the subject matter of this Petition.
19. That in the circumstances mentioned hereinabove this Writ Petition in being preferred by the Petitioners inter alia on the following amongst other grounds without prejudice to each other

GROUNDS

- A. BECAUSE the Impugned amendments deserve to be struck down as being ultra-vires Article 14 and 19(1)(a) of the Constitution of India.
- B. BECAUSE the amendments run contrary to the statement of objects and reasons (SOR) of the RTI Act, 2005 which seeks:-
- (i) To provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India (“**COI**”).
 - (ii) To ensure greater and more effective access to information.
 - (iii) To include establish an appellate machinery with investigating powers to review decisions of Public Information Officers.
 - (iv) To provide for penal provisions for failure to provide information as per law.
 - (v) To ensure maximum disclosure and minimum exemptions
- C. BECAUSE a perusal of the impugned amendments herein would reveal that there is no rational nexus with the object of the Act. It is vitiated by non-application of mind and motivated by extraneous considerations so as to negate, stultify and virtually render ineffective, the constitutionally guaranteed “Right to Information” under Article 19 of the

COI. The real purpose behind enacting the amendments is to denude the authorities under the RTI of their independence and impartiality through overarching control by the government of the day.

D. BECAUSE recently, a Constitution Bench of this Hon'ble Court in '***Rojer Mathew v. South Indian Bank Ltd***' - **[2019 SCCOnline SC 1456]** was called upon to adjudicate, inter-alia, the validity of the rules framed under Section 184 of the Finance Act 2017, which sought to amend the powers and functions of various Tribunals constituted under their respective Acts eg Central Administrative Tribunal (CAT), NCLT, FEMA, DRT etc [as enumerated in Sections 158-182 in Part XIV of the Finance Act 2017]. Act. It was held by this Hon'ble Court in *Rojer Mathew supra* that the real sequitur to the rules was excessive interference by the Executive in the appointment of members and presiding officers of tribunals which is detrimental to the *independence* of the judiciary [Para 57].

E. BECAUSE the above judgment in *Rojer Mathew* (supra) followed various earlier decisions by this Hon'ble Court such as '***R.K. Jain v. Union of India***' – **[(1993) 4 SCC 119]** wherein it was held that independence in appointment and administration of Tribunals was needed to maintain public trust.

- F. BECAUSE this Hon'ble Court in '**Supreme Court Advocates-on-Record Association v. Union of India**'- [(2016) 5 SCC 1] held that exclusion of the Judiciary in the process of selection amounted to taking away its independence, since the State is the largest litigating party and hence, cannot be a dominant participant in judicial appointments. Applying the same principles to the facts of the Rojer Mathew Case (supra), this Hon'ble Court held that exclusion of the executive control over quasi-judicial bodies such as tribunals is compulsory as it leads to executive encroachment on judicial independence. [PI see paras 167 and 168 of Rojer Mathew case (supra)].
- G. BECAUSE this Hon'ble Court in '**Madras Bar Association v. Union of India**'- [(2011) 11 SCC 1] while upholding the Constitutional validity of the Companies (Second Amendment) Act, 2002 providing for constitution of National Company law tribunals and appellate tribunals, passed directions to amend Part I-B and I-C of the act insofar as they were ultra vires the Constitution. The provisions relating to service conditions and appointments were directed to be changed since they impacted the independence of the judiciary. [PI see Para 120 of the said judgment]

H. BECAUSE this Hon'ble Court in '**Haribilas Rai Bansal vs. State of Punjab & Anr**'- [(1996)1 SCC 1], was called upon to adjudicate upon the validity of the East Punjab Urban Rent Restriction (Amendment) Act, 1956 which sought to amend Section 13 of the East Punjab Urban Rent Restriction Act, 1949 by taking away the right of the landlord to evict his tenant from a non-residential building on the ground of bona-fide requirement for his own use.

This Hon'ble Court was pleased to hold the following:-

"13.the amendment has created a situation where a tenant can continue in possession of a non-residential premises for life and even after the tenant's death his heirs may continue the tenancy. We have no doubt in our mind that the objects, reasons and scheme of the Act could not have envisaged the type of situation created by the amendment which is patently harsh and grossly unjust for the landlord of a non-residential premises."

I. BECAUSE the above judgment was followed by this Hon'ble Court in '**Andhra Pradesh Dairy Development Corporation Federation vs. B. Narasimha Reddy and Others**'- [(2011) 9 SCC 286] wherein this Hon'ble Court, while examining the vires of the Andhra Pradesh Mutually Aided Cooperative Societies (Amendment) Act, 2006 amending the Andhra Pradesh Cooperative Societies Act, 1964. This Hon'ble Court again held that

“52. The impugned provisions have no nexus with the object of enforcing the three-tier structure inasmuch as, The impugned provisions are arbitrary and violative of Article 14 as they deprived the dairy cooperative societies of the benefit of the basic principles of cooperation. The amendments are contrary to the national policy on cooperatives. They obstruct and frustrate the object of development and growth of vibrant cooperative societies in the state”

...

“63.the Act is vitiated by non-application of mind and irrelevant and extraneous considerations”

J. BECAUSE recently, this Hon’ble Court in **‘Hindustan Construction Company Limited v. Union of India’- [2019 SCCOnline SC 1520]** followed *Harbilas* (Supra) while adjudicating the validity of Section 87 of the Arbitration and Conciliation Act, 1996 (**“Act of 1996”**) as inserted by Section 13 of the Arbitration and Conciliation (Amendment) Act, 2019 (**“the amendment act”**) and repeal of Section 26 of the Act of 1996 which was brought in by way of Section 15 of the amendment Act. It was held that the amendment suffers from ‘manifest arbitrariness’ under Article 14 of the Constitution [Pl see paras 56, 57 and 59]

K. BECAUSE it can be seen from the above cases that this Hon’ble Court has time and again held an amendment to a

statute to be ultra vires the parent Statute, in case of the following 4 broad principles :-

- (i) In case the amendment suffers from manifest arbitrariness.
- (ii) If the amendment obstructs or frustrates the object of the Act.
- (iii) If the amendment runs contrary to the object, reasons and scheme of the Act.
- (iv) If the amendment is ultra vires any of the rights guaranteed under Part III of the Constitution of India.

In the present case, due to the impugned amendments to the RTI Act, 2005, the very objects of the Act as enumerated in Para 6.2 herein would be frustrated due to the independence of the CIC and SIC being completely taken away.

- L. BECAUSE this Hon'ble Court in '**Anjali Bhardwaj & Ors. v. Union of India & Ors'**- [(2019) SCC Online SC 205] has unequivocally alluded to the adjudicatory functions of information commissioners in deciding complaints, disputes and appeals related to non-compliance of public authorities under the RTI Act. Given the role of the information commissioners and the architecture of the RTI Act, independence of such commissioners lies at the core of the RTI Act.

- M. BECAUSE a Constitutional Bench of this Hon'ble Court in '***L Chandra Kumar v. Union of India***'- [(1997) 3 SCC 261] observed that the sole vesting of executive control over the tenure, salaries, allowances and service conditions of members strikes at the independence of adjudicatory bodies. This position was subsequently reaffirmed by this Hon'ble Court in '***Supreme Court Advocates-on Record Association v. Union of India***'- [(2016) 5 SCC 1].
- N. BECAUSE Even assuming the office of the Information Commissioner has been reduced from a Constitutional functionary to a statutory functionary, a 3-judge bench of this Hon'ble Court in '***K.B. Nagur M.D. vs. Union of India***'- [(2012) 4 SCC 483] held that '*statutory or constitutional independence is a pre-requisite*' to the functioning of even statutory bodies.
- O. BECAUSE a Constitutional Bench of this Hon'ble Court in '***CPIO Supreme Court of India v. Subhash Chandra Agarwal***'- [2019 SCCOnline SC 1459], recognized that the fundamental right to information flows from Article 19(1) (a) of the Constitution and predates even the enactment of the RTI Act, 2005. The right to information therefore independently stands as a constitutional right and not merely as a statutory right.

P. BECAUSE the RTI Amendment and RTI Rules run contrary to the ratio laid down by this Hon'ble Court in the cases of **"State of U.P. v. Raj Narain"**-[**(1975) 4 SCC 428**], **"Bennett Coleman & Co. v. Union of India"**- [**(1972) 2 SCC 788**], **"S.P. Gupta v. Union of India"**-[**1981 Supp SCC 87**], **"Centre for PIL v. Union of India"**-[**(2000) 9 SCC 393**], wherein the right to information has been recognized as a Fundamental Right under Part III of the Constitution.

Q. BECAUSE the Hon'ble Supreme Court has consistently adopted the position of its constitutional bench in **"State of U.P v. Raj Narain"**, which held as under:

*"The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. **The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.**" [Emphasis added].*

R. BECAUSE this Hon'ble Court in **"Chief Information Commissioner v. State of Manipur"**- [**(2011) 15 SCC 1**], held the right to information to be an intrinsic part of the fundamental right to free speech and expression under Article 19(1)(a) of the Constitution wherein the RTI Act was enacted to consolidate the fundamental right to free speech. Again, the Hon'ble Supreme Court in **"Anjali**

Bhadrwaj & Ors. v. Union of India & Ors.”- [2019 SCC Online SC 205] held that the right to information is a right that flows from the fundamental right to free speech and expression under Article 19(1)(a) and the right to life and liberty under Article 21 of the Constitution of India.

S. BECAUSE this Hon’ble Court in “***CPIO Supreme Court of India v. Subhash Chandra Agarwal***” held that the right to information Act exists as a positive obligation on the State under Article 19(1)(a) to provide citizens with information about the public functioning of government to ensure accountability and create an informed electorate.

T. BECAUSE this Hon’ble Court in “***Anjali Bhardwaj & Ors. v. Union of India & Ors.***”- [2019 SCC Online SC 205] has held that the role of Information Commissioners to be vital to ensuring that the Right to Information remains a reality. Since the role of Information Commissioners may involve directing public authorities to provide information refused, independence is paramount to their role. Therefore, diluting the independence of Information Commissioners dilutes their role and ultimately renders the right to information ineffective.

U. BECAUSE the amendments not only serve no rational objective but also seriously dilute the independence of the information commissioners. Further, the Hon’ble Supreme

Court in **Anjali Bhardwaj v. Union of India** has upheld and found no illegalities in information commissioners having their service conditions on par with election commissioners and this position was explicitly adopted by the Union in the aforesaid matter.

V. BECAUSE in **Anjali Bhardwaj v. Union of India**, the Government, represented through its Solicitor General, took the defence that the RTI Act itself mentions the terms and conditions on which appointments of Chief Information Commissioner and Information Commissioners in the Central Information Commission are to be made, hence the advertisement's reference to the terms and conditions not being specified at the time of appointment did not hold any relevance.

W. BECAUSE the adjudicatory role of the information commissioners appointed under the RTI Act in deciding complaints, disputes and appeals over the non-compliance of public authorities with the RTI Act, has been recognized by this Hon'ble Court in "**Anjali Bhardwaj & Ors. v. Union of India & Ors**"- [2019 SCC Online SC 205].

X. BECAUSE the independence of adjudicatory authorities, judicial or administrative, is indispensable to their effective functioning. In this regard, this Hon'ble Court in "**K.B.**

Nagur M.D. vs. Union of India”- [(2012) 4 SCC 483] held that statutory or constitutional independence is a prerequisite to the proper functioning of even statutory bodies, and observed as under:

“Statutory or constitutional independence is a pre-requisite to the proper functioning of such statutory bodies. Their appropriate constitution, in accordance with the provisions of the statute is mandatory. All concerned, including the Central and State Governments have the onus to discharge their duties and functions effectively and expeditiously, in coordination and within the time specified. No Court can permit any authority, much less the Central or State Government to frustrate the statutory requirements of a provision and also the very object of an Act.” [Emphasis added].

- Y. BECAUSE the Statement of objects and reasons for the RTI Amendment has reasoned that since the salaries and allowances and other terms and conditions of service of the Chief Election Commissioner and Election Commissioner are equal to a judge of this Hon’ble Court, therefore the Chief Information Commissioner, Information Commissioner and the State Chief Information Commissioner becomes equivalent to a judge of this Hon’ble Court in terms of their salaries and allowances and other terms and conditions of service.
- Z. BECAUSE a constitutional bench of this Hon’ble Court in ***“L Chandra Kumar v. Union of India”***- [(1997) 3 SCC

261] observed that the sole vesting of executive control over the tenure, salaries, allowances and service conditions of members strikes at the independence of adjudicatory bodies and this position was subsequently reaffirmed in “**Supreme Court Advocates-on Record Association v. Union of India**”- [(2016) 5 SCC 1]. In L Chandra Kumar, it was specifically observed as under:

“While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief, that armed with such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions”.

AA. BECAUSE this Hon’ble Court has held that the tenures of members serving on a commission whose independence is paramount should not be solely at the will of the government. In “**State of Madhya Pradesh vs. Ajay Singh and Ors**”- [(1993) 1 SCC 302], this Hon’ble Court held:

“It follows that after appointment, the tenure of members of the commission should not be dependent on the will of the Government, to secure their independence. A body not so independent is not likely to enjoy the requisite public confidence any may not attract men of quality and self-respect.”

BB. BECAUSE the fixity of tenure and other conditions of employment/appointment are pertinent for any employee/appointee, especially if the employee/appointee is required to be independent and has to decide upon matters which may or may not favour the employer or employing authority.

CC. BECAUSE even the framers of the Constitution highlighted the importance of having a constitutionally or statutorily fixed tenure to ensure the independence of judges or officials that adjudicate issues. In this regard, during the Constituent assembly debates, on 24.05.1949, Mr. B.R Ambedkar submitted:

“There are some who say that the Constitution should not fix any age limit whatsoever, but that the age limit should be left to be fixed by Parliament by law. It seems to me, it is not a proposition which can be accepted because if the matter of age was left to Parliament to determine from time to time, no person can be found to accept a place on the Bench because an incumbent, before he accepts the place in the Bench would like to know for how many years, in natural course of things, he could hold that office, and, therefore, a provision added to age, I am quite satisfied, cannot be determined by Parliament from time to time but must be fixed in the Constitution itself.”

DD. BECAUSE the Law Commission of India, in its 272nd Report on Assessment of Statutory Frameworks of Tribunals in India 2017, called for the harmonization of salaries and allowances of many of the statutory tribunals.

The spirit of the recommendations of Law Commission of India applies equally to the Chief and Information Commissioners of CIC and SIC and hence there is no reason to treat them differently.

EE. BECAUSE Sections 2(a) and 2(b) of the Amendment Act in altering the erstwhile fixed tenure of 5 years of the central information commissioners under Sections 13(1) and 13(2) of the RTI Act, to a tenure to be prescribed by the Central Government thwarts the independence of central information commissioners.

FF. BECAUSE Sections 3(a) and 3(b) of the Amendment Act altered the erstwhile fixed tenure of 5 years of the state information commissioners under Sections 16(1) and 16(2) of the Act to a tenure to be prescribed by the Central Government, thwarts the independence of state information commissioners.

GG. BECAUSE Sections 2(c) of the Amendment Act infringes the right to information by seriously diluting the central information commissioners' independence by granting absolute power to the Central Government to prescribe the salaries, allowances, and terms and conditions of service of the central information commissioners.

HH. BECAUSE Section 3(c) of the Amendment Act infringes the right to information by seriously diluting the state information commissioner independence by granting absolute power to the Central Government to prescribe the salaries, allowances, and terms and conditions of service of state information commissioners.

II. BECAUSE Section 4 of the Amendment Act explicitly grants absolute rule making power to the government over fixing the tenure, salaries and service conditions of information commissioners, that strikes at their independence.

JJ. BECAUSE Sections 3 and 4 of the Amendment Act are unconstitutional in so far as they vest the central government with the power to decide the tenure, salaries and service conditions of state information commissioners in violation of the constitutional scheme of federalism that was held to be part of the basic structure of the Constitution by this Hon'ble Court in "**SR. Bommai v. Union of India**".

KK. BECAUSE Section 4 of the Amendment Act in so far as it vests the central government with the power to decide the tenure, salaries and service conditions of state information commissioners runs counter to Section 27 (1) of the extant

RTI Act which confers rule making power to “*the appropriate government*” in line with the federal scheme of the constitution.

LL. BECAUSE the explicit provisions made in the pre-amended RTI Act to strength the independence of the chief, central and state information commissioners by laying down clear expectations for their salaries, tenure, and conditions of service has entirely been negated by the impugned Amendment Act.

MM. BECAUSE Rules 3 and 12 of the RTI Rules, 2019 in reducing the tenure of Central and State Information Commissioners from 5 years to 3 years and solely subjecting to the will of the Central Government, interferes with the independence of Information Commissioners and threatens the objective of the RTI Act.

NN. BECAUSE Rules 5 and 14 of the RTI Rules, 2019 that prescribe the salaries of the Central and State Information Commissioners abrogate the independence of Information Commissioners and the objective of the RTI Act.

OO. BECAUSE Rule 21 of the RTI Rules, 2019 confers the Central Government with absolute power to make binding decisions on the “conditions of service” of Information

Commissioners of the CIC and SIC not expressly covered under the rules. This allows unbridled and uncanalized residuary power to the Central Government that jeopardizes the independence of Information Commissioners. Further, given that post-retirement benefits, pensions and allowances are not explicitly in these rules, the Central Government is granted absolute power to change these from time to time as per its own discretion to the detriment of the commissions independence.

PP. BECAUSE Rule 22 empowers the Central Government excessive discretionary “power to relax” the applicability of the provisions of RTI Rules for any class or category of persons in the CIC and SIC, thereby raising alarming concerns about the government’s potential to invoke these excessive powers to determine selective tenures, terms and conditions for different Chief and Information Commissioners at the time of appointment, as per its whims and fancies.

QQ. BECAUSE Rule 23 which makes the Central Government the final interpreter of all the rules grants to it excessive power over governing the salaries, allowances and service conditions of Information Commissioners.

RR. BECAUSE the impugned Act and its accompanying rules violate Article 19(1)(a) of the Constitution by serving as an unreasonable restriction on the right to freedom of information, since they abrogate the access to information while purportedly serving an objective that has no basis in law.

SS. BECAUSE it is only through the free flow of ideas and information that citizens are fully able to exercise their democratic right to choose their representatives and interact with their governments. To this end, the impugned Act and Rules also abrogate foundational principles of democracy itself that has been held by this Hon'ble Court to be part of the basic structure of the Constitution.

TT. BECAUSE the impugned Act and its accompanying rules suffer from the vice of excessive delegation which in violation of Article 14 of the Constitution confers uncanalised and uncontrolled power to the executive over the functioning of information commissioners that will defeat the RTI Act and make the right to information illusory.. This Hon'ble Court in “***S.G. Jaisinghani v. Union of India and Ors.***”- ***[(1967) 2 SCR 703, at Para 18-19]***, elucidated upon the principles to examine if the Executive has been bestowed with arbitrary discretionary powers as under:

“In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey—“Law of the Constitution”—Tenth Edn., Introduction ex).

“Law has reached its finest moments”, stated Douglas, J. in United States v. Wunderlick (1), “when it has freed man from the unlimited discretion of some ruler ... Where discretion is absolute, man has always suffered”. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilker (2*), “means sound discretion guided by law. It must be governed by rule, not humour: it must not be arbitrary, vague and fanciful.”*

UU. BECAUSE, the passage of the RTI Act, 2005, of which the independence of information commissioners is a vital part has allowed activists to use the law to expose corruption, to understand the true impact of state policies and to illuminate institutional inadequacies thereby enabling good governance. This Hon'ble Court held in **Anjali Bhardwaj** held as under:

“This act [RTI Act] is enacted not only to subserve and ensure freedom of speech. On

proper implementation, it has the potential to bring about good governance which is an integral part of any vibrant democracy.”

20. The Petitioner crave leave of this Hon'ble Court to add, amend or alter grounds if the need so arises.

21. That the annexures filed along with the Petition are true copies of their original or copies thereof.

PRAYER

In these facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Pass an appropriate Writ, order or direction in the nature of Certiorari or any other appropriate writ order or direction so as to declare and set aside the Right to Information Amendment Act, 2019 and its accompanying Right to Information (Term of Office, Salaries, Allowances and Other Terms and Conditions of Service) Rules, 2019 as ultra-vires to the aims and objects of the RTI Act, 2005 and the Constitution of India.
- b. Pass any other directions or orders as deemed fit by this Hon'ble Court.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL IN DUTY BOUND EVER PRAY.

DRAWN BY:-

Mr. Muhammad Ali Khan
Mr. Abishek Jebaraj
Mr. Omar Hoda

DRAWN & FILED BY:-

[SUNIL FERNANDES]

Advocate for the Petitioner

NEW DELHI

DRAWN ON: 12.2019

FILED ON: .12.2019

Bar and
Bench

INDIAN LEGAL NEWS