

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30th March, 2012

+ **LPA 253/2012**

SHRI HARISH KUMAR **Appellant**

Through: Mr. C.Hari Shankar & Mr. S. Sunil,
Adv.

Versus

**PROVOST MARSHAL-CUM-APPELLATE
AUTHORITY & ANR**

..... **Respondents**

Through: Mr. B.V. Niren, CGSC with Mr.
Utkarsh Sharma & Mr. Prasouk Jain,
Adv. for UOI

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

A.K. SIKRI, ACTING CHIEF JUSTICE

1. This Intra-Court appeal impugns the order dated 27th January, 2012 of the learned Single Judge dismissing W.P.(C) No. 554/2012 preferred by the appellant. The said writ petition was preferred assailing the order dated 14th September, 2011 of the Central Information Commission (CIC) dismissing the appeal preferred by the appellant.

2. The appellant had sought the following information under the Right to Information Act, 2005 with respect to his father-in-law:-

- a. Name of the Office/Battalion/Regiment from where he retired?
- b. On which date he was retired?

- c. What is his pension?
- d. As per records, of which caste he belongs?
- e. Please provide me the photocopy of his caste certificate?

3. At this stage, it may be stated that there are disputes between the appellant and his wife.

4. The Central Public Information Officer (PIO) vide order dated 3rd December, 2010 informed the appellant that the information sought was a third party personal information, disclosure whereof was likely to cause undue invasion into the privacy of the individual concerned and the information also did not serve any public activity or interest and was therefore exempted from disclosure under Section 8 (1) (j) of the Act. The appellant was further informed that the information could be provided to the appellant subject to consent of third party i.e. his father-in-law and after following the procedure prescribed under Section 11(1) of the Act. The appellant was thus requested to provide postal address of his father-in-law, for the procedure under Section 11(1) to be followed.

5. The appellant however instead of providing address of his father-in-law, preferred an appeal. The said appeal was dismissed vide order dated 18th January, 2011 directing third party procedure under Section 11(1) to be followed, upon compliance by the appellant of the requisite formalities.

6. The appellant however was not wanting the said third party procedure to be followed and wanted the information, though pertaining to his father-in-law, but without his father-in-law having any chance to object to the

disclosure of the said information. The appellant with the said intent preferred the second appeal to the CIC. The CIC however dismissed the said appeal.

7. The learned Single Judge has dismissed the writ petition observing that the information sought was of personal nature and the appellant was unable to disclose any public interest in the disclosure thereof and disclosure of information sought by the appellant was to wreck vengeance on account of his matrimonial dispute.

8. The counsel for the appellant before us has argued that the learned Single Judge has erred in observing that there was no public interest in the disclosure sought by the appellant. It is argued that the same is irrelevant under the RTI Act.

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.

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. It was yet further held that the nature of restriction on right to privacy is of 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 upon what is at stake; this is so because a public servant is expected to act for public good in the discharge of his duties and is accountable for them. This Court in ***Vijay Prakash Vs. UOI*** AIR 2010 Del 7 also, where information of an estranged wife's service record was sought, held that the transparency values have to be reconciled with legal interest protected by law, such as other fundamental rights, particularly the fundamental right to privacy; relying on ***O.K. Ghosh Vs. Ex. Joseph*** MANU/SC/0362/1962 it was held that an individual does not forfeit his fundamental rights by becoming a public servant; that a distinction has to be drawn between official information and private information and private details of date of birth, Personal Identification Number etc. are to be disclosed only if such disclosure is necessary for providing knowledge of proper performance of the duties and tasks assigned to the public servant; not finding any public interest in the disclosure of information sought, the order of the CIC denying the information was upheld.

12. We are even otherwise pained to find that the provisions of the RTI Act are being used for personal vendetta and owing where to the PIOs are under huge load and strain.

13. We thus do not find any merit in this appeal. The same is dismissed. We refrain from imposing any costs on the appellant.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

MARCH 30, 2012

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