

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi - 110067

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Decision No. CIC/SG/A/2012/001287/19287

Appeal No. CIC/SG/A/2012/001287

Relevant Facts emerging from the Appeal:

Appellant : Mr. P. Pramod Kumar

16-11-511/C/32,Pratapnagar,

Dilsukhinagar, Hyderabad-36

Respondent : Dr . K. Srikar Reddy

PIO & RPO

Regional Passport Office

D-no. 8-2-215 to 219,

Adjacency to Prashanth Theatre,

Kummaraguda, Sedunderabad- 500003

RTI application filed on : 27/12/2011

PIO replied : 27/01/2012

First appeal filed on : 10/02/2012

First Appellate Authority order : 13/03/2012

Second Appeal received on : 07/05/2012

Information Sought:

1. Required Information: Passport Application of Savitha Kalikar D/oKalikar Narsing Rao, Aged: 08-08-1981,

R/o: 18-07-466/1/D, Hanuman Nagar, Street No:3, Uppuguda, Hyderabad-53 along with the other certificates she filed.

Reply of the Public Information Officer (PIO):

The information sought by you in your letter pertains to a third party and the information sought is personal

information the disclosure of which has no relation to any public interests, so it would be unwarranted invasion on the

privacy of the individual, the information is therefore denied under section 8(1)(j) of the RTI Act, 2005

Grounds for the First Appeal:

Incomplete and unsatisfactory information provided by the PIO.

Order of the First Appellate Authority (FAA):

The FAA upheld the information provided by the CPIO and accordingly rejected the appeal

Grounds for the Second Appeal:

Incomplete and unsatisfactory information provided by the PIO.

Relevant Facts emerging during Hearing:

The following were present

Appellant: Mr. P. Pramod Kumar on video conference from NIC-Hyderabad Studio;

Respondent: Dr. K. Srikar Reddy, PIO & RPO on video conference from NIC-

Hyderabad Studio; and Mr.

P. Roychaudhuri, Advocate, Advocate;

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.

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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.

Section 11 of the RTI act, which is the basis on which the information is sought to be denied to the appellant in the present case lays down:

'11. (1) Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information: Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to

make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.'

It is evident that the PIO is expected to follow the procedure of Section 11 when he "intends to disclose any information or record". This means that the PIO has come to the conclusion that the information is not exempt as per the provisions of the RTI Act. It is clearly stated at Section 11 (1) that 'submission of third party shall be kept in view while taking a decision about disclosure of information. The information 'which. relates to or has been supplied by a third party and has been treated as confidential by that third party'.

Thus the procedure of Section 11 comes into effect if the PIO believes that the information exists and is not exempt, and the third party has treated it as confidential. The PIO must send a letter to the third party within 5 days of receipt of the RTI application. It only gives the third party an opportunity to voice its objections to disclosing information. The PIO will keep these in mind and denial of information can only be on the basis of exemption under Section 8 (1) of the RTI act. As per Section 11 (3), the PIO has to determine the whether the information is exempt or not and inform the appellant and the third party of his decision. If the third party wishes to appeal against the decision of the PIO, he can file an appeal under Section 19 of the Act as per the provision of Section 11 (4).

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Section 11 does not give a third party an unrestrained veto to refuse disclosing information. It clearly anticipates situations where the PIO will not agree with the claim for non-disclosure by a third party and provides for a appeal to be made by the third party against disclosure, which would have been unnecessary, if the third party had been given a veto against disclosure. Thus the PIO is expected to follow the procedure of Section 11, when he intends to disclose the information but has some reason to believe that the third party treats it as confidential. If the third party sends an objection, the PIO has to determine whether the information is exempt under the provisions of the Act. If no objection is received from third party

information has to be disclosed.

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

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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.

The Commission asked the PIO if he would deny this information to the Parliament or Legislature. He states

that he would not deny this information to Parliament or Legislature. In view of this the Commission does

not uphold the exemption claimed by the PIO under Section 8(1)(j).

The PIO informed the Commission that there is a DOPT Circular that such information should not be

released. The Commission does not accept a circular from any Ministry as laying down the law. Besides the

Ministry circular claims that certain orders of the Commission have been stayed by the High Courts. Such

stays by High Courts apply to the specific cases for which stay has been obtained.

Decision:

The Appeal is allowed.

The PIO is directed to provide the complete information as per available records to the

Appellant before 10 July 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

18 June 2012

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

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