

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 31.10.2013

+ WP(C) No.677of 2013 & CM No.1293of 2013 2013

UNION OF INDIA

....Petitioner

Through: Mr. Rakesh Tikku, Sr. Adv. With Mr. P. Chaudhury, Adv.

*Versus*

ANITA SINGH

....Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

The respondent before this Court vide application dated 8.8.2011 sought the following information from the PIO of the Passport Office, Ministry of External Affairs:

1.	Provide the photocopy of the passport with complete details of Shri Ajeet Singh son of Shri Ram Bahadur Singh, 496 and 498, dandi gadi cantt. Dehradun. It was issued in 1997-98.
2.	Provide the certified Xerox copy of the date of birth certificate, education documents and residential proof certificates.

2. The aforesaid information was refused by the PIO on the ground that being a third-party information, it was exempt from disclosure under Section 8(1)(j) of the Right to Information Act. Being aggrieved from the refusal of the PIO to furnish the desired information, the respondent approached the Central Information Commission. Vide impugned order dated 1.5.2012, the Commission, *inter alia*, held as under:

“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, organizations 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 authorization or passport, 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.

In view of this the Commission does not accept the PIO's contention that information provided by an applicant when applying for passport is exempt under Section 8(1)(j) of the RTI Act.

Being aggrieved, the petitioner is before this Court seeking setting aside of the aforesaid order.

3. The issue involved in this writ petition came up for consideration before this Court in Union of India versus Rajesh Bhatia W.P(C) No.2232/2012 and other connected matters decided on 17.9.2013 and the following view was taken by this Court:

“8. The only legal issue involved in these petitions is as to whether the information relating to passport holder is exempt from disclosure under Section 8(1)(j) of the RTI Act. Section 8(1)(j) of the Right to Information Act. Section 8(1)(j) of the said Act reads as under:

“(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.”

9. A similar issue came up for consideration before this Court in W.P(C) No.3444/2012 **Union of India versus Hardev Singh**, decided on

23.8.2013. In the aforesaid case, the respondent before this Court had sought the following information from PIO in Regional Passport Office, Bhikaji Cama Palace, New Delhi:

SI.	Queries	Reply
1.	Name and details of the person to whom passport no. B 5131321 was issued from Delhi Passport Office on 28.6.2001	Beant Singh s/o Sukhwinder Singh file no. BO4899/01
2.	Photocopies of all the documents submitted as proof of address and identity on the basis on which the passport was issued.	Photocopies of all documents cannot be provided to you as it is third party information and disclosure of the individual. Please refer to section 8(1) (j) of RTI Act, 2005.
3.	Whether due process and procedure was followed in issue of the passport, including police verification report.	No, police verification report was conducted and received clear on 21.10.2001.
4.	Names and addresses of the witnesses who had recommended and signed for issue of the passport.	As stated in (2) above.
5	Copy of the noting of the officer who had recommended issue of the passport.	Copy of the noting portion cannot be provided to you as it would be direct the resources of the public authority. Please refer to section 7(9) of the RTI Act, 2005.
6.	Whether application from the person for renewal of the passport has since been received. If so, the status thereof is including date of receipt of the application and whether marriage certificate attached.	No record is found for renewal of the passport no B51313
7.	All details as mentioned in (1) to	As stated in (6) above.

	(5) above in respect of the renewal of the passport.	
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The following view was taken in the aforesaid case:

“It would thus be seen that if the information sought by the applicant is a personal information relating to a third party, it cannot be disclosed, unless the information relates to any public activity of a third party who has provided the said information or it is in public interest to disclose the information desired by the applicant. It further shows that a personal information cannot at all be disclosed if its disclosure would cause unwarranted invasion of the privacy of the third party which has provided the said information, unless the larger public interest justifies such disclosure.

4. The above referred provision came up for consideration before this Court in UPSC versus R.K. Jain [W.P(C) No.1243/2011] decided on 13.7.2012 and the following view was taken:

“19. Therefore, “personal information” under the Act, would be information, as set forth above, that pertains to a person. As such it takes into its fold possibly every kind of information relating to the person. Now, such personal information of the person may, or may not, have relation to any public activity, or to public interest. At the same time, such personal information may, or may not, be private to the person.

20. The term “personal information” under section 8(1)(j) does not mean information relating to the information seeker, or the public authority, but about a third party. The section exempts from disclosure personal information, including that which would cause “unwarranted invasion of the privacy of the individual”. If one were to seek information about himself, the question of invasion of his own privacy would not arise. It would only arise where the information sought relates to a third

party. Consequently, the exemption under Section 8(1)(j) is as regards third party personal information only.

21. ... The expression “personal information” used in Section 8(1)(j) means information personal to any “person”, that the public authority may hold. For instance, a public authority may in connection with its functioning require any other person to provide information which may be personal to that person. It is that information, pertaining to that other person, which the public authority may refuse to disclose, if the information sought satisfies the conditions set out in clause (j) of Section 8(1) of the Act, i.e., if such information has no relationship to any public activity (of the person who has provided the information, or who is the source of the information, or to whom that information pertains), or to public interest, or which would cause unwarranted invasion of the privacy of the individual (unless larger public interest justifies disclosure).

22. Merely because information that may be personal to a third party is held by a public authority, a querist does not become entitled to access it, unless the said personal information has a relationship to a public activity of the third person (to whom it relates), or to public interest. If it is private information (i.e. it is personal information which impinges on the privacy of the third party), its disclosure would not be made unless larger public interest dictates it. Therefore, for example, a querist cannot seek the personal or private particulars provided by a third party in his application made to the passport authorities in his application to obtain a passport, merely because such information is available with the passport authorities, which is a public authority under the Act.

24. “Public activity” qua a person are those

activities which are performed by the person in discharge of a public duty, i.e. in the public domain. There is an inherent public interest involved in the discharge of such activities, as all public duties are expected to be discharged in public interest. Consequently, information of a person which is related to, or has a bearing on his public activities, is not exempt from disclosure under the scheme and provisions of the Act, whose primary object is to ensure an informed citizenry and transparency of information and also to contain corruption. For example, take the case of a surgeon employed in a Government Hospital who performs surgeries on his patients who are coming to the government hospital. His personal information, relating to discharge of his public duty, i.e. his public activity, is not exempt from disclosure under the Act.

27.... whenever the querist applicant wishes to seek information, the disclosure of which can be made only upon existence of certain special circumstances, for example- the existence of public interest, the querist should in the application (moved under Section 6 of the Act) disclose/ plead the special circumstance, so that the PIO concerned can apply his mind to it, and, in case he decides to issue notice to the concerned third party under Section 11 of the Act, the third party is able to effectively deal with the same. Only then the PIO/appellate authority/CIC would be able to come to an informed decision whether, or not, the special circumstances exist in a given case.

28. I may also observe that public interest does not mean that which is interesting as gratifying curiosity or love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their rights or liabilities are affected...

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34. It follows that the „privacy“ of a person, or in other words his “private information”, encompasses the personal intimacies of the home, the family, marriage, motherhood, procreation, child rearing and of the like nature. “Personal information”, on the other hand, as aforesaid, would be information, in any form, that pertains to an individual. Therefore, „private information“ is a part of “personal information“. All that is private is personal, but all that is personal may not be private.

37. In light of the above discussion, the following principles emerge for the exemption under Section 8(1)(j) to apply (i) The information sought must relate to “Personal information“ as understood above of a third party. Therefore, if the information sought does not qualify as personal information, the exemption would not apply; (ii) Such personal information should relate to a third person, i.e., a person other than the information seeker or the public authority; AND

(iii) (a) The information sought should not have a relation to any public activity qua such third person, or to public interest. If the information sought relates to public activity of the third party, i.e. to his activities falling within the public domain, the exemption would not apply. Similarly, if the disclosure of the personal information is found justified in public interest, the exemption would be lifted, otherwise not;

OR

(iii) (b) The disclosure of the information would cause unwarranted invasion of the privacy of the individual, and that there is no larger public interest involved in such disclosure.”

5. In the case before this Court, it can hardly be disputed that the information provided by Shri Beant Singh to the Regional Passport Office, as proof of his address and identity, would be a

‘personal information’, though its disclosure may not necessarily impinge on his privacy. Such information has no relationship to any public activity of Shri Beant Singh and in fact this is not the case of the respondent that Shri Beant Singh actually was engaged in public activity at any point of time. I find it difficult to accept the view of the Commission that a person providing information relating to his address and identity, while seeking issue of passport to him is engaged in a public activity. No element of public duty is involved in providing information in proof of the address and identity of the applicant, while seeking a passport. Therefore, such information would certainly be personal information of Shri Beant Singh, having no relationship to any public activity. This is not the case of the respondent that it was in public interest to disclose the documents submitted by Shri Beant Singh as proof of his address and identity. In any case, no public interest is shown to be involved in disclosure of such information pertaining to Shri Beant Singh. As observed by this Court in **R.K. Jain (supra)**, the applicant should disclose, in the application itself, the special circumstances such as existence of public interest which would warrant disclosure of the information sought by him. No such circumstance, however, was disclosed by the respondent in his application to the PIO. Therefore, the information sought by the respondent, to the extent it pertains to the documents submitted by Shri Beant Singh, as proof of his address and identity, is clearly exempt from disclosure under Section 8(1)(j) of the Right to Information Act and to this extent the order passed by the Central Information Commission cannot be sustained.”

4. The passport of Mr. Ajeet Singh would have his personal information such as the address, date of birth and the name of his parents. The information such as date of birth and residential address of

the passport holder would constitute personal information within the meaning of Section 8(1)(j) of the Act, which cannot be disclosed to the respondents. Since neither the respondent sought disclosure of the said documents in special circumstances such as existence of any public interest nor the Commission recording finding that the larger public interest required disclosure of the said information to him, the said information would be exempt from disclosure under Section 8(1)(j) of the Act. However, the passport number and the date of issue and expiry of the passport can be provided to him. The birth certificate of Mr. Ajeet Singh as well as the documents of his education and the documents submitted by him as proof of his residential address are personal information which cannot be disclosed to the respondent, particularly when no special circumstances warranting such disclosure were indicated in the application nor did the Commission come to the conclusion that disclosure of the aforesaid personal information was warranted in the larger public interest.

5. For the reasons stated hereinabove the impugned order 1.5.2012 passed by Central Information Commission is hereby set aside subject to petitioner conveying the date of issue and expiry of the passport as well as the passport number of Mr. Ajeet Singh to the respondent within four weeks from today.

The writ petition stands disposed of in terms of this order.

There shall be no orders as to costs.

OCTOBER 31, 2013/*rd*

V.K. JAIN, J.