

REPORTABLE

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

+ **WRIT PETITION (CIVIL) No. 8524 OF 2009**

% Reserved on : 23rd July, 2009.
Date of Decision : 4th November, 2009.

RAJINDER JAINA Petitioner.
Through Mr. Rajesh Garg, Advocate.

VERSUS

CENTRAL INFORMATION COMMISSION
& OTHERS. Respondents
Through Mr. Anjum Javed, Advocate.

CORAM :
HON'BLE MR. JUSTICE SANJIV KHANNA

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | |
| 2. To be referred to the Reporter or not? | YES |
| 3. Whether the judgment should be reported in the Digest? | YES |

SANJIV KHANNA, J.:

1. Mr. Rajinder Jaina-petitioner seeks issue of Writ of Certiorari for quashing of Order dated 2nd March, 2009 passed by the Central Information Commission (hereinafter referred to as CIC, for short) directing disclosure of the following information :-

“1. List of all complaints filed against Mr. Rajinder Jaina alias Rajender Jain alias Mr. Rajender Jaina S/o. T.C. Jain r/o. Flat 'P', Sagar Apartments, G. Tilak Marg, New Delhi-

110001, office at N-52A, Connaught Circus, New Delhi-110001.

2. All FIR's filed against the above named person along with ATR and current status.

3. All arrest warrants and non-traceable reports issued in the name of Mr.T.C.Jaina, father of Mr.Rajender Jaina.

4. List of all complaints filed against M/s.Rajendra's and M/lord Builders Pvt. Ltd.

Period for which information asked for :
From 1980 till date.”

3. Learned counsel for the petitioner submitted that disclosure of information mentioned above is an unwarranted invasion on the right to privacy of the petitioner and is contrary to Section 8(1)(j) of the Right to Information Act, 2005 (hereinafter referred to as Act, for short).

4. Right to privacy has been a subject matter and reiterated in the ***State of Andhra Pradesh and District Registrar and Collector, Hyderabad and another versus Canara Bank and others*** (2005) 1 SCC 496. However, the said right is not an absolute right. Right to information is a part of Right to Freedom of Speech and Expression. Section 8(1)(j) of the Act balances right to privacy and right to information. It recognizes that both rights are important and require protection and in case of conflict between the two rights, the test of over-riding public interest is applied to decide whether information should be withheld or disclosed.

5. Section 8(i)(j) of the Act, stands interpreted by Ravindra Bhat, J. in ***The CPIO, Supreme Court of India, Tilak Marg, New Delhi versus Subhash Chandra Agarwal & another*** (Writ Petition No. 288/2009) decided on 2nd September, 2009. It has been held as under:-

“66. It could arguably be said that that privacy rights, by virtue of Section 8(1)(j) whenever asserted, would 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 personal information about a public servant, - such as asset declarations made by him- a distinction must be made between the personal data 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. If public access to the personal data containing details, like photographs of public servants, personal particulars 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 a case by case basis, would take into account of many factors which would require examination, having regard to circumstances of each case. These may include:

i) 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;

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

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

Section 8(1)(j)'s explicit mention of privacy, therefore, has to be viewed in the context. Lord Denning in his "*What next in Law*", presciently emphasized the need to suitably balance the competing values, as follows:

"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."

67. A private citizen's privacy right is undoubtedly of the same nature and character 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, afforded to the two classes – public servants and private individuals, is 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, by way of objective material or evidence, furnished by the information seeker, 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 objective of Section 8(1)(j); Parliamentary 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.”

6. In the present case, the CIC has applied the same “test of public interest” to determine and decide whether the information sought should be disclosed or disclosure will amount to unwarranted invasion of right to privacy.

7. It may be noted here that the information sought for by respondent no.2 relates to criminal complaints filed against the petitioner, FIRs registered against him, their current status and whether warrants were issued against some persons, police reports on execution of warrants and their current status. The aforesaid information is already as observed by the CIC, part of public records including court records. It is obvious and admitted

that complaints are pending and FIRs have been registered and the same have been filed with the criminal court. Issue of arrest warrants and submissions of reports thereon also form part of the court records. It may be relevant to state here that the petitioner himself has admitted that he has disputes with various parties and litigations are pending. He has also given details of some of the FIRs registered against him in the Writ Petition itself. It may be appropriate here to reproduce the ratio as expounded by the Supreme Court in ***Raj Gopal versus State of Andhra Pradesh*** (1994) 6 SCC 632 which reads as under:

“(1) A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters.

(2)None can publish anything concerning the above matters without his consent – whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned. But a publication concerning the above aspects becomes unobjectionable, if such publication is based upon public records including court records. Once something becomes a matter of public record, the right of privacy no longer exists. The only exception to this could be in the interest of decency.

(3) In the case of public officials, it is obvious that right of privacy or for that matter, remedy of action for damages is simply not available with respect to their acts and conducts relevant to the discharge of their official duties. This is so even where the publication is based upon the acts and statements that are not true unless the official establishes that

the publication was made with reckless disregard for truth.

(4) So far as the Government, local authority or other organization and institution exercising governmental power are concerned, they cannot maintain suit for damages for defaming them.”

(emphasis supplied)

In view of the aforesaid, I do not find any merit in the present Writ Petition and the same is dismissed.

(SANJIV KHANNA)
JUDGE

NOVEMBER 4th, 2009.
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