

CENTRAL INFORMATION COMMISSION
Club Building (Near Post Office)
Old JNU Campus, New Delhi - 110067

Full Bench Decision in Appeal No. CIC/SG/A/2010/001790

Appellant : Mr. Manish Bhatnagar,
Plot No. A- 70, Rajeev Nagar,
Near Durga Chowk,
Delhi- 110042

Respondent : Mr. R. N. Mangla,
SPIO & Additional Director,
Department of Women & Child Development,
GNCTD,
1, Canning Lane, K. G. Marg,
New Delhi- 110001

Relevant Facts emerging from the Appeal:-

Information sought:

The Appellant filed a RTI application dated 14/12/2009 with the Respondent seeking the following information:

- “1. Please provide me all the information and certified copies that how many number of rescue operation for children have been done by your relevant department, Govt. of NCT of Delhi under The Child Labour (Prohibition and Regulation) Act 1986, Juvenile Justice (Care and Protection of Children) Act 2000 as well as Bonded Labour System (Abolition) Act 1976, from 1st January 2008 to till date? Please provide a comprehensive list of each and every rescue operation indicating place, date, time and any other relevant information attached with it?*
- 2. Please provide me the complete list and certified copies of how many Govt. officials with there designation were present along with any NGO, people representatives etc during the rescue operations? Please provide a comprehensive list of officials with each and every rescue operations stated in Question no. 1?*
- 3. Please provide a comprehensive list of all the children rescued under each and every rescue operations stated in Question no. 1?*
- 4. Please provide a comprehensive list and certified copies and the affidavit/ identification relied upon of all the guardians/ parents who have been handed the security of all the rescued children?*
- 5. Please provide me the monitoring details and certified copies of each and every rescued child stated in Question no. 1 and as submitted to any Hon’ble court, competent authority or any lawful authority?*
- 6. Please provide me the details and certified copies of how many F.I.R were registered against the employers, placement agencies etc under The Child Labour (Prohibition and Regulation) Act*

1986, Juvenile Justice (Care and Protection of Children) Act 2000 as well as Bonded Labour System (Abolition) Act 1976, from 1st January 2008 to till date as per details as stated in Question no. 1?

7. Please provide me the comprehensive details of the amount recovered from the Employers, Placement agencies etc in all the rescue operations stated in Question no. 1?

8. If there is no or partial recovery of the penalty from the employer in the rescue operations, please fix the responsibility and name of the Government official who is responsible for not following the directions of the Hon'ble Supreme Court?

9. Please provide me the receipt/ details of the grant/ amount deposited by the government of NCT of Delhi for the welfare of each and every rescued child as per stated in Question no. 1?

10. List of all the adult unemployed member of the family of the child labourer who has been provided employment in his place as per stated in question no. 1/

11. List of the entire rescued child who has been directed to receive education as stated in question no. 1?

12. If the information related to questions no. 1 to 11 is incomplete or there is no data, please name and fix the responsibility of the official?

13. If the matter relates to sec 8 and 9 of RTI Act 2005, and the department declines to provide the information or partially gives the information for the above mentioned queries, please provide the justification for the same as per the ruling of Hon'ble Delhi High Court WP (C) No. 3114/2007 in Bhagat Singh Vs Chief Information Commissioner."

Reply of the Public Information Officer (PIO):

Vide letter dated 08/02/2010, the PIO replied that the RTI application was transferred from SPIO, Department of Labour. The said application was forwarded to all the four Child Welfare Committees as they are the competent authority for children in need of care and protection. Reply of the Child Welfare Committee, Lajpat Nagar and Nirmal Chaya Complex was attached for the Appellant's perusal.

The PIO further stated that details of children cannot be provided as per Section 21 of the Juvenile Justice (Care & Protection of Children) Act, 2000 (the "**Juvenile Justice Act**").

Grounds for the First Appeal:

Dissatisfied with the information received from the PIO, the Appellant filed a First Appeal on 10/02/2010.

Order of the First Appellate Authority (FAA):

The FAA vide its order dated 26/02/2010, noted that only information on queries 4 and 11 of the RTI application pertained to the Respondent whereas the remaining queries were related to the Labour Department. The FAA upheld the denial of information under Section 21 of the Juvenile Justice Act. However, the Appellant was allowed to inspect the relevant records of the Child Welfare Committees in accordance with the RTI Act and the Juvenile Justice Act.

Grounds for Second Appeal:

Due to unfair disposal of the First Appeal, the Appellant filed a Second Appeal which was received by the Commission on 28/06/2010.

Relevant facts leading to Full Bench Hearing held on July 28, 2011:

The Second Appeal was heard by Shri. Shailesh Gandhi, Information Commissioner on 09/08/2010. At the said hearing, the Respondent refused to provide the names and addresses of juveniles on the basis of Section 21 of the Juvenile Justice Act. Moreover, he argued that the right to privacy of the rescued child may be violated if the information sought was provided and therefore, it was exempted under Section 8(1) (j) of the RTI Act. On the other hand, the Appellant argued that there was a larger public interest in disclosure of the information sought. It was brought to the Commission's notice that the Respondent had offered an inspection of the relevant records but the Appellant did not avail of the same.

The Information Commissioner was of the considered view that there were certain fundamental issues in the matter, which should be decided by a larger Bench of the Commission. He therefore requested the Chief Information Commissioner to constitute a bench to decide this matter. Thereafter, a Bench comprising of Information Commissioners Smt. Annapurna Dixit, Smt. Deepak Sandhu and Shri. Shailesh Gandhi was constituted by the Chief Information Commissioner to decide the present matter. By hearing notice dated 28/06/2011, the matter was scheduled to be heard by the Full Bench on 28/07/2011.

Relevant facts emerging during Full Bench Hearing held on July 28, 2011:

The following were present:

Appellant: Mr. Manish Bhatnagar;

Respondents: Mr. R. N. Mangla, SPIO & Additional Director.

At the hearing held before the Commission on 28/07/2011, both parties argued and presented their case vociferously. The Appellant admitted that he had received all the relevant information from the Labour Department. However, no information was received by him in relation to queries 4, 5 and 11 of the RTI application from the Respondent and he was seeking information only in relation to the same.

The Appellant was thus seeking information about to '*how many number of rescue operation for children have been done by your relevant department, Govt. of NCT of Delhi under The Child Labour (Prohibition and Regulation) Act 1986, Juvenile Justice (Care and Protection of Children) Act 2000 as well as Bonded Labour System (Abolition) Act 1976, from 1st January 2008 to till date?*' and with respect to this:

"4. Please provide a comprehensive list and certified copies and the affidavit/ identification relied upon of all the guardians/ parents who have been handed the security of all the rescued children?"

5. Please provide me the monitoring details and certified copies of each and every rescued child stated in Question no. 1 and as submitted to any Hon'ble court, competent authority or any lawful authority?"

11. List of the entire rescued child who has been directed to receive education as stated in question no. 1?"

The Appellant primarily argued that there was a larger public interest in disclosing the names and details of children who had been rescued from the bonded labour system. The Appellant contended that poor verification and monitoring by state agencies made it difficult to ascertain whether such children were, in fact, under any parental/ guardian supervision and if they were receiving any education or other benefits

under government schemes. He also contended that a number of children were being given away to dubious persons, and thus the rescued children were being pushed from the fire into the frying pan. Given the lack of enforcement of mechanisms put in place for this purpose by the government organisations, disclosure of such information would, in the very least, enable other independent bodies, NGOs to identify such children and rehabilitate them.

The Respondent gave written submissions to the Commission and argued on the basis of the same. In short, the Respondent argued that the names, addresses of the children which may identify them should not be disclosed in the interest of the child's privacy and to prevent any stigmatization in future. In this regard, he placed reliance on Section 21 of the Juvenile Justice Act and contended that the disclosure of information was prohibited under the said provision. The Respondent further argued that the information sought was exempted from disclosure under Section 8(1)(e) and 8(1)(j) of the RTI Act. He also relied on certain decisions of the Supreme Court of India as well as the Commission in support of his contentions. The Respondent submitted that though the Appellant could inspect all the relevant records, he would not provide copies of the same as such information could be used to harm the child.

The Commission reserved the order at the hearing held on 28/07/2011.

Full Bench Decision announced on 26 August 2011:

Based on the submissions of the Appellant and perusal of the RTI application, the Commission noted that the information sought by the Appellant is as follows:

1. List of affidavits/ identification along with certified copies relied upon, of all the guardians/ parents who have been handed the security of all the children rescued from bonded labour;
2. Monitoring details along with certified copies of every child rescued from bonded labour and as submitted to any Hon'ble court, competent authority or lawful authority; and
3. List of children rescued from bonded labour who are required to receive education.

The RTI Act codifies the citizens' fundamental right to information. It was enacted with the spirit of ensuring transparency and access to information giving citizens the right to information. As observed by the High Court of Delhi in CPIO, Supreme Court of India v. S.C. Agarwal W. P. (C) No. 188/2009, the RTI Act is premised on disclosure being the norm, and refusal, the exception. According to the RTI Act, information may be exempted from disclosure in accordance with Sections 8 and 9 only and no other exemptions can be claimed while rejecting a demand for disclosure. The High Court of Delhi in Bhagat Singh v. CIC W. P. (C) No. 3114/2007 observed that exemptions in the RTI should be strictly construed and held:

“Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself.”

It follows from the aforesaid that under the RTI Act, information can be exempted from disclosure in accordance with Sections 8 and 9 of the RTI Act only and no other exemptions can be claimed while rejecting a demand for disclosure of information.

In the instant case, the Respondent has relied on Section 21 of the Juvenile Justice Act and argued that names, addresses of children which may identify them should not be disclosed in the interest of the child's privacy and to prevent any stigmatization in future. Section 21 of the Juvenile Justice Act provides as follows:

“21. Prohibition of publication of name, etc., of juvenile in conflict with law or child in need of care and protection involved in any proceeding under the Act.- (1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child nor shall any picture of any such juvenile or child be published:

Provided that for reasons to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child.

(2) Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty-five thousand rupees.”

Given the above, the issue which arises before the Commission is whether there is any inconsistency as regards furnishing of information between Section 21 of the Juvenile Justice Act and the RTI Act and if so, whether Section 22 of the RTI Act would override the Juvenile Justice Act to that extent. Section 22 of the RTI Act provides as follows:

“22. Act to have overriding effect.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets, Act 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

Section 22 of the RTI Act expressly provides that the provisions of the RTI Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act. Section 22 of the RTI Act, in no uncertain terms, lays down that as regards furnishing of information, the RTI Act shall override anything inconsistent contained in any other law. Section 21 of the Juvenile Justice Act prohibits the disclosure of name, address, school or any other particular that would lead to the identification of a juvenile in conflict with law or a child in need of care and protection under the Juvenile Justice Act in any report of a newspaper, magazine, news sheet or visual media. The provision further places an embargo on publication of a picture of any such child or juvenile.

However the Section further goes on to clarify that there is no bar on disclosure of this class of information and that- provided that for reasons to be recorded in writing, the authority holding the enquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child.

Therefore there is no inconsistency between the provisions of the RTI Act and Section 21 of the Juvenile Justice Act which delicately balances the rights of the child with the need for disclosure of information in respect of the child if such disclosure is in the interest of the juvenile or child.

Undoubtedly, the RTI Act and the Juvenile Justice Act coexist and even while operating in distinct spheres with specific objectives, are not in conflict but blend harmoniously in their quest for transparency

even in the personal sphere where such disclosure is in the “larger public interest” in respect of the former and “interests of the juvenile or the child” in respect of the latter.

The PIO has contended that the information sought was exempted from disclosure under Sections 8(1)(e) and 8(1)(j) of the RTI Act. Section 8(1)(e) of the RTI Act provides as follows:

“8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

...

(e) 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;”

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 Respondent has elucidated the concept of ‘fiduciary’ and argued that since the children in need of care are in the custody of the officer in- charge of the Approved Home, Child Welfare Committees as well as the Respondent- public authority, there is indeed a fiduciary relationship between the child in need of care and protection and the above authorities. The Respondent has cited certain single Bench decisions of the Commission interpreting the ambit of Section 8(1)(e) of the RTI Act viz. K. G. Bafana v. MHA CIC/AT/A/2007/00073 and Milap Choraria v. President’s Secretariat CIC/WB/A/2006/01003.

Section 8(1)(j) of the RTI Act stipulates as follows:

“8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

...

(j) 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:

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

From a plain reading of Section 8(1)(j) of the RTI Act, it appears that divulgence of any personal information to any third party that has no relationship with any public activity or interest, or which would cause unwarranted invasion of the privacy of an individual is barred under Section 8(1)(j) of the RTI Act. In this regard, the Respondent appears to have placed reliance on the concept of ‘right to privacy’ as enunciated by the Supreme Court of India in various decisions such as Kharak Singh & Ors. v. State of Uttar Pradesh AIR 1963 SC 1295, Rajagopal v. State of Tamil Nadu 1994 (6) SCC 632, PUCL v. Union of India (1997) 1 SCC 301, Govind v. State of Madhya Pradesh AIR 1975 SC 1378 and Dinesh Buddha v. State of Rajasthan (decided by the Supreme Court of India on 28/02/2006).

In the present matter, the Commission is of the considered view that even if the information sought was exempted under Sections 8 (1)(e) and (j) of the RTI Act,-as claimed by the respondent,- Section 8(2) of the RTI Act would mandate disclosure of the information. Section 8(2) of the RTI Act provides as follows:

“Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.”

Section 8(2) of the RTI Act mandates that even where disclosure of information is protected by the exemptions under Section 8(1) of the RTI Act, if public interest in disclosure outweighs the harm to such protected interests, the information must be disclosed under the RTI Act. This sentiment has resonance in Section 21 of the Juvenile Justice Act which complements this epithet and also allows disclosure of information pertaining to juvenile or the child if such disclosure is in the interest of the juvenile or the child. The menace of child labour has been plaguing the Indian society for a considerable period of time. Though there are several legislations, government policies and schemes in place aimed at prohibition and regulation of child labour and rehabilitation of such children, the implementation of such legislations, policies and schemes continues to remain in shambles. Moreover, despite several court verdicts, child labour still persists in a monstrous manner in our country. The Supreme Court of India, while considering the issue of ‘child labour in India’, in *M. C. Mehta v. State of Tamil Nadu & Ors.* (decided on 10/12/1996) observed as follows:

*“2. Our Constitution makers, wise and sagacious as they were, had known that India of their vision would not be a reality if the children of the country are not nurtured and educated. For this, their exploitation by different profit makers for their personal gain had to be first indicted. It is this need, which has found manifestation in Article 24, which is one of the two provisions in Part IV of our Constitution on the fundamental right against exploitation. The framers were aware that this prohibition alone would not permit the child to contribute its mite to the nation building work unless it receives at least basic education. Article 45 was therefore inserted in our paramount parchment casting a duty on the state to endeavour to provide free and compulsory education to children. (It is known that this provision in Part V of our Constitution is, after the decision by a Constitution Bench of this Court in *Unni Krishnan, 1993-1 SCC 645*, has acquired the status of a fundamental right). Our Constitution contains some other provisions also to which we shall advert later, desiring that a child must be given opportunity and facility to develop in a healthy manner.*

3. Despite the above, the stark reality is that in our country like many others, children are exploited lot. Child labour is a big problem and has remained intractable, even after about 50 years of our having become independent, despite various legislative enactments, to which we shall refer in detail subsequently, prohibiting employment of a child in a number of occupations and avocations.” (Emphasis added)

The reality alas has not changed significantly since 1996, when the Court made these observations. The manner in which state agencies are monitoring the rescue and rehabilitation of child labourers is extremely deplorable. Poor verification procedures render ineffective any efforts to rehabilitate the child. It is not possible to ascertain whether such children have been handed over to their parents/ guardians or whether any education or other benefits have been availed by them under government schemes. Even where a child is rescued from bonded labour, poverty and illiteracy compel parents/ guardians to send the child back to work subjecting him to exploitation, cruelty and despair. Despite the observations of the Supreme Court of India on unbridled existence of child labour in India even after 50 years of independence, the reality is that this issue continues to remain a challenge to India’s commitment to economic welfare and social justice till date. It certainly is reflective of the appalling manner in which government machinery has functioned in its goal to curb child labour.

Every child is an asset who will shape the future of the country, when nurtured properly. Given the lack of enforcement of government machinery in place for the purpose of prohibiting and regulating child labour and rehabilitating such children, disclosure of the information sought by the Appellant would, in the opinion of this Bench, at least enable other independent bodies, and NGOs to identify such children and rehabilitate them. Besides such disclosure could lead to a check on the undesirable practices which are known to be prevalent. Citizens monitoring of these, is likely to reduce malpractices and could lead to improvements beneficial to the children who should be freed from child labour and bonded labour. When balancing the probable harm in releasing the information sought, with the possible good that transparency could do to the interest of the suffering and exploited child, the Commission feels the good impact of Citizens being able to protect children is much greater than any probable harm. In view of the same, the Commission rules that the public interest involved in disclosure of the information is far more than any possible harm which may come to any children by revealing their names and details. The larger public interest is to ascertain whether the Nation's policy of abolition of bonded labour and child labour with regard to rescue, repatriation and rehabilitation of child labourers is being effectively implemented.

This Bench has not delved into the issue of applicability of Sections 8(1)(e) and 8(1)(j) of the RTI Act for the reasons given above. Hence there is no requirement to consider the Commission's decisions in *K. G. Bafana Case* and *Milap Choraria Case*, as cited by the Respondent. Moreover, the rulings of the Supreme Court of India cited by the Respondent were before the advent of the RTI Act and as such do not appear to address the issues currently before this Bench.

The Appeal is allowed. The SPIO is directed to provide the following information to the Appellant **before 26 September 2011:**

1. List of affidavits/ identification along with certified copies relied upon, of all the guardians/ parents who have been handed the security of all the children rescued from bonded labour;
2. Monitoring details along with certified copies of every child rescued from bonded labour and as submitted to any Hon'ble court, competent authority or lawful authority; and
3. List of children rescued from bonded labour who are required to receive education.

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.

Sd/

Smt. Annapurna Dixit
Information Commissioner
26 August 2011

Sd/

Smt. Deepak Sandhu
Information Commissioner
26 August 2011

Sd/

Shri. Shailesh Gandhi
Information Commissioner
26 August 2011

Authenticated true copy:

(Dhirendra Kumar)

Under Secretary & Dy. Registrar