# RTI Act: Delhi High Court Quashes CIC Order Asking MEA To Disclose Passport Details Of 'Estranged' Husband To Wife

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**IN THE HIGH COURT OF DELHI AT NEW DELHI**
***YASHWANT VARMA; J.***
W.P.(C) 3735/2020 & CM APPL. 13395/2020; 21.11.2022
**MINISTRY OF EXTERNAL AFFAIRS** versus **ASMITA SACHIN WAMAN**

*Petitioner Through: Mr. P. Roychaudhuri, Adv.*

**O R D E R**

**1.** The petitioner impugns the validity of an order dated 15 May 2020 passed in a second appeal which was instituted by the respondent under the **Right to Information Act, 2005** ["the Act"]. The respondent is stated to have made an application for disclosure of details relating to the passport held by her estranged husband along with marriage certificate, address proof, ID proof and other related documents. The **Central Public Information Officer** ["CPIO"], in terms of its communication of 08 June 2018, apprised the respondent that since the disclosure as sought would constitute third party information it is not liable to be provided in light of the provisions made in Section 8(1)(j) of the Act.

**2.** Assailing the aforesaid decision, the respondent preferred a first appeal in which the order passed by the CPIO was upheld.

**3.** Aggrieved by the aforesaid, the respondent moved the **Central Information Commission** ["Commission"] by way of a second appeal. That appeal came to be allowed with the Commission rejecting the view taken by the CPIO and the first appellate authority that the disclosures which are sought would fall foul of the injunct which stands placed under Section 8(1)(j) of the Act. The Commission further directed the petitioner to provide information as sought by respondent in her RTI application dated 26 May 2018.

**4.** It becomes pertinent to note that disclosures which may be sought under the provisions of the Act with respect to a passport or any other personal identification document of a third party is no longer *res integra*. This Court in **Union of India vs. R. Jayachandran** [ 2014 SCC OnLine Del 767] while considering whether passport details of a third party are liable to be provided to an RTI applicant observed as follows:

"11. This Court is also of the view that if passport number of a third party is furnished to an applicant, it can be misused. For instance, if the applicant were to lodge a report with the police that a passport bearing a particular number is lost, the Passport Authority would automatically revoke the same without knowledge and to the prejudice of the third party.

12. Further, the observations of learned Single Judge in the aforesaid batch of writ petitions are contrary to the judgment of another learned Single Judge in *Suhas Chakma* v. *Central Information Commission*, W.P.(C) 9118/2009 decided on ***2nd January, 2010*** as well as a Division Bench's judgment in *Harish Kumar* v. *Provost Marshal-Cum-Appellate Authority*, LPA 253/2012 decided on ***30th March, 2012***. In *Suhas Chakma* (supra) another learned Single Judge has held as under:-

*"5. The Court is of the considered view that information which involves the rights of privacy of a third party in terms of Section 8(1)(j) RTI Act cannot be ordered to be disclosed without notice to such third party. The authority cannot simply come to conclusion, that too, on a concession or on*

*the agreement of parties before it, that public interest overrides the privacy rights of such third party without notice to and hearing such third party.*"

13. The relevant portion of the Division Bench in *Harish Kumar* (supra) is reproduced hereinbelow:-

*"9. What we find in the present case is that the PIO had not refused the information. All that the PIO required the appellant to do was, to follow third party procedure. No error can be found in the said reasoning of the PIO. Under Section 11 of the Act, the PIO if called upon to disclose any information relating to or supplied by a third party and which is to be treated as confidential, is required to give a notice to such third party and is to give an opportunity to such third party to object to such disclosure and to take a decision only thereafter.*

*10. There can be no dispute that the information sought by the appellant was relating to a third party and supplied by a third party. We may highlight that the appellant also wanted to know the caste as disclosed by his father-in-law in his service record. The PIO was thus absolutely right in, response to the application for information of the appellant, calling upon the appellant to follow the third party procedure under Section 11. Reliance by the PIO on Section 8 (1) (j) which exempts from disclosure of personal information and the disclosure of which has no relationship to any public activity or interest and which would cause unwanted invasion of the privacy of the individual was also apposite. Our constitutional aim is for a casteless society and it can safely be assumed that the disclosure made by a person of his or her caste is intended by such person to be kept confidential. The appellant however as aforesaid, wanted to steal a march over his father-in-law by accessing information, though relating to and supplied by the father-in-law, without allowing his father-in-law to oppose to such request."*

**5.** More recently, the entire issue with respect to the rights of third parties and prayers for disclosures that may be made under the Act was revisited by the Court in **Vijay Prakash vs. Union of India** [2009 SCC OnLine Del 1731], where the learned Judge upon an exhaustive review of the precedents rendered on the subject held as under: -

**"18.** The scheme of the Information Act no doubt is premised on disclosure being the norm, and refusal, the exception. Apart from the classes of exceptions, they also appear to work at different levels or stages, in the enactment. Thus, for instance, several organizations—security, and intelligence agencies, are excluded from the regime, by virtue of Section 24, read with the Second Schedule to the Act. The second level of exception is enacted in Section 8, which lists 11 categories or classes [Clauses (a) to (j)] that serve as guidelines for nondisclosure. Though by Section 22, the Act overrides other laws, the opening *non obstante* clause in Section 8 ("notwithstanding anything contained in this Act") confers primacy to the exemptions, enacted under Section 8(1). Clause (j) embodies the exception of information in the possession of the public authority which relates to a third party. Simply put, this exception is that if the information concerns a third party (*i.e.* a party other than the information seeker and the information provider), unless a public interest in disclosure is shown, information would not be given; information may also be refused on the ground that disclosure may result in unwarranted intrusion of privacy of the individual. Significantly, the enactment makes no distinction between a private individual third party and a public servant or public official third party.

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**22.** A bare consideration of the right of individuals, including public servants, to privacy would seem to suggest that privacy rights, by virtue of Section 8(1)(j) whenever asserted, would have to prevail. However, that is not always the case, since the public interest element, seeps through that provision. Thus when a member of the public requests information about a public servant, a distinction must be made between "official" information inherent to the position and those that are not, and therefore affect only his/her private life. This balancing task appears to be easy; but is in

practice, not so, having regard to the dynamics inherent in the conflict. Though it may be justifiably stated that protection of the public servant's private or personal details as an individual, is necessary, provided that such protection does not prevent due accountability, there is a powerful counter argument that public servants must effectively waive the right to privacy in favour of transparency. Thus, if public access to the personal details such as identity particulars of public servants, *i.e.* details such as their dates of birth, personal identification numbers, or other personal information furnished to public agencies, is requested, the balancing exercise, necessarily dependant and evolving on case by case basis may take into account the following relevant considerations, *i.e.*

(i) whether the information is deemed to comprise the individual's private details, unrelated to his position in the organization, and,

(ii) whether the disclosure of the personal information is with the aim of providing knowledge of the proper performance of the duties and tasks assigned to the public servant in any specific case;

(iii) whether the disclosure will furnish any information required to establish accountability or transparency in the use of public resources.

23. An important and perhaps vital consideration, aside from privacy is the public interest element, mentioned previously. Section 8(1)(j)'s explicit mention of that concept has to be viewed in the context. In the context of the right to privacy, Lord Denning in his What Next in Law, presciencely said that:

"English law should recognise a right to privacy. Any infringement of it should give a cause of action for damages or an injunction as the case may require. It should also recognise a right of confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the Courts. As each case is decided, it will form a precedent for others. So a body of case-law will be established."

24. A private individual's right to privacy is undoubtedly of the same order as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of the two differ. Yet, inherent in the situation of the latter is the premise that he acts for the public good, in the discharge of his duties, and is accountable for them. The character of protection, therefore, which is afforded to the two classes—public servants and private individuals, has to be viewed from this perspective. The nature of restriction on the right to privacy is therefore of a different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. Therefore, if an important value in public disclosure of personal information is demonstrated, in the particular facts of a case, the protection afforded by Section 8(1)(j) may not be available; in such case, the information officer can proceed to the next step of issuing notice to the concerned public official, as a "third party" and consider his views on why there should be no disclosure. The onus of showing that disclosure should be made, is upon the individual asserting it; he cannot merely say that as the information relates to a public official, there is a public interest element. Adopting such a simplistic argument would defeat the object of Section 8(1)(j); the legislative intention in carving out an exception from the normal rule requiring no "locus" by virtue of Section 6, in the case of exemptions, is explicit through the *non obstante* clause. The court is also unpersuaded by the reasoning of the Bombay High Court, which appears to have given undue, even overwhelming deference to Parliamentary privilege (termed "plenary" by that Court) in seeking information, by virtue of the proviso to Section 8(1)(j). Were that the true position, the enactment of Section 8(1)(j) itself is rendered meaningless, and the basic safeguard bereft of content. The proviso has to be

only as confined to what it enacts, to the class of information that Parliament can ordinarily seek; if it were held that all information relating to all public servants, even private information, can be accessed by Parliament, Section 8(1)(j) would be devoid of any substance, because the provision makes no distinction between public and private information. Moreover, there is no law which enables Parliament to demand all such information; it has to be necessarily in the context of some matter, or investigation. If the reasoning of the Bombay High Court were to be accepted, there would be nothing left of the right to privacy, elevated to the status of a fundamental right, by several judgments of the Supreme Court.

25. As discussed earlier, the "public interest" argument of the petitioner is premised on the plea that his wife is a public servant; he is in litigation with her, and requires information—in the course of a private dispute—to establish the truth of his allegations. The CIC has held that there is no public interest element in the disclosure of such personal information, in the possession of the information provider, *i.e.* the Indian Air Force. This Court concurs with the view, on an application of the principles discussed. The petitioner has, not been able to justify how such disclosure would be in "public interest": the litigation is pure and simple, a private one. The basic protection afforded by virtue of the exemption (from disclosure) enacted under Section 8(1)(j) cannot be lifted or disturbed."

**6.** Viewed in the backdrop of the principles which stand enunciated in **Vijay Prakash**, this Court is of the considered opinion that the order of the Chief Information Commissioner, directing the petitioner to make the requisite disclosures can neither be countenanced nor upheld.

**7.** Accordingly, and for all the aforesaid reasons, the instant writ petition is allowed. The impugned order of 15 May 2020 shall consequently stand quashed and set aside.

**8.** Pending application shall also stand disposed of.

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