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

Date of decision: 24th January, 2023

+ **W.P.(C) 3928/2020 and CM APPL. 14074/2020**

MINISTRY OF EXTERNAL AFFAIRS

..... Petitioner

Through: Mr. P. Roychaudhuri, Mr. Gagan
Gupta & Mr. Mohan Khuller,
Advocates.

versus

SOMA PANDEY

..... Respondent

Through: Mr. Asad Alvi, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present writ petition has been filed by Ministry of External Affairs (‘MEA’) through Regional Passport Office, Delhi challenging the impugned order dated 10th June, 2020 passed by the Central Information Commission (CIC) by which the information sought by the Respondent (‘RTI Applicant’) about her husband’s passport was directed to be disclosed. The operative portion of the order reads as under:

“Keeping in view the facts of the case and the submissions made by both the parties and in the light of the decisions cited above, as also respecting the spirit enunciated by the superior Courts and maintaining consistency, the Commission while setting aside the decision of the CPIO / FAA instructs the Respondent (CPIO) to furnish the information as available on record to the Appellant within a period of 30 days from the date of receipt of this order depending upon the condition for containment of the

Corona Virus Pandemic in the Country or through email.

The Appeal stands disposed accordingly.”

3. The RTI Applicant, who is the wife of Shri Suresh Pandey, sought disclosure of the following information about her husband's passport under the Right to Information Act, 2005 (RTI) from Central Public Information Officer (CPIO), Regional Passport Office (RPO), Hudco Trikoot-III, Bhikaji Cama Place, R.K. Puram.

“1. Kindly provide me the details of the certified copies of all documents of passport file including marriage certificate and application form as submitted in passport office of Mr. Suresh Pandey, son of Mr. Kapil Deo Pandey, date of birth 25.10.1975 Address: House / Flat No.-100-S, Sector 7 Jasola Vihar New Delhi 110025. His Passport number is M0967563,

2. Kindly provide the certified copies of the visa issued for Mr. Suresh Pandey for his abroad tours for the period of January 2014 to January 2018 (if any).

3. Has he declared his wife and children in his family details of the passport while getting it re-issued on 11-08-2014 with File number DL1077981144014 when under the rules applicable that time, providing marital status and wife's name was mandatory?”

4. The application requesting for the said information was rejected by the CPIO on the ground that the same was exempted under Section 8(1)(j) of the RTI Act, 2005. Insofar as serial no. 2 is concerned, the CPIO has referred the RTI Applicant to approach the concerned Visa issuing authority, given that the Regional Passport Office was only dealing with cases involving Passports.

5. An appeal dated 13th February, 2018 was filed by the RTI Applicant

under Section 19(1) of the RTI Act, 2005 and the same was rejected vide order dated 27th February, 2018 by the First Appellate Authority.

6. Finally, the matter reached the CIC, when the RTI Applicant filed a second appeal dated 26th September, 2018, under Section 19(3) of the RTI Act, 2005. In the decision dated 10th June, 2020 in the said appeal, CIC directed the CPIO that the information, which was sought would be liable to be disclosed within a period of 30 days. The operative portion of the decision of the CIC reads as:

“Keeping in view the facts of the case and the submissions made by both the parties and in the light of the decisions cited above, as also respecting the spirit enunciated by the superior Courts and maintaining consistency, the Commission while setting aside the decision of the CPIO / FAA instructs the Respondent (CPIO) to furnish the information as available on record to the Appellant within a period of 30 days from the date of receipt of this order depending upon the condition for containment of the Corona Virus Pandemic in the Country or through email.

The Appeal stands disposed accordingly.”

7. Ld. Counsel appearing for the Petitioner- MEA submits that the information related to any person's passport is protected under Section 8(1)(j) of the Act. He submits that in order to protect the privacy of the individual concerned as also the safety and security of the information contained in the passport, this information is not provided. He relies upon the order of this Court dated 21st November, 2022 in ***W.P.(C) 3735/2020*** titled '***Ministry of External Affairs v. Asmita Sachin Waman***', which according to him is also based on the similar facts. The relevant extract of the said decision reads as:

“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.”

8. Mr. Alvi, Id. Counsel appearing for the RTI Applicant, on the other hand, submits that the only information that the RTI Applicant insists upon obtaining is whether the passport holder has disclosed the details of his wife and children while obtaining the passport which was issued on 11th August, 2014. According to the Id. Counsel the passport holder has indulged in concealment of material facts while obtaining the passport.

9. The present writ petition merely relates to the order dated 10th June, 2020 passed by the CIC. The question is whether the information sought under the RTI Act which relates to the passport details of the passport holder can be disclosed or not.

10. This issue is quite settled now in the recent order by the Id. Single Judge of this Court in ***Ministry of External Affairs (Supra)***. In the said case, the RTI Applicant had sought disclosure of details relating to the passport of her estranged husband and other supporting documents. The said information was refused and the Id. Single Judge relying upon the judgment of this Court in ***Union of India vs. R. Jayachandran [2014 SCC OnLine Del 767]*** and ***Vijay Prakash vs. Union of India [2009 SCC OnLine***

Del 1731]. After considering the above decisions, the Court observed as under:

“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.

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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.”

11. The issue being squarely covered by the three decisions; the CIC order is not sustainable in law. The same, accordingly, is set aside.

12. The writ petition is allowed. However, it is made clear that the RTI Applicant's remedies, if any, available under the Passport Act, 1967 are left open. The Petitioner is given liberty to approach the concerned Passport authority regarding the alleged non-disclosure or mis-disclosure of information by the passport holder.

13. The present order would not, in any manner, be deemed to be an adjudication on any of the issues that may be raised by the RTI Applicant before the concerned Passport authority. If the Petitioner approaches the passport authorities, the same shall be considered in accordance with law on its own merits.

14. All pending applications are disposed of.

**PRATHIBA M. SINGH
JUDGE**

JANUARY 24, 2023/dk/am