

Before the Designated First Appellate Authority
and Chief General Manager (Operations), State Bank of India,
Banking Operations Department
Corporate Centre, State Bank Bhawan, 6th Floor, Madame Cama Road
Nariman Point, MUMBAI- 400 021

Appeal submitted under Section 19(1) of the Right to Information Act, 2005

In the matter of

Venkatesh Nayak

VS

CPIO & Deputy General Manager (RTI), State Bank of India

Date of submission: 05/07/2018

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S. P. Venkatesh Nayak

Before the Designated First Appellate Authority

and Chief General Manager (Operations), State Bank of India,

Banking Operations Department

Corporate Centre, State Bank Bhawan, 6th Floor, Madame Cama Road

Nariman Point, MUMBAI- 400 021

Appeal submitted under Section 19(1) of the Right to Information Act, 2005

Date: 05/07/2018

- 1) Name and address of the Appellant :** Venkatesh Nayak
#55A, 3rd Floor
Siddharth Chambers-1
Kalu Sarai
New Delhi- 110 016
- 2) Name and address of the Central Public Information Officer (CPIO) to whom the RTI application was sent :** The Central Public Information Officer
State Bank of India
Corporate Centre
RTI Department
Madame Cama Road
Mumbai- 400 021
- 3) Name and address of the CPIO who replied to the RTI Application :** Shri S. K. Thakur
Deputy General Manager (RTI)
RTI Department
Corporate Centre
9th Floor, State Bank Bhawan
Madame Cama Road
Mumbai – 400 021
- 4) Particulars of the RTI application-**
- a) No. and date of submission of the RTI application :** No. RTI/SBI/2018/1 dated
28/05/2018
- b) Date of payment of additional fee (if any) :** Not applicable.
- 5) Particulars of the order(s) including number, if any against which the appeal is preferred :** CPIO's reply of No. RTI/000827 dated
15/06/2018

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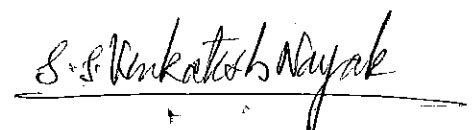
6) Brief facts leading to the appeal :

6.1) On 29/05/2018, this Appellant despatched by Speed Post, a request for information of number and date captioned at para #4 above, to the CPIO mentioned at para #2 above, along with the prescribed application fee, stating as follows (**Annexe 1**):

"Apropos of the Government of India notifying your Bank as the "Authorised Bank" for the purpose of sale and encashment of Electoral Bonds Scheme, 2018, I would like to obtain the following information about the same under the RTI Act:

- (i) The denomination-wise total number of electoral bonds sold by each of your authorised branches in March and April 2018 along with the total number of buyers of each denomination;
- (ii) The total number of buyers of electoral bonds in each category, namely, individuals, HUF, Company, Firm, Charitable Trust and Others who purchased electoral bonds from each of your authorised branches in March and April 2018;
- (iii) A clear photocopy of all application forms received by your authorised branches against which electoral bonds were sold in March and April, 2018;
- (iv) A clear photocopy of all redemption slips received and accepted by your authorised branches from every political party in relation to electoral bonds till date;
- (v) The methodology applied by your Bank to ascertain whether or not a political party redeeming electoral bonds with any of your authorised branches had secured at least 1% of the votes polled during the last round of general elections to Parliament or the State Legislatures, till date;
- (vi) A clear photocopy of all Declarations of Beneficial Ownership received from companies purchasing electoral Bonds in March and April, 2018.
- (vii) A clear photocopy of all returns or reports, by whatever name called, submitted by your Bank to the Government of India regarding the sale and encashment of electoral bonds till date; and
- (viii) A clear photocopy of all returns or reports, by whatever name called, submitted by your Bank to the Reserve Bank of India regarding the sale and encashment of electoral bonds till date."

6.2) Subsequently, on 20/06/2018, this Appellant received a reply of number and date captioned at para #5 above, from the CPIO mentioned at para #3 above (**Annexe 2**). The said CPIO provided partial information in relation to Query #1 of the RTI application. He stated that information sought at Query #(ii) of the instant RTI application was exempted under Section 7(9) of the RTI Act. As regards the information sought at Queries #(iii), (iv), (vi), (vii) and (viii) the said CPIO treated them as third party personal information held by the Bank in



fiduciary capacity and exempt from disclosure under Section 8(1)(e) and (j) of the RTI Act, 2005. As regards Query #(v) the CPIO stated that the poll percentage of political parties receiving donations through Electoral Bonds is ascertained from data published on the official website of the ECI.

6.3) This Appellant is aggrieved by the reply of the said CPIO in relation to Queries #(i) to (iv) and (vi) to (viii) of the instant RTI application for reasons stated below.

7) Prayers or relief sought :

This Appellant prays that this First Appellate Authority be pleased to:

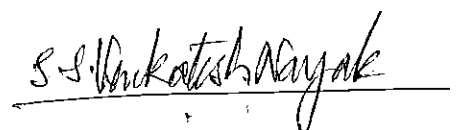
- 1) admit this appeal and inquire into the matters raised herein; and
- 2) direct the concerned CPIO to disclose all information specified in the instant RTI application free of charge as is this Appellant's right under Section 7(6) of the RTI Act.

8) Grounds for the prayer or relief :

8.1) According to Section 19(1) of the RTI Act, an RTI applicant, who is aggrieved by the decision made by a CPIO on his or her RTI application may prefer an appeal against such decision to an officer senior in rank to the CPIO, within 30 days of the date of receiving such decision. This Appellant received the decision of the CPIO mentioned at para #3 above by Speed Post on 20/06/2018. This appeal is being submitted under Section 19(1) of the RTI Act on the 15th day from the date of receipt of the said reply which is well within the deadline stipulated in that Section. This Appellant is aggrieved by the said CPIO's decision with regard to the information sought at Queries #(i) to (iv) and (vi) to (viii) of the instant RTI application for reasons described below:

8.1.1) This Appellant firmly believes that the CPIO mentioned at para #3 above has disclosed only partial information in relation to Query #(i) of the instant RTI application. According to the information published on the digital data platform **Factly.in**, a reply purportedly issued by the same CPIO under his name and signature contains data about the sale of Electoral Bonds through the Bengaluru branch of this Bank (**Annexe 3**). However, the said CPIO has failed to include this data in his reply to the instant RTI application which was disposed of by him after the previous RTI application on the subject of branch-wise sale of Electoral Bonds. Therefore this Appellant believes that the said CPIO has knowingly supplied incomplete information to this Appellant. Knowingly supplying incomplete information is a valid ground for imposition of penalty under Section 20(1) of the RTI Act. Without prejudice to his right to move the Hon'ble Central Information Commission (CIC) through appropriate proceedings under the RTI Act, this Appellant is aggrieved by the incomplete reply of the CPIO. **Hence the submission of this appeal to this Hon'ble First Appellate Authority.**

8.1.2) Further, this Appellant firmly believes that the reply of the CPIO mentioned at para #3 above in relation to Query #(ii) is patently erroneous and bad in law. According to Section



7(1) of the RTI Act, when presented with a request for information that is held in material form by the CPIO's public authority, he or she is empowered to reject such request wholly or partially only for reasons specified under Sections 8 and 9 of the Act. No other reason is valid in the eyes of the law. Section 7(9) is therefore not a valid ground for rejecting access to information contained in Query #(ii) of the instant RTI application. In the matter of **Er. Sarbajit Roy vs Delhi Development Authority** [Appeal No. 10/1/2005/ decision dated 25/02/2006], the Hon'ble Central Information Commission (CIC) was pleased to rule as follows:

"Sec 7(9) of the Act does not authorise a public authority to deny information. It simply allows the authority to provide the information in a form easy to access. We agree that providing the information on all responses to the public notice of the Board of Enquiry and Hearings, even if they number only 7000 as claimed by the DDA and more than 10,000 according to the complainant, in the form of certified copies will attract the provisions of Sec 7 (9) as averred by DDA. But this provision does not exempt disclosure of information, only of the form in which it is provided."

The CPIO of this Bank ought to have made arrangements to supply the information sought at Query #(ii) of the instant RTI application in some other acceptable form. Instead the said CPIO has proceeded to apply Section 7(9) of the RTI Act in a cavalier manner without due regard to either Section 7(1) which specifies the grounds on which an RTI application may be rejected legitimately or the Hon'ble CIC's ruling on the subject. Therefore the CPIO's decision with regard to Query #(ii) of the instant RTI application is bad in law and deserves to be set aside. **Hence the submission of this appeal to this Hon'ble Appellate Authority.**

8.1.3) Further, the said CPIO has rejected the request for all information sought at Queries #(iii), (iv), (vi), (vii) and (viii) above by invoking Sections 8(e) and (j) of the RTI Act. This Appellant is well versed with the provisions of the RTI Act ever since the legislative process around this law began in 2004. In the present form in which the RTI Act is being enforced, there is no such provision numbered as Section 8(e) or 8(j) anywhere in the text of the Act. So the CPIO seems to have invoked non-existent provisions of the RTI Act for denying access to information sought in the Queries listed above. Therefore the said CPIO's decision is bad in law and deserves to be set aside. **Hence the submission of this first appeal to this Hon'ble Appellate Authority.**

8.1.4) Further, even if one were to presume that the said CPIO's reference to third party personal information which is held by this Bank in fiduciary capacity pertains to Sections 8(1)(e) and 8(1)(j) of the RTI Act, this reply is also untenable within the scope of the said provisions for the following reasons: **First**, in relation to Queries #(iii), (iv) and (vi) of the instant RTI application the said CPIO has treated the information relating to both the buyers of the Electoral Bonds and the political parties redeeming such bonds as being held in fiduciary capacity by the Bank. This interpretation goes against the very grain of the guidelines issued by the Reserve Bank of India in its Master Circular on "Customer Service in Banks" of No. DBR No.Leg.BC. 21/09.07.006/2015-16 in July 2015 and displayed on the RBI's website at No. RBI/2015-16/59. Para #25 of this Master Circular is quoted below:

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"25. Customer Confidentiality Obligations

The scope of the secrecy law in India has generally followed the common law principles based on implied contract. The bankers' obligation to maintain secrecy arises out of the contractual relationship between the banker and customer, and as such no information should be divulged to third parties except under circumstances which are well defined. The following exceptions to the said rule are normally accepted:

- i. Where disclosure is under compulsion of law
- ii. Where there is duty to the public to disclose
- iii. Where interest of bank requires disclosure and
- iv. Where the disclosure is made with the express or implied consent of the customer." (emphasis supplied)

Given the crystal clear characterisation of any bank's relationship with its customer as being contractual in nature, no fiduciary duty exists in such a relationship. Further, the said CPIO does not seem to have understood the language of Section 8(1)(e) of the RTI Act in its fullest sense and meaning. Section 8(1)(e) is reproduced *ad literatim* below:

"8.(1) "Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(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" (emphasis supplied)

Clearly, the language of the aforementioned provision indicates that the "information" sought in an RTI application must be available to a natural person, namely, an individual in "his fiduciary relationship" with the source of such information. This Bank is not a natural person, therefore as an artificial juridical person it cannot claim the protection of Section 8(1)(e) of the RTI Act. Further, none of the functionaries of this Bank who are involved in the sale or the redemption of the Electoral Bonds act in their personal capacity as private individuals. They are all designated functionaries of the Bank and act on its behalf. Therefore the information regarding the sale and redemption of Electoral Bonds and the beneficial ownership declarations are not given to them as individuals in a "fiduciary capacity". Therefore this Appellant believes that the CPIO has wrongly invoked Section 8(1)(e) to reject access to information specified at Queries #(iii), (iv) and (vi) of the instant RTI application. Therefore this Appellant believes that the said CPIO's decision is bad in law and deserves to be set aside. **Hence the submission of this first appeal to this Hon'ble Appellate Authority.**

8.1.5) Second, the said CPIO has also treated the information sought at Query #(viii) of the instant RTI application namely, the reports or returns submitted by the this Bank to RBI regarding the sale and the redemption of Electoral Bonds as information held in a "fiduciary capacity". This reply is completely ignorant of the characterisation of the nature of the relationship between a Bank in India and RBI recognised by the Hon'ble Supreme Court of India in December 2015. In the matter of *Reserve Bank of India vs Jayantilal Mistry* [(2016) 3SCC 525], the Hon'ble Supreme Court rejected RBI's claim that it stands in a "fiduciary" relationship with the Banks that it regulates. This ruling came in the context of information

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requests regarding non-performing assets (NPAs) and loan defaulters from public sector banks. The relevant paras from the judgement are reproduced below:

"58. In the instant case, 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* [in fear] effect....

59. 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....

60. 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." (emphasis supplied)

Therefore, the said CPIO's reply that the reports and returns regarding the sale and the redemption of Electoral Bonds submitted to RBI are in "fiduciary capacity" is bad in law and deserves to be set aside. **Hence the submission of this first appeal to this Hon'ble Appellate Authority.**

8.1.6) Third, when the Hon'ble Supreme Court of India has stated that RBI does not stand in a fiduciary relationship with the banks that it regulates, there is no legal basis for treating the relationship between this Bank and the Government of India as being "fiduciary" in nature. Therefore, the said CPIO's decision to invoke Section 8(1)(e) of the RTI Act to reject access to all reports and returns submitted by this Bank to the Government of India [Query #(vii) of the instant RTI application] is also bad in law and deserves to be set aside. **Hence the submission of this first appeal to this Hon'ble Appellate Authority.**

8.1.7) Fourth, the said CPIO has termed all information sought at Queries #(vii) and (viii) of the instant RTI application, namely the reports and returns submitted by the Bank to RBI and the Government of India as "third party personal information" and therefore exempted under Section 8(1)(j) of the RTI Act. This Appellant is of the firm belief that this claim is also erroneous. By no stretch of imagination can it be said the reports and returns regarding the sale and redemption of Electoral Bonds contain personal information of anybody. Therefore, the said CPIO's decision to invoke Section 8(1)(j) of the RTI Act to reject access to all reports and returns submitted by this Bank to RBI and the Government of India is also bad in law and

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deserves to be set aside. **Hence the submission of this first appeal to this Hon'ble Appellate Authority.**

8.1.8) Fifth, the said CPIO has treated information sought at Query #(iv) of the instant RTI application as being third party personal information. This Appellant firmly believes that nothing can be more absurd than this claim. The redemption slips submitted by political parties while depositing the Electoral Bonds donated to them in their bank accounts may contain names of their office bearers authorised to sign such slips. However that action of redemption is made on behalf of the political party that they represent and not in their personal capacity. Under the Electoral Bonds scheme only political parties, not individuals are permitted to redeem the Electoral Bonds. The protection of Section 8(1)(j) of the RTI Act is not available to artificial juridical entities such as political parties. So the decision of the said CPIO to invoke Section 8(1)(j) to reject access to information sought at Query #(iv) of the instant RTI application is patently erroneous, bad in law and deserves to be set aside. **Hence the submission of this first appeal to this Hon'ble Appellate Authority.**


8.1.9) Sixth, the said CPIO has treated all information sought at para #(iii) as being personal information. This reply is difficult to believe as there is a strong likelihood that several buyers of the higher denomination Electoral Bonds of Rs. 10 lakhs and above may be corporations, associations, firms or charitable trusts. The protection of Section 8(1)(j) of the RTI Act is not available to such artificial juridical entities either. Therefore then said CPIO's decision to club them with the information relating to individual buyers is bad in law and deserves to be set aside. **Hence the submission of this first appeal to this Hon'ble Appellate Authority.**

8.1.10) Seventh, it is this Appellant's firm belief that the said CPIO's action of invoking Section 8(1)(j) of the RTI Act even in the case of individual buyers is also erroneous. The protection of Section 8(1)(j) is available only under two conditions – a) the information sought must have no relationship to any public activity or public interest or b) disclosure of personal information must result in an unwarranted invasion of the privacy of an individual. All donations are made to political parties in the public interest, so that the recipients may use them for public activities such as covering the expenses of public rallies, public meetings, creation of election materials and campaigning during elections, to mention a few. In a democracy by no stretch of imagination can it be held that these are not public activities. The political parties put up candidates to contest elections and spend money to campaign for them in order to get them elected to represent the people in Parliament and the State Legislatures. There cannot be a more sacrosanct public activity than this in a functional democracy. The very action of contesting elections is in the public interest so that the will of the people is represented in Parliament and the State Legislatures in accordance with the procedure laid down in the Constitution and the election-related laws. The very action of political parties of putting up candidates to contest elections to the legislatures is informed by public interest, namely, that they seek to get elected successfully through free and fair elections. All donations made through Electoral Bonds support these public activities which further the public interest, namely the sustenance of electoral democracy. It is not permissible for any political party to make use of the donations received through Electoral Bonds or other means for the personal benefit of their members or functionaries. The said CPIO has not realised the

enormous public interest involved in the use of Electoral Bonds by political parties. Therefore this Appellant firmly believes that his reply is bad in law and deserves to be set aside. ***Hence the submission of this first appeal to this Hon'ble Appellate Authority.***

9) I hereby verify that the aforementioned facts are true to the best of my knowledge. I also declare that I have authenticated the Annexes to this appeal.

Signature of the Appellant:


" 5/7/18

(Venkatesh Nayak)