

BEFORE THE APPELLATE AUTHORITY
(Under the Right to Information Act, 2005)
SECURITIES AND EXCHANGE BOARD OF INDIA

Appeal No. 1613 of 2013

Arun Sadashiv Bhide	:	Appellant
	Vs.	
CPIO, SEBI, Mumbai	:	Respondent

Appeal No. 1616 of 2013

Dr. Sandesh M. Mayekar	:	Appellant
	Vs.	
CPIO, SEBI, Mumbai	:	Respondent

Appeal No. 1617 of 2013

Swati Sandesh Mayekar	:	Appellant
	Vs.	
CPIO, SEBI, Mumbai	:	Respondent

Appeal No. 1618 of 2013

Sunetra Gangadhar Limaye	:	Appellant
	Vs.	
CPIO, SEBI, Mumbai	:	Respondent

ORDER

1. From the records made available to me, I find that the instant appeals viz. Appeal No. 1613 of 2013, Appeal No. 1616 of 2013, Appeal No. 1617 of 2013 and Appeal No. 1618 of 2013, involve the same set of facts and therefore, can be decided through this common order.

Appeal No. 1613 of 2013 -

2. The appellant had filed an application dated December 17, 2012 under the Right to Information Act, 2005 (hereinafter referred to as "**RTI Act**"). The respondent vide letter dated January 8, 2013, responded to the appellant. The appellant has filed this appeal dated January 30, 2013 (received at SEBI on January 31, 2013), against the said response.

Appeal No. 1616 of 2013 -

3. The appellant had filed an application dated December 12, 2012 under the RTI Act. The respondent vide letter dated January 8, 2013, responded to the appellant. The appellant has filed this appeal dated February 1, 2013 (received at SEBI on February 4, 2013), against the said response.

Appeal No. 1617 of 2013 -

4. The appellant had filed an application dated December 12, 2012 under the RTI Act. The respondent vide letter dated January 8, 2013, responded to the appellant. The appellant has filed this appeal dated January 31, 2013 (received at SEBI on February 4, 2013), against the said response.

Appeal No. 1618 of 2013 -

5. The appellant had filed an application dated December 12, 2012 under the RTI Act. The respondent vide letter dated January 8, 2013, responded to the appellant. The appellant has filed this appeal dated February 1, 2013 (received at SEBI on February 4, 2013), against the said response.
6. In view of the above, I have carefully considered the respondent's responses to the applications as filed by the appellants herein and also the instant appeals which have arisen on account of a grievance against the said responses. Accordingly, I find that the matter can be decided based on the material on record.
7. From the instant appeals, I note that the appellants are aggrieved by the respondent's response to the following queries as reproduced from their applications having subject matter: *"Application to find progress of Enquiry Committee to check defaults committed by SMC Global Securities Ltd. (hereinafter referred to as 'SMC')", viz. –*
 - i. *"Names of the members of this Enquiry Commission.*
 - ii. *How many meetings this Enquiry Commission conducted so far?*
 - iii. *Progress of Enquiry Committee proceedings in this matter.*
 - iv. *Whether SEBI Circular no. CIR/DNPD/7/2011 dated August 10, 2011 according to which SMC Global Securities will be liable with penalty of nearly Rs. 1700 Crores for the defaults committed by them, is placed before this enquiry committee?"*
8. **Query at point no. 7(i) above** - In his responses to the instant query, I note that the respondent had informed the appellants that the names of the officer(s) who handled the enquiry process related to information, the disclosure of which, may endanger the life or

physical safety of any person. It was further informed that such information related to personal information, the disclosure of which, has no relationship to any public activity or interest. Accordingly, the respondent had invoked the provisions of sections 8(1)(g) and 8(1)(j) of the RTI Act to deny information to the appellants.

9. In the instant appeals, the appellants have *inter alia* submitted that: "... SEBI and NSE are acting outright in favour of SMC which is guilty of all defaults ... the provisions of sections 8(1)(g) and 8(1)(j) are not applicable to us at all."
10. As regards the non-disclosure of information relating to the name, designation, etc. of SEBI official(s), I find that a similar issue was settled by the Hon'ble CIC in the matter of *Shri V. Raj vs. Dr. G. Narayana Raju* (Decision dated August 22, 2007), wherein it had ruled that: "... a public servant contributing to a decision is entitled to his anonymity". Similarly, in the matter of *Shri Gurbax Singh vs. Shri Vijay Kumar* (Decision dated September 25, 2007), the Hon'ble CIC had held that: "... it is a well founded assumption that employees who contribute to a given decision should remain anonymous and at least in the higher echelons of administration in the parliamentary set up, anonymity of civil servants sub serves the key element of the system - the ministerial responsibility to the Legislature". In *H. E. Rajashekarappa vs. State Public Information Officer and Ors.*, the Hon'ble High Court of Karnataka had ruled that: "... it cannot be said that section 2(f) of the Act (the RTI Act) encompasses the personal information of the officials of the public authority. The intention of the legislation is to provide right to information to a citizen pertaining to public affairs of the public authority".
11. I note that the abovementioned decisions have been followed by the Appellate Authority of SEBI in many cases including *Ajay M. Marathe vs. CPIO, SEBI* (Appeal No. 691 of 2009 – Order dated November 18, 2009), for concluding that the disclosure of information relating to the name, designation, etc. of SEBI official(s), is exempt under sections 8(1)(g) and 8(1)(j) of the RTI Act. In view of these observations, I find that the respondent was justified in invoking the provisions of sections 8(1)(g) and 8(1)(j) of the RTI Act, in his responses, while denying the information as sought by the appellants, through the instant query.
12. **Queries at point nos. 7(ii) - (iii) above** - In his responses to the instant queries, I note that the respondent had informed the appellants that the Enquiry Report had been submitted and a post-enquiry show cause notice had been issued to SMC. It was further informed that the matter was, at present, under consideration by the Whole Time Member, SEBI and disclosure of information at this stage may impede the ongoing process of investigation. In view of the same, the respondent had invoked the provisions of sections 8(1)(h) of the RTI Act to deny information to the appellants.
13. In the instant appeals, the appellants have *inter alia* submitted that: ... *As aggrieved investors, we have a right to know this information especially considering that SEBI is acting in bias against us and shielding and protecting errant notorious brokers which is our culprit namely SMC. The provisions of sections 8(1)(b) is*

not applicable in our case. We only wish that SEBI should fulfil its duty of protecting small investors and should not condone grave misdeeds of big brokers only because they are big and have political muscle and financial power."

14. As regards the request for information through the instant queries, I note that the respondent had *inter alia* informed the appellants that since the matter was, at present, under consideration by the Whole Time Member, SEBI, the disclosure of information at this stage may impede the ongoing process of investigation. In view of the fact that the matter is still under consideration by the Whole Time Member, SEBI and has not yet reached fruition, I find that the investigation cannot be treated as completed. Therefore, any disclosure of information prior to such completion would be premature to the process of investigation. Accordingly, an investor may wait till such completion as the disclosure of any information may expose the concerned authority to competing pressure and may hamper/compromise the objectivity of decision-making by such authority. Further, I note that the disclosure of information at any stage prior to such completion may also harm the reputation of parties involved. In this context, I note that the Hon'ble CIC in the matter of *Shankar Sharma and Ors. vs. Director General of Income Tax (Inv)-II & CPIO, Department of Income Tax (Decision dated 10.07.2007)*, had held that: "*In civil and administrative matters, especially under the RTI Act, the word 'investigation' needs to be liberally interpreted and the exemption cover under Section 8(1)(h) should also be made available to all proceedings pending a final decision by a competent authority*". Further, in the matter of *Shri K.S. Prasad, C/o. Srinivasa Varadachary vs. Shri Amarjeet Singh, CPIO, SEBI (Decision dated 11.12.2007)*, the Hon'ble CIC while considering the issue of whether the proceedings before the quasi judicial authority of SEBI under the SEBI Act, 1992 would qualify as an '*investigation*' so as to bring it within the ambit of the exemption under section 8(1)(h) of the RTI Act, had held in the affirmative.
15. I also note that the Hon'ble Bombay High Court vide its *order dated December 22, 2010 in W.P. No. 2865/2010 - SEBI Vs. CIC and Anr.*, had stayed the decision dated November 22, 2010 as passed by the Hon'ble CIC, wherein the respondent herein was directed to disclose the investigation report despite an ongoing investigation in the matter. Further, I note that the observations of the Hon'ble CIC in the matter of *Arun Kumar Agrawal vs. CPIO, SEBI (Decision dated November 6, 2012)*, wherein it had directed the respondent herein to disclose information *inter alia* despite ongoing quasi judicial proceedings on the ground that section 8(1)(h) was not attracted since investigation was over, had been set aside and remanded back to the Hon'ble CIC vide the Hon'ble Delhi High Court Order dated January 30, 2013 (*W.P.(C) 7248/2012 and CM 18689/2012*). In view of these observations, I find that the respondent was justified in invoking the provisions of section 8(1)(h) of the RTI Act, in his response, while denying information to the appellants.
16. **Query at point no. 7(iv) above** - In his responses to the instant query, I note that the respondent had informed the appellants that the information sought by them was in the nature

of seeking clarification and therefore, did not fall within the definition of 'information' as defined under section 2(f) of the RTI Act.

17. In the instant appeals, the appellants have *inter alia* submitted that: "... We are asking SEBI only to punish SMC so that funds lost by investors due to their misdeeds are reimbursed and which are merely 17 Crores."
18. I note that the appellants were clearly informed by the respondent that the information as requested by them could not be construed as 'information', as defined under section 2(f) of the RTI Act since it was in the nature of seeking clarification from SEBI. In this regard, I note that the Hon'ble Supreme Court of India in the matter of *Central Board of Secondary Education & Anr. vs. Aditya Bandopadhyay & Ors.* (Judgment dated August 9, 2011), had *inter alia* held that: *A public authority is "...not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provided advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act".*
19. Further, in the matter of *Shri Shantaram Walavalkar vs. CPIO, SEBI* (Decision dated January 17, 2013), the Hon'ble CIC had held that: "... we would also like to observe that, under the Right to Information (RTI) Act, the citizen has the responsibility to specify the exact information he wants; he is not supposed to seek any opinion or comments or clarifications or interpretations from the CPIO by posing somewhat hypothetical queries". In view of the aforementioned observations, I find that the respondent cannot be obliged to provide a response to such query, as raised by the appellants in their applications.
20. In view of the above, I find that there is no need to interfere with the decision of the respondent. The appeals are accordingly dismissed.

Place: Mumbai

Date: February 21, 2013

S. RAMAN

APPELLATE AUTHORITY

SECURITIES AND EXCHANGE BOARD OF INDIA