

Central Information Commission
Central Information Commission
Mr.G Gururaj Rao vs Ministry Of External Affairs on 23 January, 2012
CENTRAL INFORMATION COMMISSION

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Decision No. CIC/SG/A/2011/003260/17024

Appeal No. CIC/SG/A/2011/003260

Relevant Facts emerging from the Appeal

Appellant : Mr. S Gururaj Rao R/o: H.No. L-155,

Sh. Bana Shaukari Krupa Nijalingappa Colony,

Rajichur - 584101, Karnataka.

Respondent : Dr. K. G. Srinivas Public Information Officer

Regional Passport Office

O/o The Regional Passport Officer,

80, Feet Road, 8th Block, Karamangala,

Bangalore - 560095.

RTI application filed on : 16/12/2011

PIO replied : 27/01/2011

First appeal filed on : not mentioned. First Appellate Authority order : not mentioned Second Appeal received on : 20/10/2011

Information Sought:

The Appellant had sought information about Mr. Raghvendra Rao:

1. The official memorandum cited above, enjoins a govt. servant to furnish the above documents in his capacity as a public/government servant.

2. Any documents/affidavits furnished in pursuance of instructions by govt. are furnished by a public/government servants are all public documents and therefore are always subject to public scrutiny, therefore such documents cannot be classified as personal information as provided under section 8 (1) (j) of the Right to Information Act, 2005.

3. In other words a passport cannot be issued to a government/public servant, without complying with the conditions laid down in O.M. cited above.
4. All such required documents are required to be filed in his capacity as public servant only and at any time his role as in personal capacity does not come into play.
5. To elaborate more further, a passport issued by a public/government servant is itself is a public document, as it will have to be produced at any time and any where for scrutiny. Therefore, a passport issued to a public servant cannot be called a personal documents, as it will be meant for other purposes as may be required in the circumstances.
6. Therefore for all the facts submitted above, the information called for are the documents furnished by a public/government servant and therefore cannot be classified under section 8 (1) (j) of the Right to Information Act, 2005.

Reply of the Public Information Officer (PIO):

1. The government employees/PSU employees of Municipal Corporations/constitutional bodies, would have an option to submit either existing IC (format modified to include nationality and is Page 1 of 4 enclosed) or NOC. If IC is submitted, passport will be issued without police verification; and if NOC is submitted, passport will be issued on post police verification basis.
2. Annexure 1, in respect of employees themselves and children (up to 18 years) is dispensed with. However, spouse will require Annexure 1, if IC is submitted.
3. Dependents viz. spouse, and children up to 18 years of age (against 21 yrs. At present, to align with minor passport regulations) only have the option of submitting IC. Otherwise, they can apply under the normal process (as any other public).
4. NOC (not IC) is required for reissue of passport of Government employees, et al, on expiry of passport/exhaustion of visa pages etc. however, no police verification is required at reissue stage. For reissue, dependents should provide fresh IC (and Annexure I also by spouse) or apply under normal process (No pre-police verification is normally required for reissue under normal process).
5. While IC should be issued on official stationery (letterhead); NOC on plain paper with signature/stamp can be accepted, on the assumption that such offices are using plain paper for day to day correspondence. However, telephone/fax and e-mail (to the extent available) be indicated in NOC for the purpose of confirmation, if called for, at the discretion of the Passport Office, which should be replied to immediately.
6. Military personnel with do APO address (e.g. 56 APO/99 APO) may submit applications at their station of posting or at their permanent address, and write their permanent address in passport [against present address otherwise], provided IC [NOC at reissue] is submitted and permanent address is certified by their office. Spouse of such personnel [and adult children, when spouse has expired/divorced] may receive the passport, with authority letter, either by hand or by post. This would apply to similarly placed Air Force/Navy personnel as well.
7. If Govt./PSU employees, et al, are transferred after submission of the passport application or passport is returned undelivered due to such transfer, the same be re-dispatched, on request (along with copy of transfer order), at the new address, after correction/endorsement of address. Such persons need not submit miscellaneous form & fees for address correction. However, if police verification was required and was not completed, it will be done at the new place.

8. The validity of IC/NOC will be six months from date of issue. Expired IC/NOC will not be accepted.

Grounds for the First Appeal:

Unsatisfactory reply was provided to the appellant by the PIO.

Order of the First Appellate Authority (FAA):

Not received.

Grounds for the Second Appeal:

Unsatisfactory Information.

Relevant Facts emerging during Hearing:

The following were present

Appellant: Mr. S Gururaj Rao on video conference from NIC- Rajchur Studio; Respondent: Mr. P. Roychaudhuri, Advocate on behalf of Dr. K. G. Srinivas, Public Information Officer & RPO;

The appellant had sought information about documents furnished by Mr. Raghvendra Rao S/o Mr. Vijay Rao with his passport application. The PIO has refused to provide information claiming exemption under Section 8(1)(j) of the RTI Act.

The PIO has refused to give the information claiming exemption under Section 8(1)(j) of the RTI Act. The respondent states that third party information cannot be disclosed without taking the views of the third party and relied upon the case of Suhash Chakma Vs. CIC in W.P.(C) No. 9118 of 2009. The respondents also states that the present whereabouts of the third parties are not maintained by the Ministry. The Page 2 of 4

Commission rules that if the third party's address is not located it does not mean the citizen's right to information would disappear. Section-11 is a procedural requirement that gives third party an opportunity to voice and objection in releasing the information. The Commission however examines whether the information is exempt under Section 8(1)(j) of the RTI Act.

Under Section 8 (1) (j) information which has been exempted is defined as: "information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:"

To qualify for this exemption the information must satisfy the following criteria:

1. It must be personal information.

Words in a law should normally be given the meanings given in common language. In common language we would ascribe the adjective 'personal' to an attribute which applies to an individual and not to an Institution or a Corporate. From this it flows that 'personal' cannot be related to Institutions, organisations or corporates. Hence Section 8 (1) (j) cannot be applied when the information concerns institutions, organisations or corporates.

The phrase 'disclosure of which has no relationship to any public activity or interest' means that the information must have been given in the course of a Public activity.

Various Public authorities in performing their functions routinely ask for 'personal' information from Citizens, and this is clearly a public activity. When a person applies for a job, or gives information about himself to a Public authority as an employee, or asks for a permission, licence or authorization or passport, all these are public activities. Also when a Citizen provides information in discharge of a statutory obligation this too is a public activity.

We can also look at this from another aspect. The State has no right to invade the privacy of an individual. There are some extraordinary situations where the State may be allowed to invade the privacy of a Citizen. In those circumstances special provisions of the law apply;- usually with certain safeguards. Therefore where the State routinely obtains information from Citizens, this information is in relationship to a public activity and will not be an intrusion on privacy.

Certain human rights such as liberty, freedom of expression or right to life are universal and therefore would apply uniformly to all human beings worldwide. However, the concept of 'privacy' is a cultural notion, related to social norms, and different societies would look at these differently. Therefore referring to the UK Data protection act or the laws of other countries to define 'privacy' cannot be considered a valid exercise to constrain the Citizen's fundamental Right to Information in India. Parliament has not codified the right to privacy so far, hence in balancing the Right to Information of Citizens and the individual's Right to Privacy the Citizen's Right to Information would be given greater weightage. The Supreme of India has ruled that Citizens have a right to know about charges against candidates for elections as well as details of their assets, since they desire to offer themselves for public service. It is obvious then that those who are public servants cannot claim exemption from disclosure of charges against them or details of their assets. Given our dismal record of misgovernance and rampant corruption which colludes to deny Citizens their essential rights and dignity, it is in the fitness of things that the Citizen's Right to Information is given greater primacy with regard to privacy.

In view of this the Commission does not accept the PIO's contention that information provided by an applicant when applying for passport is exempt under Section 8(1)(j) of the RTI Act.

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Decision:

The Appeal is allowed.

The PIO is directed to provide the complete information as per available records to the Appellant before 15 February 2012.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties. Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi

Information Commissioner

23 January 2012

(In any correspondence on this decision, mention the complete decision number.)(PRE)

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