

CENTRAL INFORMATION COMMISSION
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Decision No. CIC/SG/A/2011/001828/15265
Appeal No. CIC/SG/A/2011/001828

Relevant facts emerging from the Appeal:

Appellant : Sh. D. K. Pandey,
½, Vasti Bihar,
Gurudwara Road, Mnago,
Jamshedpur, Jharkhand.

Respondent : Mr. Y. M. Shukla
Public Information Officer & PO
Ministry of External Affairs
Passport Office,
E-59-60, Sector – II,
PO. –Dhurwa, Ranchi – 834004.

RTI application filed on : 25-04-2011
PIO replied on : 20-05-2011
First Appeal filed on : 30-05-2011
First Appellate Authority order on : 30/06/2011
Second Appeal received on : 11-07-2011

The information sought:

The appellant had asked in his application for photocopy of the passport application form of Pallavi Kumari Mishra D/o Sh Hira Nand Mishra 2010-2011 and the date of issue of the passport from the Passport office Ranchi.

The PIO replied:

“Under the RTI Act, 2005, third party information cannot be provided. Hence, information in respect of Miss Pallavi Kumari can not be disclosed to others”.

Grounds for the First Appeal:

Information had not been provided to the appellant.

Order of the First Appellate Authority (FAA):

The FAA had upheld the PIO’s refusal to give the information.

Ground of the Second Appeal:

Appellant not satisfied with the PIO reply and order of the First Appellate Authority.

Relevant Facts emerging during Hearing:

The following were present

Appellant : Absent;

Respondent : Mr. P. Roychaudhuri, Advocate representing Mr. Y. M. Shukla, PIO & PO;

The respondent states that the information is covered under Section 8(1)(j) of the RTI Act and hence it was not provided. He also relied on the case of Suhash Chakma Vs CIC in writ petition no. 9118 in which the Hon’ble High Court Delhi has held that, “*information which involves the 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 an hearing such third party.”

The Commission notes that the High Court had only stated that Section 11 procedure may be followed by the PIO. In the instant case the PIO does not appear to have followed the procedure of Section 11 and the failure on the part of the PIO cannot be used to deny the information to the Appellant. The PIO has claimed exemption 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 authorisation, 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 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 does not uphold the denial of information under Section 8(1)(j).

Decision:

The appeal is allowed.

The PIO is directed to provide the information free of cost to the Appellant before 20 November 2011.

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 cost as per Section 7(6) of RTI Act.

Shailesh Gandhi
Information Commissioner
21 October 2011

(In any correspondence on this decision, mentioned the complete decision number.)(ved)