

Dispute Resolution Hotline

February 01, 2016

SUPREME COURT UNLOCKS INFORMATION WITHHELD BY RBI

- Court upholds disclosure of information relating to banks under RTI Act
- Information cannot be withheld from public on grounds of economic interest of the country
- There is no fiduciary relationship between the RBI and the Banks

INTRODUCTION

Recently, the Supreme Court of India (“**the Court**”) in *Reserve Bank of India & Ors. v. Jantilal & Ors.*¹ emphatically ruled against objections of Reserve Bank of India (“**RBI**”) and held that it cannot shy away from disclosing the information sought in applications filed under the Right to Information Act, 2005 (“**RTI Act**”) acquired during inspection/ audit of private and public banks or financial institutions. Applicants sought information such as details of loans taken by industrialists, top defaulters who have not repaid to public sector banks, details of show cause notices and fines imposed by RBI on various banks etc. Disclosure was denied on grounds of fiduciary relationship shared between RBI and the banks, commercial confidentiality, and economic interest of India. The Court held that such information could not be withheld from public on the pretext of economic interest of India or the fiduciary relationship shared between the RBI and banks. It observed that banks and financial institutions had indulged in transactions which were neither “clean” nor “transparent” and RBI would shield these banks from transparency by denying such information. It further held that it was incumbent on RBI to provide information as sought and hold the banks accountable.

In reaching this conclusion, the Court impliedly rejected objections of commercial confidentiality and put the public good ahead of private commercial rights. It remains to be seen to what extent disclosure of such information will be used by regulators and public. There is also a possibility that similar information will be sought from other regulators of the financial markets.

BACKGROUND

Various applications were filed with the Central Public Information Officer (“**CPIO**”) of the RBI under the RTI Act requesting for information such as inspection reports of banks, reports on all banks gone on liquidation, irregularities and action taken reports, advisory notes issued to banks for violations of FEMA² by them and their clients, list of banks which were issued show cause notices, detailed bank wise break up of mark to market losses because of currency derivatives, contraventions and violations made by specific banks and actions taken against them etc. However, these applications were denied by CPIO on the ground that such disclosure is exempted under section 8(1)(a), 8(1)(d) and 8(1)(e) of the RTI Act³. The decision of the CPIO was challenged in Central Information Commission (“**CIC**”) which allowed the appeals on these applications and directed the CPIO to disclose the information sought by the applicants. Aggrieved by such orders of the CIC in these applications, the RBI filed writ petitions in the High Courts of Delhi and Bombay. It subsequently approached the Supreme Court seeking transfer of writ petitions pending in different High Courts to the Court.

ISSUES

1. Whether the RTI Act overrides various provisions of special statutes which confer confidentiality to the information obtained by the RBI?
2. Whether all information sought for under RTI Act, can be denied by RBI and other banks to the public at large on the ground of economic interest, commercial confidence and fiduciary relationship between RBI and other banks?

ARGUMENTS ON BEHALF OF THE RBI AND OTHER BANKS

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1. That the RBI in the exercise of its powers conferred under section 35 of the Banking Regulation Act, 1949 conducts inspection of the banks in the country and it may, as per section 28, in public interest publish the information obtained by it, in a consolidated form but not otherwise.
2. That the role of RBI is to safeguard the economic and financial stability of the country and it has a large contingent of expert advisors for deciding matters relating to the economy. The Court therefore, should be wary of any interference in the working of experts in matters of economic policy decisions.
3. That the RBI as a supervisory and regulatory body obtains a lot of information and it may in its discretion not make public all information. This is because such disclosures may trigger an undesirable market reaction. Hence, the benefits of disclosure should accordingly be weighed against the risk to stakeholders (such as depositors).
4. That as per the RBI policy, the reports of the annual financial inspection, scrutiny of all banks/ financial institutions are confidential documents that cannot be disclosed and disclosing the same would create misunderstanding/ misinterpretation in the minds of public which may cause an adverse impact on the public confidence in the bank. Hence, it will affect the economic interest of the state and would not serve larger public interest.
5. That the RTI cannot override the provisions for confidentiality conferred on the RBI by the earlier statutes such as Banking Regulation Act, 1949 ("**Banking Act**"), Reserve Bank of India Act, 1934 ("**RBI Act**") and Credit Information Companies (Regulation) Act, 2005 ("**Credit Information Act**"). RTI Act with general provisions cannot override specific provisions relating to confidentiality in earlier legislations. RBI further argued that Credit Information Act was enacted after the RTI Act and it granted statutory confidentiality to information and therefore, this would override rights under the RTI Act.

ARGUMENTS ON BEHALF OF RESPONDENTS

1. That the RTI Act, contains a clear provision (section 22)⁴ by which it overrides all other Acts including Official Secrets Act, 1923. Hence, in spite of anything to the contrary in any other Act, the RTI Act, will prevail where transparency and access to information is concerned. RTI Act, being a subsequent law must override all earlier practices and laws to achieve its objectives.
2. That section 8(1)(a) of the RTI Act, was wrongly pleaded by the RBI because disclosing such information does not affect the economic interest of the country.
3. That the larger public interest warrants the disclosure of such information even if (a) it affects the competitive position of banks or (2) is received by the RBI in its fiduciary capacity.

COURT ANALYSIS

The Court without dealing with whether the RTI Act overrides all other legislations that contain provisions of confidentiality, dealt with the other two contentions of the RBI as follows:

a. No fiduciary relationship between the RBI and other banks/ financial institutions

The Court rejected the contention that the information could not be disclosed because the RBI had a fiduciary relationship with banks. It held that where banks/ financial institutions have an obligation to provide all information to the RBI, such information shared under an obligation could not be considered to be in breach of any alleged fiduciary relationship. Furthermore, section 2(f)⁵ of the RTI Act would still make the information shared between them to be accessible by public, even if the institutions shared a fiduciary relationship. The information held by the RBI was not in confidence or trust.⁶ Court noted that RBI was a statutory regulatory authority established to oversee the functioning of banks and country's banking sector and therefore, it ought to act with transparency and not hide information that might embarrass individual banks.

b. Disclosure is not a threat to economic interests of India

The Court declined RBI's plea that the country's economic security would be endangered if people come to know of the irregularities being committed by the banks. It agreed with the CIC in holding that if people remain oblivious to irregularities committed by such banks, then the whole financial system would be at a monumental loss. Furthermore, sidestepping general public's demand to give the requisite information on the pretext of "fiduciary relationship" and "economic interest" would only attract more suspicion and disbelief in them.

CONCLUSION

The Court did not deal with arguments about balancing interests regarding the respective legislations and has instead examined the larger public good. In an appropriate case, it might be open to a party to argue that these issues have not been considered by courts and hence, information ought not to be disclosed. The judgment has unlocked a lot of information sitting in the vaults of the RBI protected so far on grounds of confidentiality. It includes all information obtained by RBI from financial institutions including private banks and their respective clients. It remains to be seen how this information is used

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by applicants. It would also be open to applicants to seek similar and comparable information from other regulators or information relating to market infrastructure institutions.

– **Mohammad Kamran, M.S. Ananth & Vyapak Desai**

You can direct your queries or comments to the authors

¹ Transferred Case (Civil) no. 91 of 2015; 2015 SCC Online SC 1326

² Foreign Exchange Management Act, 1999

³ Section 8 - Exemption from disclosure of information.--

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,--

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) ...

(c) ...

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f)..."

⁴ Section 22 – Act to have an overriding effect. - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923(19 of 1923), and any other law for the time being, in force or in any instrument having effect by virtue of any law other than this Act.

⁵ Section 2(f) - "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

⁶ Relying on *Central Board of Secondary Education and Anr. v. Aditya Bandhopadhyay and Ors.*, (2011) 8 SCC 497

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