

CENTRAL INFORMATION COMMISSION
2nd Floor, August Kranti Bhawan
New Delhi-110066

Appeal No. CIC/AT/A/2008/00365 and
Complaint Nos. CIC/AT/C/2007/00077 and CIC/AT/C/2008/00145 & 00268

dated 14.11.2008

**Name of the Appellant/
Complainant** : 1) Shri C.L. Saraiya, Mumbai
2) Smt. Namita Kumar, New Delhi
3) Shri Jugal Kumar Ekka, Kolkata
4) Shri Bal Krishan Gupta, Nazibabad

Public Authority: Official Liquidators, Mumbai/Kolkata/Delhi

Date of Hearing 17.10.2008

Date of Decision 14.11.2008

FACTS OF THE CASE:

1. The issue as to whether the office of the Official Liquidator is a "Public Authority" within the meaning of Section 2(h) of the RTI Act came up before this Commission in Complaint Case No.CIC/AT/C/2007/00077, filed by Smt. Namita Kumar. The applicant Smt. Kumar had asked for certain information pertaining to the office of the Official Liquidator, from the PIO of the Department of Company Affairs, Government of India. PIO forwarded the applicant's request to the Official Liquidator, Maharashtra for appropriate action. Since the applicant did not receive any response from the Official Liquidator, Maharashtra, she approached this Commission requesting that the Commission direct the Official

Liquidator to furnish the requested information. A complaint case was accordingly registered and the Official Liquidator was called upon to show cause as to why penalty under Section 20(1) of the RTI Act be not imposed on him. Since no explanation was submitted by the Official Liquidator, the Commission passed an *ex-parte* order imposing a penalty of Rs.25,000 to be recovered in 3 monthly instalments. The Official Liquidator submitted an explanation wherein he admitted delay in providing information but claimed that it was “not intentional”. However, the explanation was received in the office of the Commission on 19.6.2007 after the order imposing the penalty was passed by the Single Bench of this Commission on 11.6.2007. The explanation of the Official Liquidator could not be taken into account while imposing the penalty on him. When it was brought to the notice of the Commission, it considered the matter and decided to give a post facto hearing to the Official Liquidator.

2. In the meanwhile, Shri Mangesh B. Thakur approached the Commission under Section 18(1) of the RTI Act. He had wanted certain information from the Official Liquidator, Maharashtra, but the CPIO of the the office of the Official Liquidator informed the complainant that he (complainant) should first obtain permission of the Bombay High Court in view of the High Court’s order dated 21.6.2007. The complainant again approached the office of the Official Liquidator stating that information requested by him under the RTI Act was not exempted from disclosure under Section 8 or 9 of the RTI Act. Since no response was received, the complainant approached this Commission in a complaint petition under Section 18(1) of the RTI Act. In his written statement, the Official Liquidator submitted that the office of the Official Liquidator was under the jurisdiction of the Hon’ble High Court dealing with matters of sensitive nature which were sub-judice. It was also submitted that the records available with the Official Liquidator were court records which could not be provided to a party without High Court’s specific direction. It was also submitted that the Official Liquidator was working under overall direction and supervision of the Hon’ble High Court and was, therefore, not an independent entity.

3. In view of these various submissions, this Commission decided that it was necessary to first determine as to whether the office of the Official Liquidator was an independent Public Authority under Section 2(h) of the Right to Information Act. It was also decided that the matter would be heard by a Full Bench of the Commission. Notices were accordingly issued to the appellant and the respondents as well as to the Secretary, Ministry of Corporate Affairs and the Registrar of the High Court of Bombay. The Commission also directed to place a copy of the notice on the website of the Commission as a public notice in order to enable any interested parties or organizations including corporate law houses, to make their submissions that would assist the Commission in arriving at a just decision.

4. The Department of Law and Justice declined to make any submission on the ground that the main function of the Department was to tender legal advice to various Ministries and Departments of the Government of India on legal issues including interpretation of various provisions of statute and, as such, according to them it was not appropriate for them to express any opinion on an issue to be decided by the Central Information Commission in pursuance of the discharge of its statutory function. The Department also stated that expressing any opinion or view in regard to the matter in hand might amount to conflict in interest because the Public Authority, to whom the Commission's order may be directed, can be an officer of the Government or a Government Department whom the Ministry of Law and Justice may be required to assist by way of legal advice. However, before the issue could come up for decision, the complainant submitted a written request seeking permission to withdraw the complaint as he had already received requisite information from the CPIO, office of the Official Liquidator, Maharashtra. The issue as regards the determination of the status of Official Liquidator thus remained unresolved.

5. In the meanwhile, the Commission also received three more cases concerning denial of information by the Official Liquidator, one of which was

registered as an appeal case and other two as complaint cases. The three cases were briefly as follows:

6. **Appeal No.CIC/AT/A/2008/00365:**

The appellant in this case Shri Jugal Kumar Ekka asked for certain information from the Official Liquidator attached to the High Court of Calcutta. Since the information was denied by the CPIO, the appellant approached the First Appellate Authority under Section 18(1) of the Right to Information Act which was also rejected on the ground that the information asked for by the appellant related to a third party. After hearing all parties including the third party, the First Appellate Authority upheld the decision of the CPIO that the disclosure of the information requested without leave of the High Court of Calcutta would amount to contempt of court and, therefore, he dismissed the petitions. The matter was, therefore, received in appeal before this Commission, which was at first listed before the Single Bench, but in view of the fact that the issue regarding the status of the office of the Official Liquidator as Public Authority was already before a Full Bench of the Commission, it was decided to adjourn the hearing and await the decision of the Full Bench.

7. **Complaint No. CIC/AT/C/2008/0145**

In this case, RTI application was made by Shri D.K. Gupta to the Official Liquidator, Delhi High Court. Since no response was given by the CPIO, the complaint petition was filed under Section 18(1) of the Right to Information Act.

8. **Complaint No.CIC/AT/C/2008/00268**

The complainant Shri C.L. Saraiya approached this Commission in Appeal Case No.CIC/AT/A/2007/001215. The Commission in this case first remanded the appeal to the First Appellate Authority for disposal within four weeks. As the appeal was not disposed of by the First Appellate Authority, the complainant approached this Commission under Section 18(1) of the Right to Information Act.

9. The Full Bench of the Commission decided that the Registrar of Bombay High Court and Calcutta High Court and Ministry of Corporate Affairs should also be requested and notified to depute a senior officer to attend the hearing and to file written submissions on the issue. A copy of the notice was again placed on the website of the Commission with request that the interested parties including the corporate law houses might make their submissions to help and assist the Commission arrive at a decision. In pursuance of the Notifications as aforesaid, the following written submissions were received:

- (i) Official Liquidator, Mumbai (Respondent)
- (ii) Shri C.L. Saraiya, Mumbai (Complainant)
- (iii) Secretary, Ministry of Corporate Affairs, New Delhi
- (iv) Registrar General of Bombay High Court, Bombay

10. The respondent Official Liquidator, Mumbai filed similar Written Submission in three cases stating, inter-alia, as under:

- (i) The respondent is neither the appointing authority of the complainant nor can it take decision regarding the payment of pensionary benefits to the appellant.
- (ii) This Commission itself has accepted the legal position that Official Liquidator is under the direct control of the High Court.
- (iii) The role of the Official Liquidator commences when the order of winding up of the company is communicated to the Official Liquidator under Section 444 of the Companies Act, 1956.
- (iv) As per Section 448 of the Companies Act, the Official Liquidator is appointed by the Central Government. The Central Government may also appoint one or more Deputy or Assistant Official Liquidators to assist the Official Liquidator in discharge of its functions.

- (v) An Official Liquidator can even be a part time official.
- (vi) The legislative intent that the liquidator is bound to act under the direct control of the High Court for performing various acts like keeping of books, audit or accounts, inspection of documents, obtaining legal assistance is clearly reflected in the above said provisions of the Companies Act (Section 461).
- (vii) In the present case, the information sought by the applicant cannot be disclosed/provided by the Official Liquidator without the permission/sanction of the court. In case the Official Liquidator discloses this information without the permission/sanction of the court, the act of disclosure would amount to contempt of court.
- (viii) Section 8(1)(b) of the RTI Act, 2005 provides that notwithstanding any thing contained in this Act, there shall be no obligation to give any citizen information which has been expressly forbidden to be published by any court or Tribunal or the disclosure of which may constitute contempt of court.
- (ix) Central Information Commission (CIC) lacks jurisdiction to decide the question as to whether the Official Liquidator is an independent authority.
- (x) Central Information Commission is a quasi judicial authority of limited jurisdiction. The limited mandate conferred upon the CIC is to ensure compliance of the provisions of the RTI Act for supply of information to the concerned applicants.
- (xi) A quasi-judicial authority has no jurisdiction to override a judicial order passed by the High Court. The Bombay High Court by its order dated 21.6.2007 passed in Report No.96/2007/RTI has made the report absolute in terms of prayer clause (a) which reads as under:

“(a) In view of para 7, 8 and 9 of the report, whether this Hon’ble Court may be pleased to permit the Official Liquidator to direct the applicant who files application requesting the information other than the ordinary information under the RTI Act and whose interest is not directly connected with the company in liquidation, to obtain the specific permission of this Hon’ble Court before furnishing such information by the Official Liquidator.”

- (xii) Since CIC lacks the jurisdiction to determine the question, it cannot refer the matter to the Full Bench. This act of the CIC is subject to judicial review under Article 226 of the Constitution.
- (xiii) Thus, Official Liquidator is not an independent Public Authority and the question posed by the Hon’ble CIC is beyond its jurisdiction.

11. Complainant Shri C.L. Saraiya from Bombay in his Written Arguments dated 6.10.2008 made the following submissions:

- (i) Office of the Official Liquidator is created under the Companies Act, 1956 for performing balancing act between the creditors of the company in liquidation in distribution of its assets to its creditors. Hence the Official Liquidator is a Public Authority under Section 2(h) of the RTI Act.
- (ii) Official Liquidator is appointed by the Central Government through Union Public Service Commission in consultation with the Department of Law & Justice and, therefore, its appointment comes under the purview of the Ministry of Corporate Affairs.
- (iii) Though the Official Liquidator is functioning under the orders of the High Court but the entire record and proceedings of cases filed in the High Court before the Hon’ble Company Judge are maintained and regulated by the Company Registrar pertaining to the said High

Court hence the office of the Company Registrar of the High Court is not coming under the definition of the Public Authority but the Office of the Official Liquidator surely comes under the purview of Public Authority.

- (iv) Employees employed in the office of the Official Liquidator are appointed by the Central Government and not by the High Court and, therefore, the employees including the Official Liquidator are under the administrative control of the Central Government and not under the Hon'ble Chief Justice of the High Court and are paid by the Central Treasury through the Pay & Accounts office of the Ministry of Corporate Affairs. The High Court does not take administrative action, if any, against the Official Liquidator. It has only to recommend action and/or sanction, strictures against the Official Liquidator to the Ministry of Corporate Affairs except contempt of Court.
- (v) Official Liquidator is appointed for each company which is ordered to be wound up by the Hon'ble Company Judge of the respective High Court and it is bounden duty of the Official Liquidator to assist in the process of winding up of the company. The Hon'ble Company Judge suo moto cannot order the Official Liquidator for the winding up of the company but such orders are passed only on the reports of the Official Liquidator.
- (vi) Every creditor of the company has the right to know the status of his claim pertaining to the company in liquidation and also the manner in which the Official Liquidator is recovering the debts due to the company in liquidation, the manner in which the misfeasance proceedings are taken out for misappropriation of the funds that leads to the company to insolvency in the public interest. In the process of winding up, the Official Liquidator under the Companies

Act and Rules is allowed to charge cost and expenses incurred by him. Hence the office of an Official Liquidator functions as a Public Authority. Where in case the company wound up by Official Liquidator does not have sufficient funds, it is the Central Government which provides funds under personal ledger account through Pay and Accounts Office of the Ministry of Corporate Affairs. In this respect also, the office of the Official Liquidator is coming under the purview of the Public Authority.

- (vii) The Hon'ble High Court has only supervisory powers over the action of the Official Liquidator in winding up proceedings and not other actions. For every sale, the Official Liquidator is entitled to deduct the commissions as prescribed under the Companies Act to the Central Government that goes to the Central Treasury. Thus, it is through such commissions that revenue comes to the Central Government and not through court fees. The Central Government allots funds to the office of the Official Liquidator by budgetary allocations. On this ground also, the office of the Official Liquidator functions as a Public Authority.
- (viii) The employees employed by the Office of the Official Liquidator are amenable to the jurisdiction of the Central Administrative Tribunals.
- (ix) The Office of the Official Liquidator is created under the Act of the Parliament, with expenses towards payment of salary, including other attendant benefits to the employees and other office expenses are allocated under the budgetary allocation by the Central Government under the overall control of the Regional Directors of the respective regions of the Ministry of Corporate Affairs. The Official Liquidator for any act of omission or commission is amenable to the Central Administrative Tribunal.

12. The complainant further submitted that the Official Liquidator was misleading this Commission by stating that the information under the RTI Act could be obtained only after obtaining the orders of the Hon'ble Company Court and that there was an order of the High Court to that effect. The respondents allegedly suppressed the fact that such order was passed by the Hon'ble High Court only on the administrative report of the Official Liquidator. He further submitted that every creditor in the winding up proceedings has a right to know the status of the proceeding so as to ascertain the stage of the winding up and action taken by the Official Liquidator. The Office of an Official Liquidator, therefore, cannot and ought not to be declared "excluded" under the RTI Act.

13. The Commission in response to its notice dated 3.9.2008 received Written Submissions dated 6.10.2008 on behalf of the Secretary, Ministry of Corporate Affairs. The Ministry of Corporate Affairs, who examined the issue, made the following submissions:

- (i) Article 309 of the Constitution of India contains provision regarding recruitment and conditions of service of persons serving the Union or a State, which reads as follows:

"309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and

any rules so made shall have effect subject to the provisions of any such Act.”

- (ii) In exercise of powers conferred by the proviso to Article 309 of the Constitution, the President of India made the rules called as Indian Company Law Service Rules, 1999. Controlling Authority defined under the said rules means the Central Government in the Department of Company Affairs. The Official Liquidator is one of the posts mentioned in Schedule-I of the said rules. The Cadre Controlling Authority of Official Liquidator is the Central Government in the Ministry of Corporate Affairs. Therefore, recruitment, promotion, transfer, posting etc of Official Liquidator is done by the said Ministry.
- (iii) Official Liquidator is appointed by the Central Government in the Ministry of Corporate Affairs under Section 448 of the Companies Act, 1956. In the event of a winding-up order, the Official Liquidator becomes the liquidator of the company under Section 449 of the Companies Act, 1956. Provisions regarding Official Liquidator are given in Sections 448 to 463 of the Companies Act which read as under:

“463. Control of Central Government over liquidators—

(1) The Central Government shall take cognizance of the conduct of liquidators of companies which are being wound up by the Court, and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by this Act the rules thereunder, or otherwise, with respect to the performance of his duties, or if any complaint is made to the Central Government by any creditor or contributory in regard thereto, the Central

Government shall inquire into the matter, and take such action thereon as it may think expedient:

[Provided that where the winding up of a company has commenced before the commencement of this Act, the ¹[Tribunal] may, on the application of the Central Government, appoint in place of such liquidator the Official Liquidator as the liquidator in such winding up.]

(2) The Central Government may at any time require any liquidator of a company which is being wound up by the ¹[Tribunal] to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Central Government thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up.

(3) The Central Government may also direct a local investigation to be made of the books and vouchers of the liquidators.”

(iv) The provisions regarding custody of company’s property are contained in Section 456 of the Companies Act, 1956. Sub-section (1) says that “Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled, sub-Section (2) says that all the property and effects of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company.

(v) The Ministry of Corporate Affairs further reproduced proviso to Section 458 of the Companies Act, 1956 as under:

“... Provided always that the exercise by the liquidator of such powers shall be subject to the control of the Court.”

- (vi) A combined reading of the provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959 reveals that Official Liquidator works under the direction and control of the Company Court/High Court for the purpose of liquidation proceedings which are governed under the Companies (Court) Rules, 1959.
- (vii) Expenditure on salary, medical treatment, domestic travel/TA/DA, office expenses etc in respect of Official Liquidator under the Companies Act, 1956 is met from the Budget grant of the Ministry of Corporate Affairs.
- (viii) There is no such term like “independent Public Authority” under the Right to Information Act. The Act defines the term “Public Authority” but not the terms “independent Public Authority”.

14. The Secretary, Ministry of Corporate Affairs thus urged that Official Liquidator was “Public Authority” as defined under Section 2(h) of the Right to Information Act, 2005. This view receives support from the fact that Official Liquidator was a Central Government Officer appointed by the Central Government. He was governed by CCS (Conduct) Rules and CCS (CCA) Rules, and his expenditure on salary, TA/DA, medical treatment etc was debitable to and met from the budget grant of the Ministry of Corporate Affairs. Controlling authority for the purpose of recruitment, promotion, transfer, posting etc of Official Liquidator is the Central Government in the Ministry of Corporate Affairs. Official Liquidator was a Central Government employee for all intent and purpose.

15. Registrar General of the Bombay High Court in their Written Submissions dated 26.9.2008 stated that the Office of the Official Liquidator squarely fell within the four corners of Section 2(h) sub-clause (d)(i) read with Section 2(a)(i) of the Right to Information Act, 2005 as the Office of the Official Liquidator was established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly by the Central Government. It is no doubt true that

the Office of the Official Liquidator is attached to the High Court of each State but it is not established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly by the High Court. The Official Liquidator only carries out the directions of the Hon'ble High Court to which he is attached in the matter of winding up of a Company as provided under the Companies Act, 1956 and reports on what he has done in carrying out the directions of the High Court.

16. The matter was heard by Commission's Full Bench on 17.10.2008. The following were present for the hearing:

COMPLAINANTS/APPELLANT:

Shri C.L. Saraiya

RESPONDENTS:

1. S/Shri Patchuta Ramatak, Dy. Official Liquidator, Kolkata
2. Debender Kumar Singh, Asstt., Official Liquidator, Kolkata
3. R.K. Tiwari, Dy. Official Liquidator, Mumbai
4. Satinder Singh Bawa, Advocate for Official Liquidator, Mumbai
5. Sanjay Yadav, Assistant Official Liquidator
6. A.K. Chaturvedi, Official Liquidator

OTHERS:

1. Jaikant Singh, Director, Ministry of Corporate Affairs
2. Diwan Chand, Director, Ministry of Corporate Affairs
3. Rajinder Singh, Under Secretary
4. P.S. Chaggar, PIO, Delhi High Court
5. Rower Bahniyal, DR(G), Delhi High Court
6. Sudhir Sachdeva, Sr. Judicial Assistant, Delhi High Court

17. ISSUES FOR DETERMINATION:

- I. Whether the Office of an Official Liquidator is “Public Authority” within the meaning of Section 2(h) of the Right to Information Act, 2005?

DECISION AND REASONS:

18. Presenting his case at the time of hearing, the appellant submitted that the Official Liquidators were controlled by Regional Directors of the respective region. They have to submit their Budget to the Central Government for maintaining their office etc. They are public servants and their service conditions are determined in accordance with the rules framed by the Central Government. Admittedly, they are under overall control of the Central Government and as such they are “Public Authority” within the meaning of Section 2(h) of the Right to Information Act, 2005. The Official Liquidators of Bombay and Calcutta High Courts, on the other hand, stated that the appellants/complainants should first file application before the High Court because the records sought pertained to liquidation of the company and the Official Liquidators are only custodian of the records and without the orders of the High Court, they cannot do any thing in the matter. It was also submitted that the Official Liquidators were governed by the Companies Act for any thing that they did or were required to do. They did not exercise any independent powers. They acted only in accordance with the directions of the Company Court in matters relating to liquidation of a company. Their task was to make a list of assets of the company in liquidation and then call for the claims from the creditors of the said company. For each and every thing in the matter, an Official Liquidator had to go to the High Court and seek requisite permission.

19. The Commission has carefully considered the whole matter. From the submissions made before this Commission, it appears that the Official Liquidator is a public servant appointed by the Central Government. His salary and allowances are paid by the Central Government and office expenses are also

borne from the Government Budget. All receipts to the Office of the Official Liquidator are credited to the Government account. The Office of the Official Liquidator is not a part of the High Court even though as an authority they may be working under the directions of the Court. From the submissions made by the Department of Company Affairs and the Registrar General of the Bombay High Court, **it is clear that the Official Liquidators are “Public Authority” under Section 2(h) of the Right to Information Act, 2005 and as such, obliged to provide information to an information seeker under the RTI Act unless information asked for is covered under one of the exemptions provided for under Sections 8 and 9 of the Act.**

20. The issue is decided accordingly.

21. The Commission accordingly directs the respective Official Liquidators to provide information to the respective applicants within ten days from the date of receipt of this order. The matter concerning imposition of penalty in Complaint **Case No.CIC/AT/C/2007/00077** will be decided by the concerned Bench. With these directions, the complaint and appeal petitions are disposed of.

Reserved in the hearing, this Decision is announced on this the thirty first day of October, 2008 in open chamber. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)
Chief Information Commissioner

(Prof. M.M. Ansari)
Information Commissioner

(A.N. Tiwari)
Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(L.C. Singhi)

Registrar

14.11.2008