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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 28.01.2025

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W.P.(C) 5836/2018

RAKESH KUMAR

.....Petitioner

Through: Mr. Puneet Sharma, Advocate and
Mr. Ashwani Kumar, Advocate
(through VC)

versus

CENTRAL PUBLIC INFORMATION OFFICER AND ANR.

.....Respondents

Through: Mr. Rahul Sharma, SPC along with
Mr. Mani Kant, Advocate.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

1. The present petition assails the order(s) dated 05.05.2017/16.02.2018 passed by the Chief Information Commissioner ('CIC'). The said order(s) have been passed in the backdrop of an RTI application filed by the petitioner on 05.02.2016 before the Information Officer, Regional Passport Office, Mumbai, seeking the following information:-

"1. Please provide the information whether any Passport was issued to Anubhuti Singh daughter of Arvind Kumar Singh and Anita Singh resident of Mumbai from Regional Passport Office Mumbai in the period between 1984-1990.

2. Please provide the information whether any Passport was issued to Rinki Singh daughter of Arvind Kumar Singh and Anit Singh resident of Mumbai from Regional Passport Office Mumbai in the period between 1984-1990.

3. Please provide the information whether any Travel Document to travel



abroad was issued to Anubhav Singh, son of Arvind Kumar Singh and Anita Singh resident of Mumbai from Regional Passport Office Mumbai in the period between 1987-1990.”

2. The information sought by the petitioner through the RTI application was refused by the respondent no.1 vide an email dated 23.02.2016, stating as under :-

“2. The disclosure of passport details / documents of above persons have no relationship to any public activity or interest and may cause unwarranted invasion of their privacy. Such details qualify as “Personal Information” and falls under the section 8(1)(j) of RTI Act, 2005.

3. Further, in view of Judgment given by Hon’ble Delhi High Court in the case of “Union of India vs R Jayachandran, W.P.(C) No 3406/2012 dated 19th February 2014, the competent authority has settled that no information pertaining to a passport application of third party could be disclosed in response to a RTI query

4. In view of the above, information is denied.”

3. Aggrieved by the aforesaid, the petitioner filed an appeal before the First Appellate Authority. However, the said appeal was dismissed, *inter alia*, stating as under :-

“2. The appellant had filed his appeal on the ground “refused access to information requested”. I however, find that the appellant has sought information about the passport details of a third party. Such information cannot be ordered to be disclosed as it is barred from disclosure u/s 8(1)(j) of the RTI Act. It is however made clear that the travel details/visa details of any Indian passport holder is not maintained by this Ministry.”

4. Consequently, the petitioner preferred a second appeal bearing No. CIC/KY/A/2016/000693 before the Chief Information Commissioner (‘CIC’). The said appeal was opposed by the respondent no.1 on the ground that the information sought is a third-party information and could not be provided to the petitioner. However, the said contention was refuted by the



petitioner.

5. After considering the respective submissions on behalf of the parties, the CIC passed an order dated 05.05.2017 holding as under :-

“11. The Commissioner is of the view that the information as to whether the passport has been issued to Ms. Anubhuti Singh and Ms. Rinki Singh in the period between 1984-1990, should be furnished to the appellant, provided the appellant submits details as required by RPO to trace the information.

12. The RPO, Mumbai may advise the appellant immediately of the details required to trace the Passport. The appellant, if he so wishes, may submit the details in order to obtain the information.

Decision:

13. The respondent is directed to comply with para 11 and para 12 above.

The appeal is disposed of. Copy of the order be given to the parties free of cost.”

6. Subsequently, an “Adjunct Order” dated 16.02.2018 was passed by the CIC on an application filed by the petitioner alleging non-compliance of the CIC’s order dated 05.05.2017. The said order records as under:-

“4. The respondent stated that on receipt of the order passed by this Commission in Appeal no. CIC/KY/A/2016/000693 dated 05.05.2017, necessary steps were taken and the appellant was informed via email dated 31.05.2017 that the records pertaining to issue of passport to Ms. Anubhuti Singh and Rinky Singh during the period 1984 to 1990 are not available as the records being very old and have been destroyed. However, in order to implement the Commission's order in letter and spirit, CPIO Mumbai sought more information about the passport holders from the appellant, so that endeavors can be made to check if any, information is available. Thereafter, there has been no communication from the appellant.

5. The respondent stated that it is a settled position in law that the CPIO shall supply information from available records and is not expected to create or generate information for appellant. The respondent stated that the CPIO had categorically informed the appellant about the factual



position of the records and therefore question of non-compliance of the Commission's order does not arise in the present case.

Discussion/ observation:

6. The Commission observed that the respondent had complied with the Commission's order dated 05.05.2017 in Appeal no. CIC/KY/A/2016/000693.

Decision:

7. No further intervention of the Commission is required in the matter.

The appeal is disposed of. Copy of the order be given to the parties free of cost."

7. In the present petition, the petitioner takes exception to the stand of the respondent no.1 as recorded in the aforesaid "Adjunct Order" dated 16.02.2018, to the effect that the requisite information cannot be provided in view of non-maintenance/restriction of records for the relevant period. It is submitted that the same defeats the rights accrued in favour of the petitioner *vide* order dated 05.05.2017.

8. I find no merit in the contentions raised by the learned counsel for the petitioner.

9. The petitioner has produced a copy of the email communication dated 17.05.2017 addressed by the Regional Passport Office, Mumbai, pursuant to the order dated 05.05.2017 passed by the CIC. It has been categorically stated therein as under:-

"2. In this regard, it is informed that passport applications alongwith accompaniments for the period 1984-1990 have been destroyed as per the standing instructions of the Govt. of India. Since computer system was not introduced during the said period, details of passport/application are not available. We are therefore, unable to retrieve and furnish the details as sought under RTI."



10. Thus, the requisite information sought by the petitioner is not available since the relevant records [for the period 1984-1990, with regard to which the requisite information pertains], have been destroyed, as per the extant policy/ instructions of the Government of India.

11. I also find that the information sought by the petitioner is barred from disclosure under Section 8(1)(j) of the Right to Information Act, 2005 ('RTI Act'). This Court in **Union of India vs R. Jayachandran**, 2014 SCC OnLine Del 767, **Ministry of External Affairs vs Asmita Sachin Waman**, WP(C) 3735/2020 and **Ministry of External Affairs vs Soma Pandey**, WP(C) 3928/2020 have been of a consistent view that disclosures which may be sought by a third party under the provisions of RTI act pertaining to passport or any other personal identification document, squarely falls under the ambit of Section 8(1)(j) of the RTI Act. In **Ministry of External Affairs vs Asmita Sachin Waman**, WP(C) 3735/2020, it has been held as under:

*"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.”

12. Further, this Court in **Ministry of External Affairs vs Soma Pandey** (*supra*) has observed as under:

“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 decision, the Court observed as under:.....”

13. It is quite apparent that the information sought by the petitioner vide his RTI squarely falls within the ambit of Section 8(1)(j) of the RTI Act, and the dicta laid down in the aforesaid judgments, squarely applies in respect thereof. This is quite apart from the fact that in any event, the requisite information is not available on account of non-availability/destruction of records for the concerned period.

14. During the course of hearing, learned counsel for the petitioner has sought to refute the contention of the respondents as regards destruction of records and for this purpose, has relied upon the stand taken by the Regional Passport Office, Patna, in response to another RTI application filed by the same petitioner.



15. The stand of the concerned CPIO, Regional Passport Office, Patna, in response to a different RTI application filed by the petitioner has no bearing on the entitlement of the petitioner to the information sought from the Regional Passport Office, Mumbai. Further, there is no material on the basis of which it can be plausibly asserted by the petitioner that the intimation given by the Regional Passport Office, Mumbai *vide* communication dated 17.05.2017 does not accurately depicts factual position as regards the destruction of the relevant records. However, in case the petitioner has any doubts/ further queries in this regard, it is open to the petitioner to take recourse to appropriate measures, as may be available under law. The same does not impinge upon the legality of the impugned order(s) in these proceedings.

16. In the circumstances, the present petition is, accordingly disposed of.

SACHIN DATTA, J

JANUARY 28, 2025/r, sl