

(2013) 08 DEL CK 0356

Delhi High Court

Case No: Writ Petition (C) 3444 of 2012

Union of India

APPELLANT

Vs

Hardev Singh

RESPONDENT

Date of Decision: Aug. 23, 2013**Acts Referred:**

- Right to Information Act, 2005 - Section 11, 19, 6, 8(1), 8(1)(j)

Citation: (2013) 8 AD 446**Hon'ble Judges:** V.K. Jain, J**Bench:** Single Bench**Advocate:** P. Narula, for the Respondent

Judgement

V.K. Jain, J.

Vide application filed on 27.9.2011, the respondent sought certain information from PIO of the Ministry of External Affairs, Regional Passport Office, Bhikaji Cama Palace, New Delhi with respect to passport number B 5131321 issued to one Shri Beant Singh on 28.6.2001. The said application was replied by the CPIO on 9.11.2011. The following were the queries and their replies:

Being aggrieved from the reply, the respondent preferred an appeal before the First Appellate Authority. The first appeal was dismissed on 16.12.2011. The respondent thereafter preferred a second appeal to the Central Information Commission, u/s 19 of the Right to Information Act. Vide order dated 14.3.2012, the Commission directed the PIO to provide complete information as per the available record to the respondent. Being aggrieved from the order passed by the Commission, the petitioner is before this Court.

2. As regards the queries numbers 1,3 and 6, the requisite reply was furnished by the CPIO to the respondent.

The main issue involved in this writ petition is as to whether the respondent is entitled to (i) the documents submitted by Shri Beant Singh to the Regional Passport Office, as

proof of his address and identity (ii) the noting portion whereby issue of passport was recommended to Shri Beant Singh. The Public Information Officer, refused to provide copies of documents in proof of address and identity, to the respondent on the ground that it was a third party information exempted from disclosure u/s 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.

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.

3. 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" u/s 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 u/s 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 u/s 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 u/s 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...

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 u/s 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.

4. 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 u/s 8(1)(j) of the Right to Information Act and to this extent the order passed by the Central Information Commission cannot be sustained.

5. As regards, noting on the file recommending issue of passport to Shri Beant Singh, the only ground given by the PIO for denying the said information to the respondent was that the information was exempt u/s 8(1)(j) of the Act. It is not known whether such noting contains any information which would disclose the address, or any other personal information relating to Shri Beant Singh. In case the file noting sought by the respondent does not contain any information which can be said to be personal information within the meaning of Section 8(1)(j) of the Act, there can be no objection to its disclosure. For the reasons stated hereinabove, the writ petition is disposed of with a direction that though the respondent shall not be entitled to photocopies of the documents submitted by Shri Beant Singh as proof of his address and identity, the noting of the officer who had recommended to issue passport to him shall be provided to him within four weeks in case such noting does not contain any personal information relating to Shri Beant Singh.

There shall be no orders as to costs.