

Central Information Commission

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Shri.Durgesh Vijayvargiya vs Ministry Of External Affairs on 23 January, 2012

CENTRAL INFORMATION COMMISSION

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Old JNU Campus, New Delhi - 110067

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Decision No. CIC/SG/A/2011/003257/17025

Appeal No. CIC/SG/A/2011/003257

Relevant Facts emerging from the Appeal

Appellant : Mr. Durgesh Vijayvargiya R/o: 993, Manak Chowk,

Mhow, M.P.

Respondent : Mrs. L. K. Vaghela Public Information Officer & RPO

Regional Passport Office

Minsitry of External Affairs

O/o The Passport Officer,

Gangotri Complex, 2nd Floor,

T.T. Nagar, Bhopal, M.P. 462003.

RTI application filed on : 18/07/2011 PIO replied : 04/08/2011 First appeal filed on : 02/08/2011 First Appellate Authority order : 29/08/2011 Second Appeal received on : 01/11/2011

Information Sought:

1. Addresses of the above mentioned individuals.

2. Validity of the passports of above mentioned individuals. If validity have expired then new passport have been issued or not. If issued, what are the numbers of new passports and present addresses mentioned in the new passports/passport application form.

3. If above mentioned passport holders are not residing in India then which country visa have given to them. They are residing at which country, on which address and who had sponsored visas for them.

Reply of the Public Information Officer (PIO):

1. In this connection, it is to be intimated that the information under RTI Act can be provided to the applicant only. Personal information of third party cannot be provided under section 8(1) (j) of the RTI Act.

Grounds for the First Appeal:

Unsatisfactory reply was provided to the appellant by the PIO.

Order of the First Appellate Authority (FAA):

"I have examined the RTI application and the CPIO's reply. I do not find any lacuna in the CPIO's reply. The CPIO has rightly denied the information under Section 8(1) (j) of the RTI Act, 2005, as disclosure of personal information of a third party might cause invasion of the privacy of the third party. It will be pertinent to mention that the Hon'ble Delhi High Court in W.P. (C) No. 9118 of 2009 titled as Sunas Chakma versus Central Information Commission has held that information which involves The Page 1 of 3

rights of privacy of a third party in terms of Section 8(1) (j) RTI Act cannot be ordered to be disclosed without notice to such third party. The authority cannot simply come to conclusion, that too, on a concession or on the agreement of parties before it, that public interest overrides the privacy rights of such third party without notice to and hearing such third party." In view of the above discussions I am inclined to agree with the decision of the CPIO."

Grounds for the Second Appeal:

Unsatisfactory Information.

Relevant Facts emerging during Hearing:

The following were present

Appellant: Mr. Durgesh Vijayvargiya on video conference from NIC-Indore Studio; Respondent: Mr. P. Roychaudhuri, Advocate on behalf of Mrs. L. K. Vaghela, Public Information Officer & RPO;

The appellant had sought information contained in the Passport application/Passport of three individuals. 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 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.

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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.

The PIO also states that the information about the VISA/Whereabouts of a passport holder is not maintained by the Passport Office and hence cannot be provided. The Commission accepts this.

Decision:

The Appeal is allowed.

The PIO is directed to provide the complete information about the passport details of the three individuals 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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