

CENTRAL INFORMATION COMMISSION

(Room No.313, CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi-110067)

Before Prof. M. Sridhar Acharyulu (Madabhushi Sridhar), CIC

CIC/POSTS/A/2017/603271

Seema Jain v. PIO, Department of Posts

Order Sheet: RTI filed on 12.02.2017, CPIO reply - Nil, FAO - Nil, Second appeal filed on 21.06.2017, Hearing on 02.04.2018;

Proceedings on 02.04.2018: Appellant present from NIC Lalitpur, Public Authority represented by CPIO. Mr B.K. Singh from NIC Jhansi

Date of Decision -25.04.2018: Directions for compliance, Show-cause issued-POSTED TO 22-6-2018

ORDER

FACTS:

1. The appellant sought year-wise-income details of her husband Mr. Sachendra Kumar, from the date of his appointment as agent in Indian Post, details of fixed deposits, bank accounts etc with latest balances. The CPIO on 27.02.2017 said that the information sought was not available in material form. The Appellate Authority upheld the response of CPIO and stated that as per section 2(f), information which is available can be furnished but creation or collection is not expected. It was also pleaded that as per section 8(1)(e) of the Act, information regarding Mr. Sachendra Kumar Jain are exempted from disclosure.

Decision:

2. Ms. Seema Jain, appellant explained that she need to know the details of income of Mr. Sachendra Kumar, her husband, to disprove his claims of low income and seek increase in the maintenance of their daughter. She said that her husband's claim for divorce was rejected and he was paying a meagre amount of Rs 500 per month for maintenance. Her petition for increase in the maintenance is pending before Family Court, Lalitpur. She alleged that Mr. Sachendra Kumar filed a false affidavit about his income.

3. In her written submissions she referred to the CIC decision ***Prashansa Sharma v Delhi Transco Ltd.*** (CIC/SA/A/2014/000433) dated 03.02.2015

holding that income related information such as annual returns of assets, investments, IT returns should not be withheld from each other between the spouses, as that information was needed to fulfil the legal duty to maintain the spouse. Information about salary and annual statements of assets of the public servant is not personal information. Though the savings accounts, IT returns and other investments are considered personal, they could be disclosed in public interest as per proviso of Section 8(1)(j) of RTI Act. Enforcing the legal right of maintenance is the 'public interest'. She cited **Bhuvan Mohan Singh v Meena & Ors.** (AIR 2014 SC 2875) wherein the Supreme Court held that:

"Any delay in adjudication of maintenance cases by the Family Court is not only against human rights but also against the basic embodiment of dignity of an individual. The object of the provisions of grant of maintenance is to provide speedy remedy for supply of food, clothing and shelter to the deserted wife and to prevent vagrancy and destitution. Without proper information made available or accessible, it is difficult for a spouse to seek realisation of human right to maintenance."

4. Countering the claims of CPIO she said that the information she sought was readily available and need not be compiled or created and hence it was wrongful to refuse information under Section 2(f). She referred to decision in **Prashansa Sharma v Delhi Tansco Ltd**, to reinforce her argument that maintenance of wives and children, prevention of domestic violence, are in the interest of peace and stability of society, and thus in 'larger public interest'. She questioned the CPIO for not applying his mind and turning blind to this public interest involved and prayed for penalizing the CPIO.

5. The appellant said that her husband's claim for divorce was rejected on 15.03.2018. Mr. Sachendra Kumar was appointed as an agent in the Lalitpur Division and was regularly drawing the commission on the investments but the CPIO has wrongly claimed that their public authority does not maintain the income details of its agents. The CPIO Mr. B.K. Singh claimed that except the voucher generated when commission was paid. He said that the appointing authority for the agents was Zilla Parishad and the details such as income, investments, fixed deposit account statements are generally available with the

appointing authority. He further stated that their office does not maintain bank balance and related details and only pay the commission over each transaction.

6. If CPIO's claim that he did not have the information and that was held by Zilla Parishad office, he would have transferred the RTI application to the Zilla Parishad Office. He should have given the details of the commission paid to appellant's husband which was held by the Post Office. The CPIO ignored this duty and violated section 2 (f) and section 8 (1) (e) of RTI Act.

7. The appellant in this case is fighting for her peace in domestic life, and financial support to maintain her daughter. The information sought is important for her to make a claim for adequate maintenance and also necessary information for the court of law to adjudicate the questions of facts and law. Thus it is not only the matter in larger public interest but also the information concerning right to life of her and their daughter.

8. In ***Kusum Sharma*** case, the Delhi High Court said:

3. Maintenance is not merely a legal right. It is part and parcel of basic human right. For weaker sections, it is a problem in the sense that their very survival rest on the maintenance. The object behind the provision is two-fold: firstly, to prevent vagrancy resulting from stained relation between the husband and wife, and secondly, to ensure that the indigent litigating spouse is not handicapped in defending or prosecuting the case due to want of money. On the breakdown of the marriage, it often so happens that the husband pays nothing for the support of his wife and children and the wife has to fall back upon her parents and relatives to fend her immediate needs. Reasonableness too demands extension of such a relief in favour of a needy spouse. Had not the parties drifted away from one another, the spouse from whom support is sought would have in any case supported the other spouse entailing financial burden. Hence, it is but natural to make the husband bear the cost of maintaining his wife pending disposal of any dispute until some permanent relief is provided to her.

9. Delhi High Court referred to Section 125 of the Code of Criminal Procedure and said it "was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the Court and she

can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like a person to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity”.

10. In ***Radhika v. Vineet Rungta***, 110 (2004) DLT 111, Delhi High Court observed that parties rarely disclose their true income and therefore, the Court have to resort to the status and life style of the parties for fixing the maintenance. When the wife has a right to information in her capacity as citizen, why should she not seek such information which would help her to secure honourable maintenance.

11. Thus, information about assets, income and investments of spouses cannot be protected as personal information between spouses, in view of the public interest in maintenance of families and domestic peace. The proviso to Section 8(1) (j) read with Section 8(2) of the Right to Information Act entitled the appellant to get information because of overwhelming public interest and her interest in securing adequate maintenance for their daughter.

12. The CPIO has also invoked without any justification, Section 8(1)(e), which enable the public authority to deny information which was given in fiduciary relationship. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary

has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and expected not to disclose the thing or information to any third party. The details of investment and payments in the form of commission to an agent, is not information given in fiduciary relation. The commission paid by public authority is not the information given by the appellant's husband. It is the information held by the authority and not personal information. The amount is paid from public exchequer according to the rates decided by the public office for public activity. It is illegal to deny such information.

13. Hence, the Commission directs Mr. B.K. Singh, CPIO to provide point-wise information after collecting the same from the Zila Parishad, Lalitpur along with details of the commission paid by the Postal Department, within 25 days from this date.

14. The Commission directs Mr. B.K. Singh, CPIO to show-cause why maximum penalty should not be imposed upon him for not transferring the RTI application to the Zila Parishad, Lalitpur within five days and for illegally denying the information sought. The CPIO is directed to submit his explanation, before 22.06.2018 and the matter is posted on 22.06.2018, for compliance and penalty proceedings on the aforesaid date.

SD/-

(M. Sridhar Acharyulu)
Central Information Commissioner