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

Judgment reserved on: 27.04.2009
Judgment pronounced on: 01.07.2009

\+ W.P. (C) 803/2009

VIJAY PRAKASH ..... Petitioner
Through: Petitioner in person.

versus

UOI AND ORS. ..... Respondents
Through: Mr. S.K. Dubey with
Mr. K.B. Thakur and Mr. Deepak Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Hon'ble Mr. Justice S. Ravindra Bhat

1. The petitioner in this proceeding under Article 226 of the Constitution of India, challenges a decision of the Central Information Commission (CIC) dated 17.12.2008 (the impugned order] affirming the decision of the appellate authority under the Right to Information Act, 2005 [hereafter, "the Information Act"] not to allow disclosure of the information sought.

2. The facts necessary for deciding the case are that the petitioner is a former officer of the Indian Air Force. He apparently got married in 2001. According to the averments, he had sought resignation from the Indian Air Force, which was granted on 30.09.2001. His wife was inducted

in the Defence Research Development Organization (DRDO) on 31.03.2005 and was posted at 4, Air Force Selection Board ("AFSB"), Varanasi. Eventually, differences cropped up between the two, and his wife applied for divorce. The petitioner caused to be served, through his counsel, an application to the Station Commander, 4 AFSB, requesting for information in respect of his wife's service records pertaining to all leave application forms submitted by her; attested copies of nomination of DSOP and other official documents with financial implications, and the changes made to them; record of investments made and reflected in the service documents of his wife, along with nominations thereof.

3. The information application was declined by the Public Information Officer, i.e. the Wing Commander of the 4, AFSB by his letter dated 25.04.2007 on the ground that the particulars sought for related to personal information, exempted under Section 8(1)(j) of the Information Act; that disclosure of such information had no relation with any public activity or interest and that it would cause unwarranted invasion into the privacy of the individual. The petitioner felt aggrieved and preferred an appeal under Section 19 of the Information Act. The appeal was rejected by an order dated 25.01.2008 by the Air Vice Marshal, Senior Officer Incharge, Administration, of the Indian Air Force, who was the designated Appellate authority. Feeling aggrieved, the writ petitioner preferred a second appeal to the Central Information Commissioner.

4. By the impugned order, the CIC, after discussing the arguments and pleas advanced, rejected the appeal. The relevant part of the impugned order, upholding the determination of the authorities, including the appellate authority is as follows:-

> *"During the hearing, the Appellant submitted that the information sought was required for producing before the Competent Court where a dispute was pending between him and Dr. Sandhya Verma and the information was necessary for fair trial. The Respondents submitted that the information was necessary pertained to personal information concerning Dr. Sandhya Verma, a Third Party and had no relationship to any public interest or activity and, therefore, exempt from disclosure under Section 8(1)(j) of the Right to Information Act. The information which has been sought includes, attested copies of all the leave application forms submitted by Dr. S. Verma since she was posted to 4 AFSB, copies of nomination of DSOP/other official documents with financial implications and record of investment made and reflected thereon in service documents along with the nominations thereof, if explicitly made. The information sought is obviously personal information concerning Dr. Sandhya Verma, a Third Party. It is immaterial if Dr. Sandhya Verma happens to be the wife of the Appellant. The information sought does not seem to have any relationship to any public interest or public activity and has been expressly sought to be used as evidence in a dispute in a Court pending between the Appellant and Dr. Sandhya Verma. The decision of the CPIO, upheld by the Appellate Authority, in denying the information by invoking the exemption provision of Section 8(1)(j) of the Right to Information Act seem to be absolutely right and just. We find no reason to interfere with the decision of the Appellate Authority and, thus, reject the appeal."*

5. The writ petitioner, a self-represented litigant, argues that the approach of the authorities under the Information Act has been unduly narrow and technical. He emphasized that by virtue of Section 6, a right is vested in every person to claim information of all sorts which exists on the record. He relied upon Section 2 (i) and (j) to say that information under the Act has been defined in the widest possible manner and that the question of exceptions should be construed from the perspective of the right rather than the exemptions, which has been done in this case. Reliance was placed upon Division Bench ruling in *Surup Singh Hrya Naik v. State of Maharashtra* AIR 2007 Bom 121 to submit that ordinarily information sought for by person must be made available without disclosure by him about the reason why he seeks it. It is submitted further that a close reading of the decision would show that the public right to

information ordinarily prevails over the private interest of a third party, who may be affected. Particularly, it was emphasized that the Court should always keep in mind the object of the Act, which is to make public authorities accountable and open and the contention that the information might be misused is of no consequence. It was submitted lastly that even if there is a rule prohibiting disclosure of information, that would yield to the dictates of the Information Act, as the latter acquires supremacy.

6. It was consequently urged that in the context of this case, the information sought for was not really of a third party, but pertained to the petitioner's wife. Although they are facing each other in litigation, nevertheless, having regard to their relationship, the invocation of Section 8(1)(j) was not justified.

7. The petitioner contended further that the grounds urged, i.e. lack of public interest and unwarranted intrusion of privacy, were unavailable in this case. It was submitted in this regard that being a public official, the petitioner's wife was under a duty to make proper and truthful disclosure; the pleadings made by her in the divorce proceedings, contained untruthful averments. These could be effectively negatived by disclosure of information available with the respondents. Therefore, there was sufficient public interest in the disclosure of information.

8. The Indian Air Force (IAF), which has been impleaded as second respondent argues that the impugned decision is justified and in consonance with law. It argued that what constitutes "public interest" is defined in *Black's Law Dictionary (6th Edition)* at page 1229 as follows:

> *"Public Interest: Something in which the public, the community at large, has some pecuniary interest by which their legal rights or liabilities are affected. It*

does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question……"

9. It is urged that the Information Act was brought into force as a means of accessing information under the control of public authorities, to citizens with the object of promoting transparency and accountability. This regime, is however, subject to reasonable restrictions or exemptions. Particular reliance is placed upon the non-obstante clause contained in Section 8, which lists out the various exemptions. It was submitted that if the disclosure of personal information has no relation to any public activity or interest, the authorities under the Act within their rights in denying disclosure. The counsel contended in this regard that there is no element of public interest, in relation to the private matrimonial litigation pending before the Court between the petitioner and his wife. Similarly, the action of filing information in relation to one's assets and investments, with the public authority, *per se*, is not a public activity, and contents of such disclosure cannot be accessed. It was argued that in addition, the disclosure of such information (which is meant purely for the records and for the use of the employer), during inappropriate instances, is bound to cause unwarranted loss of privacy to the individual. Therefore, in the overall conspectus of the facts of this case, even though the parties were married to each other, as a policy matter, the IAF acted within the bounds of law in denying access to the information submitted by the petitioner's wife.

10. The relevant provisions of the Information Act, in the context of this case, are extracted below:

*"**2. Definitions.**- In this Act, unless the context otherwise requires,-*

(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

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(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

(i) inspection of work, documents, records;
(ii) taking notes, extracts or certified copies of documents or records;
(iii) taking certified samples of material;
(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

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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, 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.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under Section 6, if the third party has been given an opportunity to make representation under sub-section(2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision."

11. The precise question to be decided here is whether records relating to investments of, and financial disclosure made during the course of employment by the petitioner's wife were justifiably withheld on grounds of lack of public interest element and likelihood of invasion of privacy.

12. In the decision relied upon by the petitioner reported as *Surup Singh Hrya Naik v. State of Maharashtra (supra)*, the Bombay High Court had to deal with the question whether disclosure of medical records of a member of the Legislative Assembly, who had been

imprisoned for contempt of Court, for a month, was protected by the exemption under Section 8(1)(j). The Court dealt with the argument that in terms of regulations framed by the Indian Medical Council (IMC), such records were confidential. However, the argument that such confidentiality obliged the Government to deny the request, was turned-down on the ground that the regulations had to yield to provisions of the Act and that unless the third party made out a strong case for denial, such information could always be disclosed. In the course of its reasoning, the Division Bench emphasized that the proviso to Section 8(1)(j) clothes Parliament and State Legislatures with plenary powers, which in turn implied that all manner of information was capable of disclosure and could not, therefore, be withheld.

13. Under the scheme of the Information Act, the expressions "record", "information", "right to Information" have been given the widest possible amplitude. By virtue of Sections 3, 5, 6 and 7, every public authority requested to provide information is under a positive obligation to do so; the information seeker is under no obligation to disclose why he requests it. The information provider or the concerned agency is further, obliged to decide the application within prescribed time limits. A hierarchy of authorities is created with the CIC, at the apex to decide disputes pertaining to information disclosure. In this Scheme, the Parliament has in its wisdom, visualized certain exemptions. Section 8 lists those exemptions; it opens with a *non-obstante* clause, signifying the intention that irrespective of the rights of the information seeker, in regard to matters listed under that provision, the information providers can justifiably withhold access to the information seeker the record, information or queries sought for by him. This case concerns the applicability of Section 8(1)(j).

14. The right to access public information, that is, information in the possession of state agencies and governments, in democracies is an accountability measure empowering citizens to be aware of the actions taken by such state "actors". This transparency value, at the same time, has to be reconciled with the legal interests protected by law, such as other fundamental rights, particularly the fundamental right to privacy. This balancing or reconciliation becomes even more crucial if we take into account the effects of the technological challenges which arise on account of privacy. Certain conflicts may arise in particular cases of access to information and the protection of personal data, stemming from the fact that both rights cannot be exercised absolutely. The rights of all those affected must be respected, and no right can prevail over others, except in clear and express circumstances.

15. To achieve the above purpose, the Information Act outlines a clear list of the matters that cannot be made public. There are two types of information seen as exceptions to access; the first usually refers to those matters limited to the State in protection of the general public good, such as security of State, matters relating to investigation, sensitive cabinet deliberations, etc. In cases where state information is reserved, the relevant authorities must prove the damage that diffusion of information will effectively cause to the legal interests protected by law, so that the least amount of information possible is reserved to benefit the individual, thus facilitating governmental activities. The second class of information with state or its agencies, is personal data of both citizens and artificial or juristic entities, like corporations. Individuals' personal data is protected by the laws of access to confidentiality and by privacy rights.

16. Democratic societies undoubtedly have to guarantee the right of access to public information; it is also true that such societies' legal regimes must safeguard the individual's right to privacy. Both these rights are often found at the same "regulatory level". The Universal Declaration of Human Rights, through Article 19 articulates the right to information as follows:

> *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".*

Article 12 of the same Declaration provides that,

> *"no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".*

17. The scheme of the Information Act no doubt is premised on disclosure being the norm, and refusal, the exception. Apart from the classes of exceptions, they also appear to work at different levels or stages, in the enactment. Thus, for instance, several organizations –security, and intelligence agencies, are excluded from the *regime,* by virtue of Section 24, read with the Second Schedule to the Act. The second level of exception is enacted in Section 8, which lists 11 categories or classes (clauses (a) to (j)) that serve as guidelines for non-disclosure. Though by Section 22, the Act overrides other laws, the opening *non-obstante* clause in Section 8 ("notwithstanding anything contained in this Act") confers primacy to the exemptions, enacted under Section 8(1). Clause (j) embodies the exception of information in the possession of the public authority which relates to a third party. Simply put, this exception is that if the information concerns a third party (i.e. a party other than the information seeker and the information provider), unless a public interest in disclosure is shown, information would not be

given; information may also be refused on the ground that disclosure may result in unwarranted intrusion of privacy of the individual. Significantly, the enactment makes no distinction between a private individual third party and a public servant or public official third party.

18. It is interesting to note that paradoxically, the right to privacy, recognized as a fundamental right by our Supreme Court, has found articulation – by way of a safeguard, though limited, against information disclosure, under the Information Act. In India, there is no law relating to data protection, or privacy; privacy rights have evolved through the interpretive process. The right to privacy, characterized by Justice Brandeis in his memorable dissent, in *Olmstead* v. *United States*, 277 US 438 (1928) as *""right to be let alone… the most comprehensive of rights and the right most valued by civilised men"* has been recognized under our Constitution by the Supreme Court in four rulings - *Kharak Singh* v. *State of U.P.* (1964) 1 SCR 332; *Gobind v. State of M.P.,* (1975) 2 SCC 148; *R. Rajagopal v. State of T.N.,* (1994) 6 SCC 632; and *District Registrar and Collector v. Canara Bank,*(2005) 1 SCC 496. None of these judgments, however explored the intersect between the two values of information rights and privacy rights; *Rajagopal,* which is nearest in point, was concerned to an extent with publication of material that was part of court records.

19. It has been held by a Constitution Bench of the Supreme Court that an individual does not forfeit his fundamental rights, by becoming a public servant, in *O.K. Ghosh v. E.X. Joseph* AIR 1963 SC 812:

"...the fundamental rights guaranteed by Art. 19 can be claimed by Government servants. Art. 33 which confers power on the parliament to modify the rights in their application to the Armed Forces, clearly brings out the fact that all citizens, including Government servants, are entitled to claim the rights guaranteed by Art. 19."

Earlier, in *Kameshwar Prasad v. State of Bihar* AIR 1962 1166, an argument that public servants do not possess certain fundamental rights, was repelled, by another Constitution Bench, categorically, in these terms:

"It was said that a Government servant who was posted to a particular place could obviously not exercise the freedom to move throughout the territory of India and similarly, his right to reside and settle in any part of India could be said to be violated by his being posted to any particular place. Similarly, so long as he was in government service he would not be entitled to practice any profession or trade and it was therefore urged that to hold that these freedoms guaranteed under Art. 19 were applicable to government servants would render public service or administration impossible. This line of argument, however, does not take into account the limitations which might be imposed on the exercise of these rights by cls. (5) and (6) under which restrictions on the exercise of the rights conferred by sub-cls. (d) and (g) may be imposed if reasonable in the interest of the general public.

13. In this connection he laid stress on the fact that special provision had been made in regard to Service under the State in some of the Articles in Part III - such as for instance Arts. 15, 16, and 18(3) and (4) - and he desired us therefrom to draw the inference that the other Articles in which there was no specific reference to Government servants were inapplicable to them. He realised however, that the implication arising from Art. 33 would run counter to this line of argument but as regards this Article his submission was that it was concerned solely to save Army Regulations which permitted detention in a manner which would not be countenanced by Art. 22 of the Constitution. We find ourselves unable to accept the argument that the Constitution excludes Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III save in those cases where such persons were specifically named.

14. In our opinion, this argument even if otherwise possible, has to be repelled in view of the terms of Art. 33. That Article select two of the Services under the State-members of the armed forces charged with the maintenance of public order and saves the rules prescribing the conditions of service in regard to them -

from invalidity on the ground of violation of any of the fundamental rights guaranteed by Part III and also defines the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the Services members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, we consider that other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Art. 19(1)(e) and (g)."

(emphasis supplied)

20. A bare consideration of the right of individuals, including public servants, to privacy would seem to suggest that privacy rights, by virtue of Section 8(1)(j) whenever asserted, would have to prevail. However, that is not always the case, since the public interest element, seeps through that provision. Thus when a member of the public requests information about a public servant, a distinction must be made between "official" information inherent to the position and those that are not, and therefore affect only his/her private life. This balancing task appears to be easy; but is in practice, not so, having regard to the dynamics inherent in the conflict. Though it may be justifiably stated that protection of the public servant's private or personal details as an individual, is necessary, provided that such protection does not prevent due accountability, there is a powerful counter argument that public servants must effectively waive the right to privacy in favour of transparency. Thus, if public access to the personal details such as identity particulars of public servants, i.e. details such as their dates of birth, personal identification numbers, or other personal information furnished to public agencies, is requested, the

balancing exercise, necessarily dependant and evolving on case by case basis may take into account the following relevant considerations, i.e.

i) whether the information is deemed to comprise the individual's private details, unrelated to his position in the organization, and,

ii) whether the disclosure of the personal information is with the aim of providing knowledge of the proper performance of the duties and tasks assigned to the public servant in any specific case;

iii) whether the disclosure will furnish any information required to establish accountability or transparency in the use of public resources.

21. An important and perhaps vital consideration, aside from privacy is the public interest element, mentioned previously. Section 8(1)(j)'s explicit mention of that concept has to be viewed in the context. In the context of the right to privacy, Lord Denning in his *What next in Law,* presciently said that:

> *"English law should recognise a right to privacy. Any infringement of it should give a cause of action for damages or an injunction as the case may require. It should also recognise a right of confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the Courts. As each case is decided, it will form a precedent for others. So a body of case-law will be established."*

22. A private individual's right to privacy is undoubtedly of the same order as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of the two differ. Yet, inherent in the situation of the latter is the premise that he acts for the public good, in the discharge of his duties, and is accountable for them. The character of protection,

therefore, which is afforded to the two classes – public servants and private individuals, has to be viewed from this perspective. The nature of restriction on the right to privacy is therefore of a 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 on what is at stake. Therefore, if an important value in public disclosure of personal information is demonstrated, in the particular facts of a case, the protection afforded by Section 8(1)(j) may not be available; in such case, the information officer can proceed to the next step of issuing notice to the concerned public official, as a "third party" and consider his views on why there should be no disclosure. The onus of showing that disclosure should be made, is upon the individual asserting it; he cannot merely say that as the information relates to a public official, there is a public interest element. Adopting such a simplistic argument would defeat the object of Section 8(1)(j); the legislative intention in carving out an exception from the normal rule requiring no "locus" by virtue of Section 6, in the case of exemptions, is explicit through the *non-obstante* clause. The court is also unpersuaded by the reasoning of the Bombay High Court, which appears to have given undue, even overwhelming deference to Parliamentary privilege (termed "plenary" by that court) in seeking information, by virtue of the proviso to Section 8(1)(j). Were that the true position, the enactment of Section 8(1)(j) itself is rendered meaningless, and the basic safeguard bereft of content. The proviso has to be only as confined to what it enacts, to the *class* of information that Parliament can ordinarily seek; if it were held that all information relating to all public servants, even private information, can be accessed by Parliament, Section 8(1)(j) would be devoid of any substance, because the provision makes no

distinction between public and private information. Moreover there is no law which enables Parliament to demand all such information; it has to be necessarily in the context of some matter, or investigation. If the reasoning of the Bombay High Court were to be accepted, there would be nothing left of the right to privacy, elevated to the status of a fundamental right, by several judgments of the Supreme Court.

23. As discussed earlier, the "public interest" argument of the Petitioner is premised on the plea that his wife is a public servant; he is in litigation with her, and requires information, - in the course of a private dispute – to establish the truth of his allegations. The CIC has held that there is no public interest element in the disclosure of such personal information, in the possession of the information provider, i.e. the Indian Air Force. This court concurs with the view, on an application of the principles discussed. The petitioner has, not been able to justify how such disclosure would be in "public interest" : the litigation is, pure and simple, a private one. The basic protection afforded by virtue of the exemption (from disclosure) enacted under Section 8(1)(j) cannot be lifted or disturbed.

24. In view of the above discussion, the writ petition fails, and is dismissed. In the circumstances of the case, there shall be no order on costs.

S. RAVINDRA BHAT, J

JULY 01, 2009
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