

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

द्वितीय अपील संख्या/Second Appeal No. CIC/CCITJ/A/2019/142221

Smt. Veena

... अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO, O/o. the Income Tax Officer,
Ward No. 2(1), Udaipur

... प्रतिवादी /Respondent

Relevant dates emerging from the appeal:

| | | |
|-------------------|------------------|----------------------|
| RTI : 11-03-2019 | FA : 30-04-2019 | SA : 31-08-2019 |
| CPIO : 11-04-2019 | FAO : 20-05-2019 | Hearing : 01-06-2021 |

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. 2(1), Udaipur, seeking following information:-

“Certified copies of complete ITR files of Mr. Jagdish Chandra Rathore from 2016 onwards.”

2. The CPIO responded on 11-04-2019. The appellant filed the first appeal dated 30-04-2019 which was disposed of by the first appellate authority on 20-05-2019. Thereafter, she 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, Smt. Veena attended the hearing through audio conferencing. Mr. A K Khatri, CPIO participated in the hearing representing the respondent through audio conferencing. The written submissions are taken on record.

4. The appellant limited her submissions on furnishing the gross income of her husband Mr. Jagdish Chandra Rathore and further contended that it cannot be

treated as personal information. She submitted that now the PAN number of her husband Mr. Jagdish Chandra Rathore has been sent to the public authority.

5. The respondent submitted that the PAN number was initially not provided by the appellant and therefore, the gross income of her husband Mr. Jagdish Chandra Rathore could not be furnished. However, he claimed exemption u/Section 8(1)(j) of the RTI Act, 2005 for not disclosing the ITR files of Mr. Jagdish Chandra Rathore.

Decision:

6. With regards to the applicability of Section 8(1)(j) of the RTI Act, 2005 regarding non-disclosure of the 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."

7. Henceforth, the legal issue to be decided herein is whether the appellant claiming to be the legally wedded wife of Mr. Jagdish Chandra Rathore is entitled to seek details of his 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.

8. 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."

9. 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.”

10. 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.”

11. 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.”

12. 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, Mr. Jagdish Chandra Rathore being a person other than the RTI applicant surely comes within the definition of ‘third party’. Moreover, the CPIO has 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.

13. 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.”

14. 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 the details of the Income Tax Returns filed by the third party, Mr. Jagdish Chandra Rathore which is exempted u/Section 8(1)(j) of the RTI Act, 2005.

15. However, with regard to disclosure of remuneration of the spouse, the Division Bench of the **Hon'ble High Court of Madhya Pradesh** vide its decision dated 15-05-2018 in the matter of **Smt. Sunita Jain v. Pawan Kumar Jain and others, W.A. No. 168/2015** and **Smt. Sunita Jain v. Bharat Sanchar Nigam Limited and others, W.A. No. 170/2015** has decided in affirmative with following observations:-

“The controversy involved in the present writ appeal is whether the information sought is exempt under Section 8(1)(j) of the Act or it is covered by Section 4(1)(b)(x) which obliges the public authorities to display on public domain the monthly remuneration received by each of its officers and employees.

For ready reference, Section 4(1)(b)(x) of the Act reads as under:-

“4. Obligations of public authorities.- (1) Every public authority shall-
(b). publish within one hundred and twenty days from the enactment of this Act.-

- (i) xxxxxxxxxxxx
- (ii) xxxxxxxxxxxx
- (iii) xxxxxxxxxxxx
- (iv) xxxxxxxxxxxx
- (v) xxxxxxxxxxxx
- (vi) xxxxxxxxxxxx
- (vii) xxxxxxxxxxxx
- (viii) xxxxxxxxxxxx
- (ix) xxxxxxxxxxxx

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations.”

The question of consideration is whether such information is exempt Section 8(1)(j) of the Act, which reads as under:-

“8. Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen.-

- (a) xxxxxxxxxxxx
- (b) xxxxxxxxxxxx
- (c) xxxxxxxxxxxx
- (d) xxxxxxxxxxxx

- (e) xxxxxxxxxxxx
- (f) xxxxxxxxxxxx
- (g) xxxxxxxxxxxx
- (h) xxxxxxxxxxxx
- (i) xxxxxxxxxxxx

(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.”

The question is whether information sought is a personal information, the disclosure of which has no relationship to any public activity or interest or would cause unwarranted invasion of privacy of Shri Pawan Kumar Jain.

In Strouds Judicial Dictionary, Vol.IV (4th edn.) ‘public interest’ is defined thus:

“Public interest – 1. A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected.”

In Black’s Law Dictionary (6th edn.). ‘public interest’ is defined as follows:

“Public Interest – Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government...”

While dealing with the Section 8(1)(j) of the Act, we cannot lose sight of the fact that the appellant and the respondent No.1 are husband and wife and as a wife she is entitled to know what remuneration the respondent No.1 is getting.

Present case is distinguishable from the case of **Girish Ramchandra Deshpande** (supra) and therefore the law laid down by their Lordships in the case of **Girish Ramchandra Deshpande** (supra) are not applicable in the present case.

In view of the foregoing discussion, we allow the appeal and set aside the order passed by the Writ Court in W.P. No. 341/2008.

Similarly, the W.A. No. 170/2015 is also allowed and the impugned order passed in W.P. No. 1647/2008 is set aside.”

16. Therefore, in view of the legal position stipulated in the case of **Smt. Sunita Jain (Supra)**, this Commission directs the respondent to disclose the ‘gross income’ of Mr. Jagdish Chandra Rathore so that she could defend her maintenance case effectively considering the aspect of marital discord between the husband and wife vis-à-vis her right of maintenance. The ‘gross income’ of Mr. Jagdish Chandra Rathore should be disclosed to the appellant, within a period of 15 working days from the date of receipt of this order.

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

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

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

दिनांक / Date:01-06-2021

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

S. C. Sharma (एस. सी. शर्मा),
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Smt. Veena