

## Hon'ble Supreme Court Interprets Fiduciary Relationship in a Landmark Case

**December 16, 2015:** In a landmark case 'Reserve Bank of India and Ors. v. Jayantilal N. Mistry and Ors.' on December 16, 2015, the Hon'ble Supreme Court upheld the order passed by the Central Information Commissioner (CIC) on the issue: whether the Public Authorities under Right to Information Act, 2005 can deny information to the public on the basis of certain legal exemptions: public at economic interest; commercial confidence; public interest and fiduciary relationship? Whether giving information to the general public would be detrimental to the economic interest of the Country?

The Supreme Court held that the RBI does not place itself in a fiduciary relationship with the Financial institutions (though, in word it puts itself to be in that position) because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. In this case neither the RBI nor the Banks act in the interest of each other. By attaching an additional "fiduciary" label to the statutory duty, the Regulatory authorities have intentionally or unintentionally created an *in terrorem* effect.

### Background of the case

The respondent Jayantilal N. Mistry sought information from the CPIO, RBI in respect of a Cooperative Bank viz. Saraspur Nagrik Sahkari Bank Limited related to inspection report, which was denied by the CPIO on the ground that the information contained therein were received by RBI in a fiduciary capacity and are exempt under Section 8(1)(e) of RTI Act. The CIC directed the petitioner to furnish that information since the RBI expressed their willingness to disclose a summary of substantive part of the inspection report to the respondent. While disposing of the appeal the CIC observed:-

*"Before parting with this appeal, we would like to record our observations that in a rapidly unfolding economics scenario, there are public institutions, both in the banking and non-banking sector, whose activities have not served public interest. On the contrary, some such institutions may have attempted to defraud the public of their moneys kept with such institutions in trust. RBI being the Central Bank is one of the instrumentalities available to the public which as a regulator can inspect such institutions and initiate remedial measures where necessary. It is important that the general public, particularly, the shareholders and the depositors of such institutions are kept aware of RBI's appraisal of the functioning of such institutions and taken into confidence about the remedial actions initiated in specific cases. This will serve the public interest. The RBI would therefore be well advised to be proactive in disclosing information to the public in general and the information seekers under the RTI Act, in particular. The provisions of Section 10(1) of the RTI Act can therefore be judiciously used when necessary to adhere to this objective."*

The Reserve Bank refused to give the information taking the defence of Section 8(1) (a) & (e) of the RTI Act. It stated that the Information sought is maintained by the bank in a fiduciary capacity and was obtained by Reserve Bank during the course of inspection of the bank. Hence, cannot be given to outsiders. Moreover, disclosure of such information may harm the interest of the bank & banking system.

Section 8(1)(a) and (e) of the RTI Act states that:

- (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;*
- (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.*

The court took a detailed view on the definition of fiduciary in light of The Advanced Law Lexicon, 3rd Edition, 2005. The dictionary says that

"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.”

“(i) No Conflict rule- A fiduciary must not place himself in a position where his own interests conflicts with that of his customer or the beneficiary. There must be real sensible possibility of conflict.

(ii) No profit rule- a fiduciary must not profit from his position at the expense of his customer, the beneficiary;

(iii) Undivided loyalty rule- a fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position where his duty towards one person conflicts with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer’s affairs

(iv) Duty of confidentiality- fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person.”

The Supreme Court refused to accept the argument that a fiduciary relationship exists between the RBI and Financial Institutions. The information collected after the investigations do not fall under the purview of fiduciary relationship. On the contrary the Court held that:

- ❑ RBI is supposed to uphold public interest and not the interest of individual banks.
- ❑ RBI is not in any fiduciary relationship with any bank.
- ❑ RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of ‘trust’ between them.
- ❑ RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country’s economy and the banking sector.
- ❑ The exemption contained in Section 8(1)(e) applies to exceptional cases and only with regard to certain pieces of Information, for which disclosure is unwarranted or undesirable. If information is available with a regulatory agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship.

The information which may be withheld include the following:

Information which is in 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 investment 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.

The Court held that RBI is a statutory body set up by the RBI Act as India’s Central Bank. It is a statutory regulatory authority to oversee the functioning of the banks and the country’s banking sector. Under Section 35A of the Banking Regulation Act, RBI has been given powers to issue any direction to the banks in public interest, in the interest of banking policy and to secure proper management of a banking company. It has several other far-reaching statutory powers.

RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus, there is no relationship of ‘trust’ between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country’s economy and the banking sector. Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks. It is duty bound to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein.

In this case the RBI and the Banks have sidestepped the General public’s demand to give the requisite information on the pretext of “Fiduciary relationship” and “Economic Interest”. This attitude of the RBI will only attract more suspicion and disbelief in them. RBI as a regulatory authority should work to make the Banks accountable to their

actions.

Furthermore, the RTI Act under Section 2(f) clearly provides that the inspection reports, documents etc. fall under the purview of "Information" which is obtained by the public authority (RBI) from a private body. Section 2(f), reads thus:

*"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.*

By reading the above section it can be inferred that the Legislature's intent was to make available to the general public such information which had been obtained by the public authorities from the private body. Had it been the case where only information related to public authorities was to be provided, the Legislature would not have included the word "private body". As in this case, the RBI is liable to provide information regarding inspection report and other documents to the general public.

Even if we were to consider that RBI and the Financial Institutions shared a "Fiduciary Relationship", Section 2(f) would still make the information shared between them to be accessible by the public. The facts reveal that Banks are trying to cover up their underhand actions, they are even more liable to be subjected to public scrutiny.

The Court finally concluded that the right to information is a fundamental right as conferred by the Constitution of India. Thus, it is imperative that the RTI Act be observed astutely and remains transparent. The only exemptions to be observed should be the ones listed under Section 8 of the RTI Act. The case's notability is attributed to its advocacy of greater accountability and transparency in exchange of information. The case has given hope to the birth of a new India, awakening to a deeper realization of truth and awareness.