

CENTRAL INFORMATION COMMISSION
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Decision No. CIC/SG/A/2011/002300/15902
Appeal No. CIC/SG/A/2011/002300

Relevant facts emerging from the Appeal:

Appellant : Mr. Sanat Kumar
Vill + Post: Kerma, Via – Turki,
District – Muzzaffarpur,
Pin – 844127 (Bihar)

Respondent : Mr. B. K. Pattnaik
PIO & Dy. General Manager
United Bank of India, Head Office
11, Hemanta Basu Sarani,
Kolkata – 700001.

RTI application filed on : 28-04-2011
PIO replied on : 29-05-2011
First Appeal filed on : NOT ENCLOSED
First Appellate Authority order of : 29-06-2011
Second Appeal received on : 23-08-2011

Information Sought:

1. To provide a copy of declaration to be given by Sri Jaiant Kishore Narayan, employee of Kanti Branch mentioning the number of times he appeared in the Matriculation or its equivalent examination and his date of joining. What was his actual qualification and what was his qualification at the time of joining in the Bank.
2. Whether Sri Jaiant Kishore Narayan has shown all his educational qualifications. If not, why.
3. To provide copy certificate of all his educational qualifications.

The PIO reply:

With reference to your captioned letter, we would like to inform you that information sought by you are personal in nature and disclosure of which has no relationship to any public activity or interest as such the same cannot be provided under section 8 (j) of the Right to Information Act, 2005.

Grounds for the First Appeal:

Unsatisfactory reply was given to the appellant by the PIO.

Order of the First Appellate Authority (FAA):

In respect of the queries, raised by the appellant, it is informed that Sri Jaiant Kishore Narayan joined at United Bank of India as an employee under Subordinate Cadre on 05.10.1987 and was promoted to clerical cadre on 22.11.1993 and at present he is attached with UBI, Kanti Branch.

In respect of other queries information sought for related to personal information, as such the same can not be furnished under Sec.8 (1) (j) of the RTI Act, 2005.

Ground of the Second Appeal:

Unsatisfactory information had been provided by the PIO.

Relevant Facts emerging during Hearing:

The following were present:

Appellant : Mr. Sanat Kumar on video conference from NIC-Muzaffarpur Studio;

Respondent : Mr. B. K. Pattnaik, PIO & Dy. General Manager on video conference from NIC-Kolkata Studio;

The PIO has denied certain information sought by the Appellant claiming exemption under Section 8(1)(e) &(j) of the RTI Act. The Commission is examining the claim for exemptions below.

Section 8 (1) (e) of the RTI Act exempts from disclosure 'information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;'

The traditional definition of a **fiduciary** is a person who occupies a position of *trust* in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g. doctor, lawyer, financial analyst or trustee. Another important characteristic of such a relationship is that the information must be given by the holder of information who must have a choice,- as when a litigant goes to a particular lawyer, a customer chooses a particular bank, or a patient goes to particular doctor. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the one who is providing the information. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a license, cannot be considered to have been given in a fiduciary relationship.

In view of the PIO's claim for exemption under Section 8(1)(e) is not upheld.

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.

Therefore we can state that disclosure of information such as assets of a Public servant, -which is routinely collected by the Public authority and routinely provided by the Public servants,- cannot be construed as an invasion on the privacy of an individual. There will only be a few exceptions to this rule which might relate to information which is obtained by a Public authority while using extraordinary powers such as in the case of a raid or phone tapping.

In view of the PIO's claim for exemption under Section 8(1)(j) is also not upheld.

Decision:

The Appeal is allowed.

The PIO is directed to provide the complete information as per available records to the Appellant before 15 December 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 of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi
Information Commissioner
24 November 2011

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