

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/MOEF/A/2018/146793

Dr. Sanjeev Goel

... अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO, M/o. External Affairs, New
Delhi.

...प्रतिवादी/Respondent

Relevant dates emerging from the appeal:

RTI : 15-05-2018	FA : 19-06-2018	SA : 25-07-2018
CPIO : 06-06-2018	FAO : 02-07-2018	Hearing : 17-04-2020

ORDER

1. The appellant filed an application under the Right to Information Act, 2005 (RTI Act) before the Central Public Information Officer (CPIO), M/o. External Affairs, New Delhi seeking following information regarding the passport details and religion of Mr. Rahul Gandhi, Member of Parliament, Lok Sabha:-

- “1. How many passports have been issued by any Government in the world to Mr. Rahul Gandhi or alias, if any, bearing photograph of Mr. Rahul Gandhi, Member of Parliament, Lok Sabha, India?
2. If more than one passport has been issued bearing his photograph, address and details of all passports be provided.
3. What was his religion at the time of birth?
4. What is his religion by virtue of his faith at present?”

2. The CPIO responded on 06-06-2018. The appellant filed the first appeal dated 19-06-2018 which was disposed of by the first appellate authority on 02-07-2018. Thereafter, he filed a second appeal u/Section 19(3) of the RTI Act, 2005 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, Dr. Sanjeev Goel attended the hearing through video conferencing. Mr. P. Roychaudhury, Advocate participated in the hearing representing the respondent through video conferencing. The written submissions are taken on record.

4. The appellant submitted that Mr. Rahul Gandhi is a 'public servant' as per the provisions of Section 2(c) of the Prevention of Corruption Act, 1988 and the information which cannot be denied to the parliament or a State Legislature shall not be denied to any person. He further submitted as follows:-

“Mr. Rahul Gandhi is already on bail in a criminal case, so he should declare details of all passports issued to him by any country in the world in his name or alias bearing photograph of Mr. Rahul Gandhi, Member of Parliament, Lok Sabha, India. There are all possibilities to jump his bail by using other passports, if, he possesses more than one passport i.e. passport issued by authorities of various countries. The third party information which is exempted from disclosure u/Section 8(1)(j) of RTI Act, 2005 is not applicable in this case, as Mr. Rahul Gandhi is a public representative/figure/public servant and meets any head of the state out of India in the same capacity and not as an individual person. Being a public servant, he is in public life and should disclose all his identity, if such revelation does not harm him in any manner, whatsoever. Section 9(1) of the Citizenship Act, 1955 provides that any citizen of India who by naturalization or registration acquires the citizenship of another country shall cease to be a citizen of India. Persons who acquire another citizenship lose their Indian citizenship from the date on which they acquire that citizenship or another country's passport.”

5. The appellant also emphasized that he has a right to know the religion of Mr. Rahul Gandhi who is a public figure. Therefore, considering the public interest in the matter, the information pertaining to his passport details and religion should be disclosed to him, as no exemption is applicable in this case.

6. The learned counsel, Mr. P. Roychaudhury, Advocate appearing on behalf of the respondent submitted that the information pertaining to the passport details and religion of Mr. Rahul Gandhi is personal in nature which attracts the exemption available u/Section 8(1)(j) of the RTI Act, 2005. Further, he submitted that disclosure of the information sought would cause unwarranted invasion of the third

party's privacy and no any larger public interest is involved in the matter. On this aspect, he relied on the decision dated 19-02-2014 rendered by the **Hon'ble High Court of Delhi** in **Union of India v. R. Jayachandran**, W.P. (C) 3406/2012 & CM APPL 7218/2012.

Decision:

7. At the outset, this Commission deems it fit to reproduce the provisions of Section 8(1)(j) of the RTI Act, 2005 which is being accordingly extracted hereunder:-

“8. Exemption from disclosure of information.—

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,

.....

(j) information which relates to personal information the disclosure of which has not 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.”

8. Since the appellant has relied on the ‘public interest’ element, this Commission 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:-

“POINT NO. 4: MEANING OF THE TERM ‘PUBLIC INTEREST’

71. In **Union of India v. Association for Democratic Reforms and Another**, (2002) 5 SCC 294, recognising the voters’ right to know the antecedents of the candidates and the right to information which stems from Article 19(1)(a) of the Constitution, it was held that directions could be issued by the Court to subserve public interest in creating an informed citizenry, observing:

“46. [...] The right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant of Civil and Political Rights which is as under:

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

6. Cumulative reading of plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Article 141 and 142 of the Constitution to issue necessary directions to the Executive to subserve public interest.”

Clearly, the larger public interest in having an informed electorate, fair elections and creating a dialectical democracy had outweighed and compelled this Court to issue the directions notwithstanding disclosure of information relating to the personal assets, educational qualifications and antecedents including previous involvement in a criminal case of the contesting candidate.

72. Public interest, sometimes criticised as inherently amorphous and incapable of a precise definition, is a time tested and historical conflict of rights test which is often applied in the right to information legislation to balance right to access and protection of the conflicting right to deny access. In **Mosley v. News Group Papers Ltd.**, 2008 EWHC 1777 (QB), it has been observed:

“130... It is not simply a matter of personal privacy versus the public interest. The modern perception is that there is a public interest in respecting personal privacy. It is thus a question of taking account of conflicting public interest considerations and evaluating them according to increasingly well recognized criteria.”

The RTI Act is no exception. Section 8(1)(j) of the RTI Act prescribes the requirement of satisfaction of ‘*larger public interest*’ for access to information when the information relates to personal information having no relationship with any public activity or interest, or would cause unwarranted invasion of privacy of the individual. Proviso to Section 11(1) states that except in 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 interest of the third party. The words ‘*possible harm or injury*’ to the interest of the third party is preceded by the word ‘importance’ for the purpose of comparison. ‘Possible’ in the context of the proviso does not mean something remote, far-fetched or hypothetical, but a calculable, foreseeable and substantial possibility of harm and injury to the third party.

73. Comparison or balancing exercise of competing public interests has to be undertaken in both sections, albeit under Section 8(1)(j) the comparison is between public interest behind the exemption, that is personal information or invasion of

privacy of the individual and public interest behind access to information, whereas the test prescribed by the proviso to Section 11(1) is somewhat broader and wider as it requires comparison between disclosure of information relating to a third person or information supplied and treated as confidential by the third party and possible harm or injury to the third party on disclosure, which would include all kinds of 'possible' harm and injury to the third party on disclosure.

74. This Court in **Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi and Another**, (2012) 13 SCC 61, has held that the phrase 'public interest' in Section 8(1)(j) has to be understood in its true connotation to give complete meaning to the relevant provisions of the RTI Act. However, the RTI Act does not specifically identify factors to be taken into account in determining where the public interest lies. Therefore, it is important to understand the meaning of the expression 'public interest' in the context of the RTI Act. This Court held 'public interest' to mean the general welfare of the public warranting the disclosure and the protection applicable, in which the public as a whole has a stake, and observed:

“23. The satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to the circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity. Similarly, there may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given their due implementation as they spring from statutory exemptions. It is not a decision simpliciter between private interest and public interest. It is a matter where a constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional values under the Constitution of India.”

75. Public interest in access to information refers to something that is in the interest of the public welfare to know. Public welfare is widely different from what is of

interest to the public. “Something which is of interest to the public” and “something which is in the public interest” are two separate and different parameters. For example, the public may be interested in private matters with which the public may have no concern and pressing need to know. However, such interest of the public in private matters would repudiate and directly traverse the protection of privacy. The object and purpose behind the specific exemption vide clause (j) to Section 8(1) is to protect and shield oneself from unwarranted access to personal information and to protect facets like reputation, honour, etc. associated with the right to privacy. Similarly, there is a public interest in the maintenance of confidentiality in the case of private individuals and even government, an aspect we have already discussed.

76. The public interest test in the context of the RTI Act would mean reflecting upon the object and purpose behind the right to information, the right to privacy and consequences of invasion, and breach of confidentiality and possible harm and injury that would be caused to the third party, with reference to a particular information and the person. In an article ‘*Freedom of Information and the Public Interest: the Commonwealth experience*’ published in the Oxford University Commonwealth Law Journal, Published online on 28th August, 2017, the factors identified as favouring disclosure, those against disclosure and lastly those irrelevant for consideration of public interest have been elucidated as under:

“it is generally accepted that the public interest is not synonymous with what is of interest to the public, in the sense of satisfying public curiosity about some matter. For example, the UK Information Tribunal has drawn a distinction between ‘matters which were in the interests of the public to know and matters which were merely interesting to the public (i.e. which the public would like to know about, and which sell newspapers, but... are not relevant).

Factors identified as favouring disclosure include the public interest in: contributing to a debate on a matter of public importance; accountability of officials; openness in the expenditure of public funds, the performance by a public authority of its regulatory functions, the handling of complaints by public authorities; exposure of wrongdoing, inefficiency or unfairness; individuals being able to refute allegations made against them; enhancement of scrutiny of decision-making; and protecting against danger to public health or safety.

Factors that have been found to weigh against disclosure include: the likelihood of damage to security or international relations; the likelihood of damage to the integrity or viability of decision-making processes: the public interest in public bodies being able to perform their functions effectively; the public interest in preserving the

privacy of individuals and the public interest in the preservation of confidences.

Factors irrelevant to the consideration of the public interest have also been identified. These include: that the information might be misunderstood; that the requested information is overly technical in nature; and that disclosure would result in embarrassment to the government or to officials.”

77. In **Campbell** (supra), reference was made to the Press Complaints Commission Code of Practice to further elucidate on the test of public interest which stands at the intersection of freedom of expression and the privacy rights of an individual to hold that:

“1. Public interest includes:

- (i) Detecting or exposing crime or a serious misdemeanour.
- (ii) Protecting public health and safety.
- (iii) Preventing the public from being misled by some statement or action of an individual or organisation....”

78. Public interest has no relationship and is not connected with the number of individuals adversely affected by the disclosure which may be small and insignificant in comparison to the substantial number of individuals wanting disclosure. It will vary according to the information sought and all circumstances of the case that bear upon the public interest in maintaining the exemptions and those in disclosing the information must be accounted for to judge the right balance. Public interest is not immutable and even time-gap may make a significant difference. The type and likelihood of harm to the public interest behind the exemption and public interest in disclosure would matter. The delicate balance requires identification of public interest behind each exemption and then cumulatively weighing the public interest in accepting or maintaining the exemption(s) to deny information in a particular case against the public interest in disclosure in that particular case. Further, under Section 11(1), reference is made to the ‘possible’ harm and injury to the third party which will also have to be factored in when determining disclosure of confidential information relating to the third parties.

79. The last aspect in the context of public interest test would be in the form of clarification as to the effect of sub-section (2) to Section 6 of the RTI Act which does not require the information seeker to give any reason for making a request for the information. Clearly, ‘motive’ and ‘purpose’ for making the request for information is irrelevant, and being extraneous cannot be a ground for refusing the information. However, this is not to state that ‘motive’ and ‘purpose’ may not be relevant factor while applying the public interest test in case of qualified exemptions governed by the public interest test. It is in this context that this Court in **Aditya Bandopadhyay** (supra) has held that beneficiary cannot be denied personal information relating to him. Similarly, in other cases, public interest may

weigh in favour of the disclosure when the information sought may be of special interest or special significance to the applicant. It could equally be a negative factor when the 'motive' and 'purpose' is vexatious or it is a case of clear abuse of law.

80. In the RTI Act, in the absence of any positive indication as to the considerations which the PIO has to bear in mind while making a decision, the legislature had intended to vest a general discretion in the PIO to weigh the competing interests, which is to be limited only by the object, scope and purpose of the protection and the right to access information and in Section 11(1), the 'possible' harm and injury to the third party. It imports a discretionary value judgment on the part of the PIO and the appellate forums as it mandates that any conclusion arrived at must be fair and just by protecting each right which is required to be upheld in public interest. There is no requirement to take a fortiori view that one trumps the other."

9. Para 75 of the aforesaid decision outlines the '**public interest in access to information**' in following terms thereby stipulating that the protection of right to privacy is also extended to a 'public servant':-

"For example, the public may be interested in private matters with which the public may have no concern and pressing need to know. However, such interest of the public in private matters would repudiate and directly traverse the protection of privacy. The object and purpose behind the specific exemption vide clause (j) to Section 8(1) is to protect and shield oneself from unwarranted access to personal information and to protect facets like reputation, honour, etc. associated with the right to privacy. Similarly, there is a public interest in the maintenance of confidentiality in the case of private individuals and even government."

10. With reference to the **right to privacy and religious belief** of an individual, it is apt to quote the following extracts:-

" 40. The right to privacy though not expressly guaranteed in the Constitution of India is now recognized as a basic fundamental right vide decision of the Constitutional Bench in **K. S. Puttaswamy and Another v. Union of India and Others**, (2017) 10 SCC 1, holding that it is an intrinsic part of the right to life and liberty guaranteed under Article 21 of the Constitution and recognised under several international treaties, chief among them being Article 12 of the Universal Declaration of Human Rights, 1948 which states that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. The judgment recognises that everyone has a right to the protection of laws against such interference or attack.

41. In **K. S. Puttaswamy** (supra) the main judgment (authored by D.Y. Chandrachud, J.) has referred to provisions of Section 8(1)(j) of the RTI Act to highlight that the right to privacy is entrenched with constitutional status in Part III of the Constitution, thus providing a touchstone on which validity of executive decisions can be assessed and validity of laws can be determined vide judicial review exercised by the courts. This observation highlights the status and importance of the right to privacy as a constitutional right. The ratio as recorded in the two concurring judgments of the learned judges (R.F. Nariman and Sanjay Kishan Kaul, JJ.) are similar. It is observed that privacy involves a person's right to his physical body; right to informational privacy which deals with a person's mind; and the right to privacy of choice which protects an individual's autonomy over personal choices. While physical privacy enjoys constitutional recognition in Article 19(1)(d) and (e) read with Article 21, personal informational privacy is relatable to Article 21 and right to privacy of choice is enshrined in Articles 19(1)(a) to (c), 20(3), 21 and 25 of the Constitution. In the concurring opinion, there is a reference to '*The Right to Privacy*' by Samuel Warren and Louis D. Brandeis on an individual's right to control the dissemination of personal information and that an individual has a right to limit access to such information/shield such information from unwarranted access. Knowledge about a person gives another power over that person, as personal data collected is capable of effecting representations in his decision making process and shaping behaviour which can have a stultifying effect on the expression of dissent which is the cornerstone of democracy. In the said concurring judgment, it has been further held that the right to protection of reputation from being unfairly harmed needs to be zealously guarded not only against falsehood but also against certain truths by observing:

“623. An individual has a right to protect his reputation from being unfairly harmed and such protection of reputation needs to exist not only against falsehood but also certain truths. It cannot be said that a more accurate judgment about people can be facilitated by knowing private details about their lives – people judge us badly, they judge us in haste, they judge out of context, they judge without hearing the whole story and they judge with hypocrisy. Privacy lets people protect themselves from these troublesome judgments.” *Daniel Solove: “10 Reasons Why Privacy Matters” published on 20th January 2014 and available at <https://www.teachprivacy.com/10-reasons-privacy-matters/>*

42. Privacy, it is uniformly observed in **K. S. Puttaswamy** (supra), is essential for liberty and dignity. Therefore, individuals have the need to preserve an intrusion-free zone for their personality and family. This facilitates individual freedom. On the question of invasion of personal liberty, the main judgment has

referred to a three-fold requirement in the form of – (i) legality, which postulates the existence of law (RTI Act in the present case); (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality, which ensures a rational nexus between the objects and the means to be adopted to achieve them. The third requirement, we would observe, is achieved in the present case by Sections 8(1)(j) and 11 of the RTI Act and the RTI Act cannot be faulted on this ground. The RTI Act also defines the legitimate aim, that is a public interest in the dissemination of information which can be confidential or private (or held in a fiduciary relationship) when larger public interest or public interest in disclosure outweighs the protection or any possible harm or injury to the interest of the third party.

43. Privacy and confidentiality encompass a bundle of rights including the right to protect identity and anonymity. Anonymity is where an individual seeks freedom from identification, even when and despite being in a public space. In **K. S. Puttaswamy** (supra) reference is made to **Spencer v. R.**, 2014 SCC Online Can SC 34: (2014) 2 SCR 212: 2014 SCC 43, which had set out three key elements of informational privacy: privacy as secrecy, privacy as control, and privacy as anonymity, to observe:

“214. [...] anonymity may, depending on the totality of the circumstances, be the foundation of a privacy interest that engages constitutional protection against unreasonable search and seizure.

XX XX XX

[...] The disclosure of this information will often amount to the identification of a user with intimate or sensitive activities being carried out online, usually on the understanding that these activities would be anonymous. A request by a police officer that an ISP voluntarily disclose such information amounts to a search.”

Privacy and confidentiality, therefore, include information about one’s identity.

44. In **K. S. Puttaswamy** (supra), it is observed that the Canadian Supreme Court in **Spencer** (supra) had stopped short of recognising an absolute right of anonymity, but had used the provisions of Canadian Charter of Rights and Freedoms of 1982 to expand the scope of the right to privacy, used traditionally to protect individuals from an invasion of their property rights, to an individual’s “reasonable expectation of privacy”. Yet the Court has observed that there has to be a careful balancing of the requirements of privacy with legitimate concerns of the State after referring to an article, Richard A. Posner, “Privacy, Surveillance, and Law”, The University of Chicago Law Review (2008), Vol. 75, 251, wherein it was observed that:

“Privacy is the terrorist’s best friend, and the terrorist’s privacy has been enhanced by the same technological developments that have both made data

mining feasible and elicited vast quantities of personal information from innocents ...”

45. Referring to an article titled ‘*Reasonable Expectations of Anonymity*’, Virginia Law Review (2015), Vol. 101, at pp. 691-762, authored by Jeffrey M. Skopek, it is observed that distinction has been drawn between anonymity on one hand and privacy on the other as privacy involves hiding information whereas anonymity involves hiding what makes it personal by giving an example that furnishing of medical records of a patient would amount to an invasion of privacy, whereas a State may have legitimate interest in analysing data borne from hospital records to understand and deal with a public health epidemic and to obviate serious impact on the population. If the anonymity of the individual/patient is preserved, it would legitimately assert a valid State interest in the preservation of public health.

46. For the purpose of the present case, we are not concerned with the specific connotations of the right to anonymity and the restrictions/limitations appended to it. In the context of the RTI Act, suffice would be to say that the right to protect identity and anonymity would be identically subjected to the public interest test.

47. Clause (j) to sub-section (1) of Section 8 of the RTI Act specifically refers to invasion of the right to privacy of an individual and excludes from disclosure information that would cause unwarranted invasion of privacy of such individual, unless the disclosure would satisfy the larger public interest test. This clause also draws a distinction in its treatment of personal information, whereby disclosure of such information is exempted if such information has no relation to public activity or interest. We would like to, however, clarify that in their treatment of this exemption, this Court has treated the word ‘information’ which if disclosed would lead to invasion of privacy to mean personal information, as distinct from public information. This aspect has been dealt with in the succeeding paragraphs.

48. As per Black’s Law Dictionary, 8th Edition, the word ‘*personal*’ means ‘*of or affecting a person or of or constituting personal property*’. In Collins Dictionary of the English Language, the word ‘*personal*’ has been defined as under:

- “1. Of or relating to the private aspects of a person’s life.
2. Of or relating to a person’s body, its care or its appearance.
3. Belonging to or intended for a particular person and no one else.
4. Undertaken by an individual himself.
5. Referring to, concerning, or involving a person’s individual personality, intimate affairs, etc., esp. in an offensive way.
6. Having the attributes of an individual conscious being.
7. Of or arising from the personality.
8. Of or relating to, or denoting grammatical person.

9. Of or relating to movable property (Law).

10. An item of movable property (Law).”

49. In **Peck v. United Kingdom**, (2003) EMLR 15, the European Court of Human Rights had held that private life is a broad term not susceptible to exhaustive definition but includes the right to establish and develop relationships with other human beings such that there is a zone of interaction of a person with others, even in a public context, which may fall within the scope of private life. Recognised facets of an individual’s private life include a person’s health, ethnicity, personal relationships, sexual conduct; **religious** or philosophical convictions and personal image. These facets resemble what has been categorised as sensitive personal data within the meaning of the Data Protection Act, 2018 as applicable in the United Kingdom.”

11. With respect to **what is public and private information**, the relevant portion is quoted as under:-

“50. Gleeson CJ in **Australian Broadcasting Corporation v. Lenah Game Meats Pty Ltd**, (2001) 185 ALR 1, had distinguished between what is public and private information in the following manner:

“An activity is not private simply because it is not done in public. It does not suffice to make an act private that, because it occurs on private proper property, it has such measure of protection from the public gaze as the characteristics of the property, the property owner combine to afford. Certain kinds of information about a person, such as information relating to health, personal relationships, or finances, may be easy to identify as private, as may certain kinds of activity which a reasonable person, applying contemporary standards of morals and behaviour, would understand to be meant to be unobserved. The requirement that disclosure or observation of information or conduct would be highly offensive to a reasonable person of ordinary sensibilities is in many circumstances a useful practical test of what is private.”

51. This test had been adopted in several English decisions including decision of the House of Lords in **Campbell v. Mirror Group Newspapers Limited**, (2004) UKHL 22, wherein Lord Hope of Craighead had further elucidated that the definition is taken from the definition of ‘privacy’ in the United States, where the right to privacy is invaded if the matter which is publicised is of a kind that – (a) would be highly offensive to a reasonable person and (b) not of legitimate concern to the public. Law of privacy in **Campbell** (supra), it was observed, was not intended for the protection of the unduly sensitive and would cover matters which are offensive and objectionable to a reasonable man of ordinary sensibilities who must expect some reporting of his daily activities. The mind that has to be examined is not that of a reader in general, but that of

the person who is affected by the publicising/dissemination of his information. The question is what a reasonable person of ordinary sensibilities would feel if he/she is subjected to such publicity. Only when publicity is such that a reasonable person would feel justified in feeling seriously aggrieved that there would be an invasion in the right to privacy which gives rise to a cause of action.

52. In **Douglas** (supra), it was also held that there are different degrees of privacy which would be equally true for information given in confidentiality, and the potential for disclosure of the information to cause harm is an important factor to be taken into account in the assessment of the extent of the restriction to protect the right to privacy.

53. While clause (j) exempts disclosure of two kinds of information, as noted in paragraph 47 above, that is “personal information” with no relation to public activity or interest and “information” that is exempt from disclosure to prevent unwarranted invasion of privacy, this Court has not underscored, as will be seen below, such distinctiveness and treated personal information to be exempt from disclosure if such disclosure invades on balance the privacy rights, thereby linking the former kind of information with the latter kind. This means that information, which if disclosed could lead to an unwarranted invasion of privacy rights, would mean personal information, that is, which is not having co-relation with public information.

54. In **Girish Ramchandra Deshpande v. Central Information Commissioner and Others**, (2013) 1 SCC 212, the applicant had sought copies of all memos, show-cause notices and censure/punishment awarded to a Government employee from his employer and also details of his movable/immovable properties, details of investment, loan and borrowings from financial institutions, details of gifts accepted by the employee from his family members and relatives at the time of the marriage of his son. In this context, it was observed:

“12. 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 organisation 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

or 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.

13. 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.”

(emphasis supplied)

55. In **Canara Bank v. C. S. Shyam and Another**, (2018) 11 SCC 426, the applicant had sought information on parameters with regard to transfer of clerical staff with details of individual employees, such as date of their joining, promotion earned, date of their joining the branch, the authorities who had posted the transfer letters, etc. The information sought was declared to be personal in nature, which was conditionally exempted from disclosure under Section 8(1)(j) of the RTI Act.

56. In **Subhash Chandra Agarwal v. Registrar, Supreme Court of India and Others**, (2018) 11 SCC 634, the applicant (who is also the respondent in the present appeals) had sought information relating to details of medical facilities availed by individual judges of the Supreme Court and their family members, including information relating to private treatment in India and abroad in last three years. This Court had held that the information sought by the applicant was ‘personal’ information and was protected under Section 8(1)(j) of the RTI Act, for disclosure would cause unwarranted invasion of privacy which prohibition would not apply where larger public interest justifies disclosure of such information.

57. In **R. K. Jain v. Union of India and Another**, (2013) 14 SCC 794, the applicant had sought inspection of documents relating to Annual Confidential Reports (ACRs) of a Member of Customs Excise and Service Tax Appellate Tribunal (CESTAT) and follow up action taken by the authorities based on the ACRs. The information sought was treated as personal information, which, except in cases involving overriding public interest, could not be disclosed. It was observed that the procedure under Section 11 of the RTI Act in such cases has to be followed. The matter was remitted to examine the aspect of larger public interest and to follow the procedure prescribed under Section 11 of the RTI Act which, it was held, was mandatory.

58. Reference can also be made to **Aditya Bandopadhyay** (supra), as discussed earlier in paragraph 32, where this Court has held that while a fiduciary could not withhold information from the beneficiary in whose

benefit he holds such information, he/she owed a duty to the beneficiary to not disclose the same to anyone else. This exposition of the Court equally reconciles the right to know with the rights to privacy under clause (j) to Section 8(1) of the RTI Act.

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.”

12. This Commission also takes note of the legal principle enunciated by the **Hon’ble Delhi High Court** regarding non-disclosure of third party passport details in **Union of India v. R. Jayachandran**, WP (C) 3406/2012 dated 19-02-2014 as follows:-

“10. This Court also finds that the observations given by learned Single Judge in the batch of writ petitions being W.P.(C) 2232/2012 are without taking into account the binding provisions of Sections 11(1) and 19(4) of the RTI Act. In particular the learned Single Judge erred in observing in W.P.(C) 1677/2012 that passport number is not a personal information. This Court is in agreement with Mr. Tiku’s submission that as to who generates a third party information, is totally irrelevant. After all passport number is not only personal information but also an identification proof, specifically when one travels abroad.

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.”

13. From the foregoing, this Commission observes that the contentions put forth by the appellant with regards to ‘public interest’ element on the premise of Mr. Rahul Gandhi being a public figure does not stand a chance for disclosure of his personal information such as religion and passport details. Furthermore, the appellant has also failed to substantiate that the information sought is in line with

the proviso appended to Section 8(1)(j) of the RTI Act, 2005. Hence, in the absence of any larger public interest in the matter, this Commission comes to a conclusion that the information sought by the appellant qualifies to be the 'personal information' of third party which is exempted under Section 8(1)(j) of the RTI Act, 2005 and therefore, it cannot be provided to the appellant.

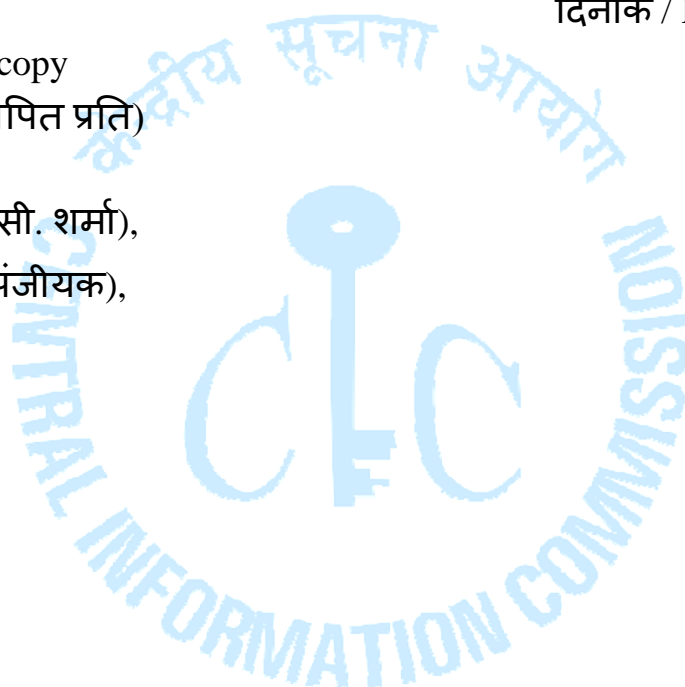
14. With the above observations, the appeal is disposed of.
15. Copy of the decision be provided free of cost to the parties.

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

दिनांक / Date:- 17-04-2020

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

S. C. Sharma (एस. सी. शर्मा),
Dy. Registrar (उप-पंजीयक),
(011-26105682)



Addresses of the parties:

1. The CPIO,
M/o. External Affairs, Under Secretary
(PV-I) & CPIO, (CPV Division), Patiala
House Annexe, Tilak Marg, New Delhi-110001.
2. Dr. Sanjeev Goel

