

कन्द्राय सूचना आयाग
Central Information Commission
बाबा गंगनाथ माग' मुनिरका
BabaGangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या/ Second Appeal No. CIC/CCITD/A/2019/120284

Pawan Kumar Saluja

... अपीलकर्ता /Appellant

VERSUS

बनाम

CPIO, O/o. the Income Tax
Officer, Ward No. 55 (4), Vikas
Bhawan, New Delhi

... /Respondent

Relevant dates emerging from the appeal:

...प्रतिवादी

RTI : 18-01-2019	FA : 01-03-2019	SA : 01-05-2019
CPIO : 13-02-2019	FAO : 22-03-2019	Hearing : 05-01-2021

ORDER

1. The appellant filed an application under the Right to Information Act, 2005 (RTI Act) before the Central Public Information Officer (CPIO), O/o. The Income Tax Officer, Ward No. 55(4), New Delhi seeking following information:-

1. “Please inform name and branch address of all those banks wherein my spouse Ms. Mamta @ Mamta Arora, R/o X-1/57 Budh Vihar, Phase-1, Delhi-110086 , was having account, at any point of time, during the financial years 2012-2013 to 2017-2018, the information is requested financial year-wise, the date of opening and closure of the each bank account concerned be also informed and if any of the account is functional till the date of disposal of this application, then its functional status be also informed. The PAN card number of my spouse is APSPM8586N and her Aadhaar Card number is 319568028653.
2. Please provide details as to name and branch address of all those banks wherein my spouse Ms. Mamta @ Mamta Arora has held any account, at any point of time, during the present financial year 2018- 2019. Date of opening and closure of the each bank account

concerned be also informed and if any of the bank account is functional till the date of disposal of this application, then its functional status be also informed.

3. Please inform what were the income tax slabs, for all the categories i.e. males, females, senior citizens etc. during the financial years 2012-2013 to 2017-2018, for assessment of income tax on the annual income of any resident Indian individual.
Etc.”

2. The CPIO responded on 13-02-2019. The appellant filed the first appeal dated 01-03-2019 which was disposed of by the first appellate authority on 22-03-2019. Thereafter, he filed a second appeal u/Section 19(3) of the RTI Act before the Commission requesting to take appropriate legal action against the CPIO u/Section 20 of the RTI Act, 2005 and also to direct him to provide the sought for information.

Hearing:

3. The appellant, Mr. Pawan Kumar Saluja attended the hearing along with Adv. Sh. Rohit Nagpal & Mr. Akarshan Bhardwaj through audio-video conferencing. Mr. Birendar Singh, ITO participated in the hearing representing the respondent through audio conferencing. The written submissions are taken on record.

4. The appellant contended that he is seeking information about his legally wedded wife, Ms. Mamta @ Mamta Arora and therefore, the CPIO should have invoked Section 11 of the RTI Act, 2005. Referring to the CIC's order dated 03-02-2015 in CIC/SA/A/2014/000433, he submitted that the information regarding her bank details & income tax returns should be disclosed.

5. The respondent submitted that the appellant is seeking clarification with regard to the bank details & income tax returns of his wife, Ms. Mamta @ Mamta Arora which is personal in nature and therefore, they have claimed exemption u/Section 8(1)(j) of the RTI Act, 2005. They also submitted that Section 11 of the RTI Act, 2005 can only be invoked if the CPIO intends to disclose the personal information and therefore, once the CPIO is satisfied that the information is to be denied under Section 8(1)(j) of the RTI Act, 2005, Section 11 is not required to be invoked. They stated that prima facie no larger public interest is involved in the matter and hence, the CPIO did not intend to disclose this information.

Decision:

6. This Commission observes that the opening words of Section 11 of the RTI Act are “CPIO...intends to disclose” which indicate that the procedure of Section

11 has to be followed only if CPIO intends to disclose the third party information. Section 11 of the RTI Act, 2005 which deals with the 'third party information' reads as under:-

“11. (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.”

7. From the foregoing, it is deduced that the CPIO is expected to follow the procedure of Section 11 when he “intends to disclose any information or record”. In the present case, the CPIO did not find any merit in disclosure and accordingly, Section 11 was not invoked. With regards to the applicability of Section 8(1)(j) of

the RTI Act, 2005 for non-disclosure of the third party bank details and income tax returns, this Commission refers to the judgment dated 03-10-2012 of the **Hon'ble Supreme Court of India** in SLP(C) No. 27734 of 2012 titled as **Girish Ramchandra Deshpande v. Central Information Commission & ors.**, wherein, it has been held as under:-

“12. The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the abovementioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act.

13. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

14. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is

satisfied that the larger public interest justifies the disclosure of such information.”

8. Henceforth, the legal issue to be decided herein is whether the appellant claiming to be the legally wedded husband of Ms. Mamta @ Mamta Arora is entitled to seek information regarding her bank details & income tax returns. In this regard, it is apt to mention the decision dated 01-07-2009 of the **Hon’ble High Court of Delhi** in W.P.(C) 803/2009 titled as **Vijay Prakash v. UOI & others** wherein it has been clarified that in a private dispute between husband and wife, the basic protection afforded by virtue of the exemption from disclosure enacted under Section 8(1)(j) cannot be lifted or disturbed unless the petitioner is able to justify how such disclosure would be in ‘public interest’. In the matter at hand, the appellant has not succeeded in establishing that the information sought is for larger public purpose. Accordingly, the CIC’s order dated 03-02-2015 in CIC/SA/A/2014/000433 is not applicable to the facts of this case.

9. Since filing of the Income Tax Returns by an individual with the Income Tax Department is not a public activity and rather it is in the nature of an obligation which a citizen owes to the State viz. to pay his taxes, this information cannot be disclosed to the appellant in the absence of any larger public interest relying on the legal principle enunciated in the judgment dated 11-06-2015 rendered by the **Hon’ble Bombay High Court** in Writ Petition No. 8753 of 2013 titled as **Shailesh Gandhi v. The Central Information Commission**, wherein, it has been observed as follows:-

“16...The Petitioner possibly being aware of the said position has therefore sought to contend that filing of the Income Tax Returns is a public activity. I am afraid the said contention is thoroughly misconceived as filing of Income Tax Returns can be no stretch of imagination be said to be a public activity, but is an obligation which a citizen owes to the State viz. to pay his taxes and since the said information is held by the Income Tax Department in a fiduciary capacity, the same cannot be directed to be revealed unless the pre-requisites for the same are satisfied.”

10. The Hon’ble High Court of Delhi in the decision of **Naresh Kumar Trehan v. Rakesh Kumar Gupta** in W.P.(C) 85/2010 & CM Nos.156/2010 & 5560/2011 dated 24-11-2014 has observed as under:-

“25. Indisputably, Section 8(1)(j) of the Act would be applicable to the information pertaining to Dr Naresh Trehan (petitioner in W.P.(C) 88/2010) and the information contained in the income tax returns would be personal information under Section 8(1)(j) of the

Act. However, the CIC directed disclosure of information of Dr Trehan also by concluding that income tax returns and information provided for assessment was in relation to a “public activity.” In my view, this is wholly erroneous and unmerited. The act of filing returns with the department cannot be construed as public activity. The expression “public activity” would mean activities of a public nature and not necessarily act done in compliance of a statute. The expression "public activity" would denote activity done for the public and/or in some manner available for participation by public or some section of public. There is no public activity involved in filing a return or an individual pursuing his assessment with the income tax authorities. In this view, the information relating to individual assessee could not be disclosed. Unless, the CIC held that the same was justified "in the larger public interest.”

11. The division bench of the **Hon’ble High Court of Delhi** in the decision of **Harish Kumar v. Provost Marshall cum Appellate Authority & Anr**, LPA No. 253/2012 dated 30-03-2012 while denying information in a matrimonial dispute has held as under:-

“11. A Division Bench of this Court in Paardarshita Public Welfare Foundation Vs. UOI AIR 2011 Del. 82, in the context of Section 8(1)(j) (supra) and relying upon Gobind Vs. State of Madhya Pradesh (1975) 2 SCC 148, Rajagopal Vs. State of Tamil Nadu (1994) 6 SCC 632 and Collector Vs. Canara Bank (2005) 1 SCC 496 has held right to privacy to be a sacrosanct facet of Article 21 of the Constitution of India. It was further held that when any personal information sought has no nexus with any public activity or interest, the same is not to be provided. Finding the information sought in that case to be even remotely having no relationship with any public activity or interest and rather being a direct invasion in private life of another, information was denied. The full bench of this Court also in Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal AIR 2010 Del. 159 has held that the conflict between the right to personal privacy and public interest in the disclosure of personal information is recognized by the legislature by incorporating Section 8(1)(j) of the Act. It was further observed that personal information including tax returns, medical records etc. cannot be disclosed unless the bar against disclosure is lifted by establishing sufficient public interest in disclosure and disclosure even then can be made only after duly notifying the third party and after considering his views.”

12. At this juncture, this Commission deems it appropriate to quote Section 2(n) of the RTI Act, 2005 which reads as under:-

“2(n):- “third party” means a person other than the citizen making a request for information and includes a public authority.”

13. From the words circumscribed u/Section 2(n) of the RTI Act, 2005, it is vividly clear that any person other than the citizen making a request for information can be termed as ‘third party’. Therefore, Ms. Mamta @ Mamta Arora being a person other than the RTI applicant surely comes within the definition of ‘third party’. Moreover, the CPIO has also not intended to disclose the information and has rather pleaded that there is no public interest in the matter. This Commission also does not find any public interest which outweighs the harm caused in its disclosure.

14. This Commission also refers to the judgment of the **Hon’ble Supreme Court of India** in Civil Appeal No. 10044 of 2010 & Ors. dated 13-11-2019 titled as **CPIO, Supreme Court of India v. Subhash Chandra Agarwal**, wherein, it was observed as follows:-

“59. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive.”

15. In light of the aforesaid decisions and the legal principles enunciated therein, this Commission after considering the factual matrix of the case is of the opinion that in the absence of any larger public interest in the matter, the appellant is not entitled to seek information regarding bank details & income tax returns of his wife which is exempted u/Section 8(1)(j) of the RTI Act, 2005. Hence, no further intervention of the Commission is required in the matter.

16. With the above observations, the appeal is disposed of.

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

Neeraj Kumar Gupta (नीरज कुमार गुप्ता)
Information Commissioner (सूचना आयोग)

दिनांक / Date 05-01-2021

Authenticated true copy
(अभिप्रेत सत्यापित
प्रति)

S. C. Sharma (एस. सी. शर्मा),
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Addresses of the parties:

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