

CENTRAL INFORMATION COMMISSION
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Decision No. CIC/AD/A/2011/001494/SG/14922
Appeal No. CIC/AD/A/2011/001494/SG

Appellant : Mr. S. K. Kalra,
Flat No. 24,
Data Ram Co - Operative Society,
Sector – 18, Rohini, Delhi - 110085

Respondent : Mr. Rakesh Aggarwal,
CPIO & RPO,
Ministry of External Affairs ,
SCO – 28 - 32, Sector 34 – A,
Chandigarh - 160022

RTI application filed on : 14/11/2010
PIO replied on : 29/11/2010
First Appeal received on : 27/12/2010
FAA's order of : 24/01/2011
Second Appeal received on : 15/03/2011

Based on the papers before the Commission, the relevant facts emerging from the Appeal are:

Information sought:

Passport details of Mr. Kapil Arya, S/o Mr. Ved Parkash Arya, who is facing criminal charges, vide FIR No. 12 dated 06-01-2005 U/S 406/498A IPC, P. S. Sadar, Patiala and has been declared as a 'Proclaimed Offender' by Additional Chief Judicial Magistrate, vide order dated 25/09/2010.

Reply of Public Information Officer (PIO):

Information denied on the basis of Section 8(1)(j) of the RTI Act as disclosure of personal information of a third party might cause invasion of the privacy of the third party.

Grounds for First Appeal:

Dissatisfied by information provided by PIO.

Order of the First Appellate Authority (FAA):

The FAA upheld the reply of the PIO. The FAA further noted that the High Court of Delhi in *Suhas Chakma v. CIC & Ors.* W. P. (C) No. 9118/2009 dated 22/01/2010 held - "*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*".

Ground for Second Appeal:

Aggrieved by the FAA's order.

Relevant Facts emerging during Hearing held on September 26, 2011:

The following were present:

Appellant: Absent;

Respondent: Mr. P. Roychaudhuri, Advocate representing Mr. Rakesh Aggarwal, CPIO & RPO. The Respondent relied on the decision of the High Court of Delhi in the *Suhas Chakma Case* which ruled that third party information cannot be disclosed without consulting the third party, and argued that Section 11 of the RTI Act cannot be invoked since the CPIO in the present matter does not have the current whereabouts of the third party.

The order was reserved at the hearing held on 26/09/2011.

Decision announced on 28 September 2011:

The Appellant has sought information about passport details of one Mr. Kapil Arya who is facing criminal charges and has been declared as a 'Proclaimed Offender' by Mr. Rajiv Kalra, Additional Chief Judicial Magistrate, Patiala vide order dated 25/09/2010. The PIO denied the information on the basis of Section 8(1)(j) of the RTI Act, which was also upheld by the FAA. The Counsel appearing before the Commission for the Respondent and the FAA relied on the decision of the High Court of Delhi in *Suhas Chakma v. CIC & Ors.* W. P. (C) No. 9118/2009 dated 22/01/2010 in support of this denial, the relevant paragraph of which has been reproduced above. The Counsel appearing on behalf of the Respondent argued that since the PIO did not have any information about the current whereabouts of the third party, Section 11 of the RTI Act could not be invoked and consequently, the information sought was not required to be provided to the Appellant.

Section 11(1) of the RTI Act provides as follows:

"11. Third party information.- (1) Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the 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 interests of such third party."

Section 11(1) of the RTI Act is triggered once the PIO intends to disclose to an applicant any information which relates to or has been supplied by a third party and has been treated as confidential by that third party. Once Section 11(1) of the RTI Act is applicable, the PIO shall follow the procedure of serving a notice to the third party for seeking objections whether such information shall be disclosed or not. On receipt of the submissions of the third party, the PIO shall keep the submissions in view and then decide whether the information sought shall be disclosed or not. If the PIO does not find any merit in the submissions of the third party, he shall disclose the information sought to the applicant. On the other hand, where the PIO decides that the information sought shall not be disclosed then the basis for denial of information must be in accordance with Sections 8 and 9 of the RTI Act only. However (except in the case of trade or commercial secrets protected by law) even where the PIO is of the view that there is possible harm or injury to the interests of the third party, but public interest in disclosure outweighs in importance any such harm or injury, he may disclose the information. Section 11 does not give the third party a right of veto in giving information.

In this regard, it may be worthwhile to note the observations of Muralidhar, J. of the High Court of Delhi in *Arvind Kejriwal v. CPIO* W. P. (C) 6614/2008 and C. M. Appl. No. 12685/2008, W. P. (C) 8999/2008 and C. M. Appl. No. 7517/2008, W. P. (C) 8407/2009 and C. M. Appl. 5286/2009 decided on 30/07/2010, in Paragraph 21, which are as follows:

“...It requires to be noticed that under the RTI Act information that is totally exempt from disclosure has been listed out in Section 8. The concept of privacy is incorporated in Section 8(1)(j) of the RTI Act. This provision would be a defense available to a person about whom information is being sought. Such defense could be taken by a third party in a proceeding under Section 11(1) when upon being issued notice such third party might want to resist disclosure on the grounds of privacy. This is a valuable right of a third party that encapsulates the principle of natural justice inasmuch as the statute mandates that there cannot be a disclosure of information pertaining to or which ‘relates’ to such third party without affording such third party an opportunity of being heard on whether such disclosure should be ordered. This is a procedural safeguard that has been inserted in the RTI Act to balance the rights of privacy and the public interest involved in disclosure of such information. Whether one should trump the other is ultimately for the information officer to decide in the facts of a give case.”

In view of the above, this Bench agrees with the observations of the High Court of Delhi in the *Suhas Chakma Case* viz. *“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”*.

In the instant case, assuming the PIO intended to disclose the passport details of the third party which had been treated as confidential by the latter, the PIO should have served a notice on such third party seeking objections This is certainly in consonance with the ruling in *Suhas Chakma Case*. However, the peculiarity of the present matter is that the third party is a Proclaimed Offender, as declared by a competent court, and therefore, it is fairly obvious that the whereabouts of such a person would not be known. Given the same, it may not be practically possible to comply with the requirements of Section 11 of the RTI Act. It is pertinent to mention that the *Suhas Chakma Case* did not deal with a situation where the concerned third party was a proclaimed offender and is therefore, not relevant to the present matter before the Commission.

Further, the PIO has denied the information on the basis of Section 8(1)(j) of the RTI Act. Notwithstanding the applicability of Section 8(1)(j) of the RTI Act to the information sought, this Bench is of the considered view that Section 8(2) of the RTI Act would mandate disclosure of the information. Section 8(2) of the RTI Act provides as follows:

“Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.”

Section 8(2) of the RTI Act mandates that even where disclosure of information is protected by the exemptions under Section 8(1) of the RTI Act, if public interest in disclosure outweighs the harm to such protected interests, the information must be disclosed under the RTI Act. In the instant matter, disclosure of the information of a proclaimed offender may bring the third party to justice

in a pending legal proceeding where he has already been declared as a Proclaimed Offender. Therefore, the information sought must be disclosed in accordance with Section 8(2) of the RTI Act.

The Appeal is allowed. The PIO shall provide the information as per records to the Appellant **before 25 October 2011.**

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi
Information Commissioner
28 September 2011

(In any correspondence on this decision, mention the complete decision number.)(HA)