

CENTRAL INFORMATION COMMISSION

BABA GANGNTH MARG, MUNIRKA

New Delhi-110067

F. No. **CIC/INBRU/A/2017/118048**

Date of Hearing : 26.03.2018
Date of Decision : 07.05.2018
Appellant/Complainant : Mr. M. Dinesh
Respondent : PIO,
Bureau of Immigration /Intelligence
Bureau,
(Ministry of Home Affairs)

Information Commissioner : Shri Yashovardhan Azad

ORDER

1. The captioned appeal emanates from RTI application dated 31.08.2016 whereby the Appellant sought information regarding arrival-departure details in his passport.
2. The respondent PIO declined to furnish information citing exemption under Section 24 of the RTI Act. It would be worthwhile to reproduce the following averments contained in memorandum of second appeal which sufficiently explain the reasons which led to filing of present RTI application.

I am an IT employee working for a private company in Chennai. I have been deployed into Abu Dhabi and Dubai during 20/12/2013 To 28/03/2015 for my project deliverables. A person called Selvam, who is no way connected to my life, launched a false complaint against me in H5 police station- New washernmpet, Chennai-600081. In his false complaint he mentioned few days, on those days I physically threatened him but actually I was in Dubai and Abu Dhabi during those dates. He influenced the police to register FIR and Police included my name along with 4 others and the FIR no is 1039/2015. H5 police for extraneous reason at the instance of the said selvam registered a false complaint. But all of sudden they came to my house with 4 police man at 02.00 am on 06/01/2016 and taken me to the H5 police station. I asked the reason for taking me to

the police station they refused to tell the reason and informed that Inspector will explain to me in the morning.

But Inspector of police came only in the evening and enquired me about the false complaint. I told him, that I was not in India during those dates the said selvam mentioned in the complaint. I showed all the immigration stampings on my passport to the Inspector of Police and explained to him that I am an innocent person and no way connected to the false complaint. Since he was influenced by the said selvam he doesn't want to look into my passport stampings and mechanically sent me with remand report for the judicial custody for 15 days on 06/11/2016. I came out in bail only on 11/01/2016. My arrest is illegal and clear violation on Human rights. I have requested the Appellate Authority to provide only details of my passport given by Govt Of India, the particulars of departure and arrival stampings in my passport are not clear to submit has an evidence before the Honorable Court of human rights. But my request was denied by Appellate Authority saying there was no corruption or human rights violation on BOI/IB. My human rights were violated, illegally arrested and remanded in false case by tamilnadu police and BOI is the concern dept to provide my arrival and departure details of my passport. I request your good say to direct and order BOI to provide my arrival and departure details on my passport. I am only asking my own particulars in my passport which aren't readable.

- 3.** Both the parties are present and heard in course of hearing. The appellant, who states to have been implicated in a false case, seeks details of his immigration clearance and record of travel to prove his innocence on the strength of plea of *alibi*. It is his submission that the date of stamping recorded on his passport is not clear. Per contra, the PIO raises the plea of Section 24 of the RTI Act. It is the contention of the PIO that since the information sought did not relate to allegations of corruption and human right, the appellant is not entitled to secure any information. Parties were heard at length and they reiterated their respective contentions.
- 4.** The foremost contentious point which thus arises is of the maintainability of the present appeal. Section 24(1) of the RTI Act, 2005 lays that:

24. Act not to apply to certain organizations.—

(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section: Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.

5. The respondent public authority is enlisted in Second Schedule of the RTI Act and as such, exempt from provisions of this Act. The only exception carved out to the rule is wherein information sought relates to **allegations of corruption / human rights violations** and **approval** to disclosure is accorded by this Commission.
6. Thus, the present RTI request must satisfy two preconditions. Firstly, the information sought must relate to **allegations of corruption / human rights violations** and the same must not be expressly barred under the specific exemptions enumerated under Section 8 of the RTI Act.

Decision:

7. In the considered opinion of the Commission, the appellant is entitled to information sought. The expression 'human rights' is defined in Section 2(d) of the Protection of Human Rights Act, 1993.

“human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

8. Article 21 of the Constitution of India guarantees a right to lead a dignified life with personal liberty. Article 14 guarantees equality before law to all citizens. In a catena of judicial pronouncements, the right to a fair trial is held to be an embodiment of the Article 14 read with Article 21.

9. Also, India is a signatory to the International Covenant on Civil and Political Rights (CCPR) and the same has been ratified since 10th April 1979. Article 14 of the CCPR reads as:

Article 14

1. *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.....*

2. *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*

3. *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

*(b) **To have adequate time and facilities for the preparation of his defence** and to communicate with counsel of his own choosing;*

[Emphasis added]

10. Having derived strength from the aforesaid provisions, I am left with no doubt that a man preparing for his self defense in penal proceeding exercises his basic human right. Any impediment in the same would invariably be a breach of human right. The term 'violation' as preceding the term 'human right' in proviso to Section 24 of the RTI Act has to be understood in a broader manner so as to cover any past or ongoing violation of human rights. It is not necessary that the breach of human rights has to be conclusively proved by the information seeker. A credible allegation of breach of human right, which weighs favourably with the Commission warrants disclosure of information.

- 11.** Had the stamps affixed on the passport of appellant been clearly identifiable, no need would have arisen for seeking information from the public authority. The present case can also be viewed as a simple case of hardship which needs a sympathetic redressal by the public authority. The Commission is quite alive to the possible exponential increase in requests for information under RTI Act regarding foreign travel citing the present decision as precedent. It would not be possible to postulate all specific instances in which information shall be divulged. The same depends on facts and circumstances of each case and the present decision cannot be generalised.
- 12.** In the facts of present case, the appellant is not seeking information related to any third party but his own travel details to prove his innocence in a criminal proceeding. The information sought is crucial to the appellant for a fair opportunity of self defence. The Commission is not considering the culpability or innocence of the appellant in the criminal case set up against him; but declining a fair opportunity to arrange for material of self defence would certainly breach the human right of appellant.
- 13.** Furthermore, there is no impediment in terms of exceptions carved out in Section 8 of the RTI Act prohibiting dissemination of information sought. Accordingly, the Commission directs the PIO, Bureau of Immigration, Intelligence Bureau/MHA to provide complete information sought within four weeks of receipt of the present order.
- 14.** The appeal is allowed in aforesaid terms.

(Yashovardhan Azad)
Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(R.P. Grover)
Designated Officer