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

+ W.P.(C) 3406/2012 & CM APPL. 7218/2012

UNION OF INDIA Petitioner
Through Mr. Rakesh Tiku, Senior Advocate
with Mr. P.R. Choudhary, Advocate
versus

R JAYACHANDRAN Respondent
Through None

AND

+ W.P.(C) 8915/2011 & CM APPLs. 20128/2011, 20162/2012

MINISTRY OF EXTERNAL AFFAIRS Petitioner
Through Mr. Rakesh Tiku, Senior Advocate
with Mr. P.R. Choudhary, Advocate
versus

D.K.PANDEY Respondent
Through None

AND

+ W.P.(C) 410/2012 & CM APPL. 871/2012

MINISTRY OF EXTERNAL AFFAIRS Petitioner
Through Mr. Rakesh Tiku, Senior Advocate
with Mr. P.R. Choudhary, Advocate
versus

K.K.DHARMAN Respondent
Through None

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Date of Decision : 19th February, 2014

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN**

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present batch of writ petitions has been filed challenging the orders of the Central Information Commission (for short 'CIC') whereby the petitioner-Ministry of External Affairs has been directed to provide copies of passports of third parties along with their birth certificates, educational qualifications and identity proofs. Since the reasoning of the CIC in all the impugned orders is identical, the relevant portion of the impugned order in W.P.(C) 3406/2012 is reproduced hereinbelow:-

"We can also look at this from another aspect. The State has no right to invade the privacy of individual. There are some extraordinary situations where the State may be allowed to invade the privacy of a Citizen. In those circumstances special provisions of the law apply;- usually with certain safeguards. Therefore where the State routinely obtains information from Citizens, this information is in relationship to a public activity and will not be an intrusion on privacy.

Certain human rights such as liberty, freedom of expression or right to life are universal and therefore would apply uniformly to all human beings worldwide. However, the concept of 'privacy' is a cultural notion, related to social norms, and different societies would look at these differently. Therefore referring to the UK Data protection act or the laws of other countries to define 'privacy' cannot be considered a valid exercise to constrain the Citizen's fundamental Right to Information in India. Parliament has not codified the right to privacy so far, hence in balancing the Right to Information of Citizens and the

individual's Right to Privacy the Citizen's Right to Information would be given greater weightage. The Supreme Court of India has ruled that Citizens have a right to know about charges against candidates for elections as well as details of their assets, since they desire to offer themselves for public service. It is obvious then that those who are public servants cannot claim exemption from disclosure of charges against them or details of their assets. Given our dismal record of misgovernance and rampant corruption which colludes to deny Citizens their essential rights and dignity, it is in the fitness of things that the Citizen's Right to Information is given greater primacy with regard to privacy."

2. Despite filing affidavit of service, none has appeared for the respondents today. Even yesterday, none had appeared for the respondents. Consequently, this Court has no other option but to proceed with the matter ex parte.

3. Mr. Rakesh Tiku, learned senior counsel for petitioners submits that CIC failed to appreciate that the passport application contains personal information and if disclosed, would cause unwarranted invasion of privacy of third party. He further submits that even if the CIC came to the conclusion that the information sought for was not exempt from disclosure under Section 8(1)(j) of the Right to Information Act, 2005 (for short 'RTI Act'), it would still have to follow the third party information procedure under Section 11 of the RTI Act.

4. Mr. Tiku fairly points out that in connected matters, i.e., W.P.(C) Nos. 2232/2012, 8932/2011, 3421/2012, 1263/2012, 1677/2012, 1794/2012, 2231/2012, a co-ordinate bench of this Court has directed the Ministry of External Affairs to give details of passport to third parties like passport number, date of its first issue, subsequent renewals, the name of police

station from which verification had been done, nature of documents submitted with the passport application without disclosing the contents of those documents along with the information as to whether Visa was issued to the third party.

5. Mr. Tiku, however, submits that the reasoning in W.P.(C) 2232/2012 for release of third party information that the said information was generated by Ministry of External Affairs, is untenable in law. According to him, if this reasoning were to be accepted, then a third party's Permanent Account Number (PAN) and password would also be liable to be disclosed as the same are generated by the Income Tax Department. He states that if an applicant were to get a third party's PAN and password details, he would be able to find out his financial details like income, tax paid etc.

6. This Court finds that the concept of third party information has been comprehensively dealt with in the RTI Act. Some of the relevant sections pertaining to third party as well as personal information are reproduced hereinbelow:-

“2. Definitions.—In this Act, unless the context otherwise requires,—

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(n) “third party” means a person other than the citizen making a request for information and includes a public authority.

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8. Exemption from disclosure of information. —(1)
Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

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(j) information which relates to personal information the disclosure of which has no 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.

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11. Third party information.—*(1) Where a Central Public Information Officer or a 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.

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19. Appeal.-

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(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against

which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.”

7. Keeping in view the aforesaid provisions, this Court is of the view that the proper approach to be adopted in cases where personal information with regard to third parties is asked is first to determine whether information sought falls under Section 8(1)(j) of the RTI Act and if the Court/Tribunal reaches the conclusion that aforesaid exemption is not attracted, then the third party procedure referred to in Section 11(1) of the RTI Act must be followed before releasing the information.

8. This Court finds that except making general observations in the impugned matters, CIC has not considered the aforesaid binding statutory provisions. In fact, the impugned order is based on surmises and conjectures. CIC has not pointed out as to how any of its general observations with regard to mis-governance, rampant corruption by public servants and politicians have any relevance to the present batch of cases. CIC has nowhere stated in the impugned orders that third parties are either public servants or politicians or persons in power.

9. CIC has neither examined the issue whether larger public interest justifies the disclosure of the information sought by the applicants in these cases nor has followed the third party procedure prescribed under Sections 11 and 19(4) of RTI Act.

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.

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 Vs. Central Information Commission, W.P.(C) 9118/2009* decided on *2nd January, 2010* as well as a Division Bench's judgment in *Harish Kumar Vs. Provost Marshal-Cum-Appellate Authority & Ors., LPA 253/2012* decided on *3^{0th} 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.”

14. The Supreme Court in ***Municipal Corporation of Delhi Vs. Gurman Kaur, (1989) 1 SCC 101*** has held that a decision of a Court is *per incuriam* when it is given in ignorance of the terms of a statute. In the present case, as the direction of learned Single Judge in the aforesaid batch of writ petitions bearing W.P.(c) 2232/2012 is specifically contrary to Section 11(1) of the RTI Act, this Court is of the view that it is *per incuriam*.

15. Consequently, present writ petitions are allowed and the impugned orders dated 11th April, 2012 passed in W.P.(C) 3406/2012; 21st October, 2011 in W.P.(C) 8915/2011; and 19th December, 2011 in W.P.(C) 410/2012 by CIC are set aside. The applications stand disposed of.

MANMOHAN, J

FEBRUARY 19, 2014

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