

केन्द्रीय सूचना आयोग  
Central Information Commission  
बाबा गंगनाथ मार्ग, मुनिरका  
Baba Gangnath Marg, Munirka  
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No. CIC/MHOME/A/2019/107928

Ehtesham Qutubuddin Siddiqui

... अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO, Ministry of Home  
Affairs, IPS-IV Desk, North Block,  
New Delhi.

... प्रतिवादीगण /Respondents

Relevant dates emerging from the appeal:

RTI : 26.08.2018	FA : 29.10.2018	SA : 04.02.2019
CPIO : 03.09.2018	FAO : 30.11.2018	Hearing : 06.11.2019

**ORDER**  
**(29.11.2019)**

**CORAM**

*HON'BLE CIC SHRI SUDHIR BHARGAVA*  
*HON'BLE IC SHRI BIMAL JULKA*  
*HON'BLE IC SHRI SURESH CHANDRA*

1. The appellant filed an application under the Right to Information Act, 2005 (RTI Act) before the Central Public Information Officer (CPIO), Ministry of Home Affairs (MHA), North Block, New Delhi seeking copies of UPSC forms along with

complete documents annexed therewith of each of 12 IPS officers mentioned in his RTI application.

2. The appellant filed second appeal before the Commission on the grounds that the CPIO incorrectly denied information under Section 8(1)(j) of the RTI Act. The respondent submitted that the information sought pertained to personal information of third parties and no public interest was involved in the matter. In fact, appointments of the IPS officers in question were made 20 years prior to the date on which the RTI application was made. Hence, in view of Section 8(3) of the RTI Act, exemption provided under Section 8(1)(j) of the RTI Act was not available in to the present case. The appellant requested the Commission to direct the CPIO to provide the information sought for.

**Hearing (13.06.2019) :**

3. The appellant, Shri Ehtesham Qutubuddin Siddiqui attended the hearing through video-conferencing. The respondent Shri Anjan Sarkar, Under Secretary (IPS-IV Desk), Ministry of Home Affairs, New Delhi was present in person.

**Interim Decision:**

4. The Commission passed the following directions:

*"In view of the above, the Commission surmises that a decision in this case would have major implications for the implementation of the RTI Act. In view of this, the Commission is of the opinion that the matter should be referred to a larger bench."*

**Hearing on 06.11.2019:**

5. The appellant attended the hearing through video conference and on behalf of the respondents Shri Pankaj Gangwar and Shri S K Verma, Under Secretary, Department of Personnel and Training and Shri Ravi Nirmal, Under Secretary, Ministry of Home Affairs, New Delhi, attended the hearing in person.

5.1. The appellant argued that the CPIO incorrectly denied information under Section 8(1)(j) of the RTI Act on the ground that the information sought for pertained to personal information of third parties. He contended that the appointments of IPS officers in question were made 20 years before the date on

which the RTI application was made. Hence, in view of the provisions contained under Section 8(3) of the RTI Act, the exemption of personal information of third party provided under Section 8(1)(j) of the RTI Act ceases to exist. Hence, the CPIO should have provided the information sought for.

5.2. The respondent while defending their case reiterated that the information sought by the appellant pertained to personal information of third parties, the disclosure of which had no relationship to any public interest and would have caused unwarranted invasion of the privacy of the third parties. The respondent emphasized that the Hon'ble Supreme Court of India in plethora of cases had held that the right to privacy was a fundamental right, and hence, the same could have not been eclipsed by ordinary statute. Hence, the information sought for could not be disclosed under the provisions of the RTI Act. The respondent denied the fact that the right to privacy arose 20 years back and ended with the appointment. The respondent contested the claim of the appellant that the limitation period of 20 years expired after lapse of 20 years from the date of appointment. It was contended that it was continuing and hence the provisions of Section 8(3) were not attracted in that case. The matter of privacy was continuous phenomenon.

5.3. The issue before the Commission was as to whether by virtue of the provisions contained under sub-section (3) of section 8 of the RTI Act, the personal information which was in the custody of a public authority was to be disclosed under RTI application after lapse of 20 years. The relevant portion of section 8 of the RTI Act read as under:

*"8. Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-*

*(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;*

.....

*(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;*

.....  
*(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;*

.....  
*Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.*

*(2) .....*

*(3) Subject to the provisions of clauses (a), (c) and (i) of subsection (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:*

*Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."*

**5.4.** The Right to Privacy is not enumerated as a Fundamental Right either in terms of Article 21 of the Constitution or otherwise. It, however by reasons of an elaborate explanation of the Apex Court, has been held to be an essential ingredient of "personal liberty".

**5.5.** The Supreme Court in case of *Kharak Singh vs. The State of U. P. & Others* [1963 AIR 1295] dated 18.12.1962 has held as under:

*"Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. It is true our constitution does not expressly declare a right to privacy as a Fundamental Right, but the said right is an essential*

*ingredient of personal liberty. Every democratic country sanctifies domestic life.....”*

**5.6.** The Supreme Court in case of *R.Rajgopal vs. State of Tamil Nadu [1995 AIR 264]* dated 07.10.1994 has held as under:

*“...The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a ‘right to be let alone’. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters.”*

**5.7.** In *Thappalam Service Cooperative Bank Limited vs State of Kerala(2013) 16 SCC 82*, the Supreme Court has recognized that the Right to Privacy as a Fundamental Right emanates from Article 21 of the Constitution.

**5.8.** The Commission further notes that the Hon’ble Supreme Court of India in case of Justice K. S. Puttaswamy (Retd.) vs. Union of India, WP(C) No. 494/2012 dated 26.09.2018 has observed that:

*“446) (m) ..... it stands established, without any pale of doubt that privacy has now been treated as part of fundamental right. The Court has held that, in no uncertain terms, that privacy has always been a natural right which given an individual freedom to exercise control over his or her personality. The judgment further affirms three aspects of the fundamental right to privacy namely:*

- (i) Intrusion with an individual’s physical body,*
- (ii) Informational privacy and*
- (iii) Privacy of choice.”*

**5.9.** The Hon’ble Supreme Court of India had further observed that informational privacy deals with the person’s mind. “In this manner, it protects a person by giving her control over the dissemination of material that is personal to her and disallowing unauthorized use of such information by the State.”

**5.10.** The Hon'ble Supreme Court of India, in catena of cases, has also emphasized the primacy of the provisions of the Constitution and that the provisions of the Constitution will prevail over any enactment of the legislature, which itself is a creature of the Constitution.

**5.11.** The High-Level Committee chaired by Justice B.N.Srikrishna in their report on data protection law has observed that:

*“data protection law is designed to limit the processing of personal data to legitimate reasons where the flow of information is beneficial and respects the autonomy of the data principal. It is particularly sensitive to the harm to an individual pursuant to the disclosure of personal data and seeks to actively prevent such harm.*

*However, disclosure of information from the public authorities may lead to private harms being caused. It is thus important to recognize that, in this context, there is a conflict of fundamental rights, between transparency and privacy. This requires careful balancing. The fact that neither the right to privacy nor the right to information is absolute and will have to be balanced against each other in some circumstances has been recognized by the Supreme Court.”*

**5.12.** The Constitutional Court of South Africa in *NM & Ors vs Smith & Ors.*, 2007 (5) SA 250(CC), while dealing with the fundamental right to privacy recognized by the South African Constitution, has made the following observations:

*“An implicit part of this aspect of privacy is the right to choose what personal information of ours is released into the public space. The more intimate that information, the more important it is in fostering privacy, dignity and autonomy that an individual makes the primary decision whether to release the information or not. That decision should not be*

*made by others. This aspect of the right to privacy must be respected by all of us, not only the state.....”*

**5.13.** In *D S Nakara & ors vs Union of India (1983) 2 SCR 165* the Supreme Court while holding that the division of pensioners into two classes being violative of Article 14 of the Constitution *inter alia* observed that a pension scheme which looked to the goals for attainment of welfare state proposed to be set up in the light of the Directive Principles of State Policy and Preamble of the Constitution the pensioners for payment of pension from a class. The division which classified the pensioners into two classes on the basis of the specific date was devoid of any rational principle and was both arbitrary and unprincipled being unrelated to the object sought to be achieved by grant of liberalized pension and the guarantee of equal treatment contained in Article 14 was violated inasmuch as the pension rules which were statutory in character meted out differential and discriminatory treatment to equals in the matter of computation of pension from the dates specified in the impugned memoranda.

**5.14.** In the case under consideration issue is whether the personal information could be disclosed. As per the provisions of sub-section (3) of Section 8 of the RTI Act, personal information which is in the custody of public authority may be disclosed after 20 years from the date of occurrence. Perhaps the RTI Act aims to ensure greater accountability so as to make the public authorities more progressive, participatory and meaningful. The operation of the statute would provide more access to the information and thus bring transparency and accountability. The RTI Act is a statute Act which provides for rights and obligations of persons. On the other hand, the right to privacy is a facet of right to life and personal liberty enshrined in Article 21 of the Constitution. There has to be harmonious construction of both the provisions.

**5.15.** The Supreme Court in plethora of cases had held that the right to privacy is an evolving right which may vary from case to case and depending upon the facts of the case and public interest involved in disclosure of information. Right

to Privacy being a facet to the Right to Life and personal liberty is on a higher pedestal and a harmonious construction of the provisions of the RTI Act and of the Constitutional provisions would necessitate reading down of the provisions of RTI Act so as to avoid illegality of the statutory provisions. Moreover, the respondent argued that it was not an event or occurrence which happened 20 years back. The respondent vehemently claimed that the event was continuous and thus provisions of Section 8(3) were not applicable in this case.

6. The Commission after adverting to the facts and circumstances of the case, hearing both parties and perusal of records, feels that the right to privacy being a facet of fundamental right under Article 21 of the Constitution has to be protected in accordance with the three parameters laid down by the Supreme Court in the case of K.S.Puttaswamy (*Supra*) i.e. (i) there must be legal object, (ii) there must be legal framework and (iii) there must be nexus between the objective to be achieved and the privacy to be compromised. It appears that for meeting different treatment, there must be a reasonable classification and the classification must have a rational nexus with the objective to be achieved. If we take that the RTI Act contains provisions providing framework for disclosures outweighing right to privacy under Section 8(3) of the RTI Act which aims transparency and accountability, the appellant may be entitled for the information of the occurrence which took place 20 years before the RTI application. Thus the Right to Privacy of the 3<sup>rd</sup> party may not be absolute if the same is falling within the ambit of the aforementioned parameters. However, the respondent have claimed that the occurrence was not a onetime event i.e. the Right to Privacy is a continuous process and drawing a line of giving applications for appointment as such may not be a water tight compartment wherein the Right to Privacy was not existing or continuing after the lapse of 20 years.



Proviso to sub section 3 of section 8 of the RTI Act provides that wherein a question arises as to the date from which the said period of 20 years has to be computed the decision of the Central Government shall be final subject to the usual appeals provided in this Act. Keeping in view the submissions made by both the parties and the above observations, the appeal is dismissed.

Copy of the decision be provided free of cost to the parties.

Sd/-

**(Suresh Chandra) (सुरेश चंद्रा)**  
**Information Commissioner**  
दिनांक / Date: 29.11.2019

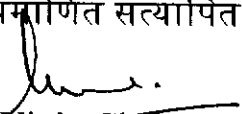
Sd/-

**(Bimal Julka) (बिमल जुल्का)**  
**Information Commissioner**  
दिनांक/Date: 29.11.2019

Sd/-

**Sudhir Bhargava (सुधीर भार्गव)**  
**Chief Information Commissioner**  
Date/ 29.11.2019

Authenticated true copy  
(अभिप्रमाणित सत्यापित प्रति)

  
(Brig Vipin Chakrawarti) (ब्रिगेडियर विपिन चक्रवर्ती)  
Registrar (पंजीयक)  
011-26105021

Addresses of the parties:

1. The First Appellate Authority (FAA)  
Ministry of Home Affairs,  
Police-I Division (IPS-IV Desk),  
Room No. 220, North Block, New Delhi.
2. The Central Public Information Officer (CPIO),  
Ministry of Home Affairs,  
(IPS-IV Desk),  
Room No. 220, North Block, New Delhi.

3. Shri Ehtesham Qutubuddin Siddiqui  
Confined At Nagpur Central Prison  
(C-9168, Chhoti Gol Separate),  
Warda Road, Nagpur, Maharashtra- 440020.

