

Union of India Vs. Kanwar Deep Singh

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Court : Delhi

Decided On : Sep-17-2013

Judge : V. K. Jain

Appellant : Union of India

Respondent : Kanwar Deep Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment reserved on :

05. 09.2013 Judgment pronounced on :

17. 09.2013 + W.P.(C) 2232/2012 UNION OF INDIA THROUGH MINISTRY OF EXTERNAL AFFAIRS Petitioner Through: Mr. Rakesh Tikku, Sr. Adv. with Mr. P. Roychaudhuri & Mr. Amit Panigrahi, Advs. versus RAJESH BHATIA Respondent Through: + W.P.(C) 8932/2011 & CM No.20166/2011 MINISTRY OF EXTERNAL AFFAIRS Petitioner Through: Mr. Rakesh Tikku, Sr. Adv. with Mr. P. Roychaudhuri & Mr. Amit Panigrahi, Advs. versus PRAVEEN VAID Respondent Through: + In person. W.P.(C) 3421/2012 & CM No.7235/2012 UNION OF INDIA Through: Petitioner Mr. Rakesh Tikku, Sr. Adv. with Mr. P. Roychaudhuri & Mr. Amit Panigrahi, Advs. versus KANWAR DEEP SINGH Through: + Respondent Mr. K. Mahajan, Adv. W.P.(C) 1263/2012 & CM No.2745/2012 UNION OF INDIA THROUGH MINISTRY OF EXTERNAL AFFAIRS Petitioner Through: Mr. Rakesh Tikku, Sr. Adv. with Mr. P. Roychaudhuri & Mr.

Amit Panigrahi, Advs. versus JERALD REBELLO Through: + Respondent W.P.(C) 1677/2012 & CM No.6186/2012 UNION OF INDIA THROUGH MINISTRY OF EXTERNAL AFFAIRS Petitioner Through: Mr. Rakesh Tikku, Sr. Adv. with Mr. P. Roychaudhuri & Mr. Amit Panigrahi, Advs. versus DURGESH VIJAYVARGIYA Respondent Through: Mr. Abhinav Sharma, Adv. + W.P.(C) 1794/2012 & CM No.3929/2012 UNION OF INDIA THROUGH MINISTRY OF EXTERNAL AFFAIRS Petitioner Through: Mr. Rakesh Tikku, Sr. Adv. with Mr. P. Roychaudhuri & Mr. Amit Panigrahi, Advs. versus G. SRINIVAS Respondent Through: + W.P.(C) 2231/2012 & CM No.6185/2012 UNION OF INDIA THROUGH MINISTRY OF EXTERNAL AFFAIRS Petitioner Through: Mr. Rakesh Tikku, Sr. Adv. with Mr. P. Roychaudhuri & Mr. Amit Panigrahi, Advs. versus RAJESH KAPIL Respondent Through: Mr. Harsh Jaidka, Adv. CORAM: HON'BLE MR. JUSTICE V.K. JAIN V.K. JAIN, J.

In W.P(C) No. 2232/2012, the respondent - Mr. Rajesh Bhatia applied to the PIO in the Ministry of External Affairs, Passport Office, Jaipur seeking the following information:

1. Has any passport ever issued from your Jaipur office by the name of NEERU DUGGAL, R/O 304/6, Raja Park, Jaipur or any other address? 2. If yes then provide me the details of the passport - number, wife of, or daughter of whichever is applicable.
3. Provide me the date of First Issue and subsequent renewal/s, if applicable.
4. What were the documents submitted when the application of the passport as made.
5. Name of the police station, date when the police verification was carried out.
6. Was any foreign visit undertaken by her (Neeru Duggal) as per your record, if yes then provide me all the details of all the country visited by her.
7. What is the marital status of her as per your records? If married then provide me the name/ address of the husband.

8. Does her name figure as a mother/ guardian in any passport of a minor? If yes then provide me the detail of the same as well.

2. The PIO refused the information on the ground that the said information could be provided only to those to whom the information relates. The first appeal filed by the respondent having been dismissed, he approached the Central Information Commission (hereinafter referred to as the Commission) by way of a second appeal. The Commission vide the impugned order dated 31.1.2012 allowed the appeal and directed PIO to provide the desired information. Being aggrieved from the said order, the Union of India is before this Court by way of the present writ petition. In W.P(C) No.3421/2012, the respondent - Shiv Kumar applied to the PIO in the Ministry of External Affairs, Regional Passport Office, Kolkata and sought the following information in respect of the passport issued in favour of one Manvika Kaur Oberoi during the year 2008-2009, 2009-2010 or 2010-2011: Information Sought S.No.

1. 2.

3.

4. Date of issue of passport Passport number Date of expiry A photocopy of application form duly filled in, signed & submitted by the applicant for obtaining the passport. The PIO declined to provide the said information on the ground that the information relates to a third party and was exempt under Section 8(1)(j) of the Right to Information Act (hereinafter referred to as RTI Act). The first appeal having been dismissed, the respondent preferred a second appeal. Vide order dated 11.4.2012, the Commission directed the PIO to provide the complete information as per available record. Being aggrieved from the said order, the Union of India is before this Court by way of the present writ petition.

3. In W.P(C) No.1263/2012, the respondent - Mr. Jerald Rebello applied to the PIO in the Ministry of External Affairs, Office of the Deputy Passport Office, New Delhi and sought the following information in respect of one Rocky Dsilva who was issued a passport at Bangalore in January, 1999: S.No.

1. 2.

3. Information sought Details regarding his arrivals and departures during the years 1999-2009. Is there any thing to evidence/ proof that he has arrived in Mumbai/India on 28.10.2005 or on 29.10.2005 or any time in 2005. The above passport was renewed in the year January 2009, please provide details provided/ furnished by him while renewing the above passport pertaining to the following: a) His residential address b) Details regarding his spouse/child. c) Details of his case/ cases pending/ filed against him. d) If any report from the jurisdictional police was called for/ furnished in this connection. e) The above was renewed by him through the embassy or through any agent. f) The above was renewed in India or in Kuwait or any other country. The PIO declined to provide the said information. The first appeal having not yielded any result the respondent approached the Commission by way of second appeal. Vide impugned order dated 2.12.2011 the Commission directed providing the complete information as per available record.

4. In W.P(C) No.8932/2011, the respondent - Praveen Vaid sought the following information from PIO, Passport Office, Ministry of External Affairs, Bhopal:

1. Name and designation, with date of the employees of the concerned office.

2. Copy of application since 1.11.2010 for passport till 26.11.2010.

3. List of authorized agents and rules governing them. The information was not granted and the first appeal did not yield any satisfactory results. Being aggrieved, the respondent approached the Commission by way of a second appeal. Allowing the appeal vide the impugned order dated 16.9.2011, the Commission directed the IPO to provide the complete information to the respondent.

5. In W.P(C) No.1677/2012, the respondent - Mr. Durgesh Vijayvargiya sought the following information from PIO - Regional Passport Office, Ministry of External Affairs, Bhopal: S.No. Passport holders name 1. Jaswinder Singh Z118977 Ahluwalia Vikramjit Singh A9375381 Ahluwalia Rupali Ahluwalia A9314729 2.

3. Passport no. Place of issue Date of birth Bhopal (MP) - India Bhopal (MP) - India Bhopal (MP) - India 20 Fe

26. May 1971 Description of information:(a) Addresses of the above mentioned individuals. (b) Validity of the passports of above mentioned individuals. If validity have expired then new passport have been issued or not. If issued, what are the numbers of new passports and present addresses mentioned in the new passports/ passport application form. (c) If above mentioned passport holders are not residing in India then which country visas have given to them. They are residing at which country, on which address and who had sponsored visas to them. The information having been refused by the PIO on the ground that it was exempt under Section 8(1)(j) of the RTI Act and the first appeal having been dismissed, the respondent approached the Commission by way of a second appeal and vide the impugned order dated 23.1.2012, the Commission directed the PIO to provide complete information about the passport details of the individuals mentioned in the application as per available record to the respondent.

6. In W.P(C) No.1794/2012, the respondent - Mr. G. Srinivas sought the following information from PIO in the Passport Office, Visakhapatnam:

1. Name of the passport holder.
2. Proof of copy of the old passport, passport number and date of issue.
3. Proof of documents & educational qualifications produced at the time of applying for the old passport.
4. Proof of educational qualifications and the supporting documents submitted in getting the status or emigration check not required for the old passport.
5. Countries visited on the old passport.
6. Date of issuing the renewal of new passport.
7. Proof of the supporting documents and educational qualifications produced at the time of renewal of new passport.

8. Proof of educational qualifications and the supporting documents submitted in getting the status of Emigration check not required for the new passport.
9. Countries visited on the new passport. The information was denied by the PIO on the ground that it was exempt under Section 8(1) (j) of the RTI Act and the first appeal having been dismissed, the respondent approached the Commission by way of a second appeal and vide the impugned order dated 13.1.2012, the Commission directed the PIO to provide the complete information as per available record to the respondent.
7. In W.P(C) No.2231/2012, the respondent - Mr. Rajesh Kapil sought the following information from the PIO - Regional Passport Office, Jaipur:
1. Provide with the testified copies of the documents and the written application submitted by Mr. Dharmendra Attri for having the passport.
 2. If for renew or for the entering of the documents application is been made more than one time then provide with photocopies these applications.
 3. If the documents are revised in respect with issuing of the passport to Mr. Darmendra Attri or for the entering for new one if any application or oath letter is submitted then provide with the photocopy of the same.
 4. Provide with the investigation report of police and CID for issuing of the passport of Mr. Dharmendra Attri.
 5. If the passport has been issued according to the Talkal facility on the basis of verification certificate of nay office then provide with the photocopy of the VC.
 6. If the documents entered in issuing the passport of Mr. Dharmendra Attri are based on the requirement of the necessary documents then their confirmation must be done by the department. The PIO having taken the plea that the information was exempt under Section 8 (1) (r) of the Act, the respondent approached the Commission, which directed its disclosure as per available record.
8. The only legal issue involved in these petitions is as to whether the information relating to passport holder is exempt from disclosure under Section 8(1)(j) of the

RTI Act. Section 8(1)(j) of the Right to Information Act. Section 8(1)(j) of the said Act reads as under: (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.

9. A similar issue came up for consideration before this Court in W.P(C) No.3444/2012 Union of India versus Hardev Singh, decided on 23.8.2013. In the aforesaid case, the respondent before this Court had sought the following information from PIO in Regional Passport Office, Bhikaji Cama Palace, New Delhi: SI. Queries Reply 1. Name and details of the person to whom Beant Singh s/o Sukhwinder Singh file passport no. B 5131321 was issued from no. BO4899/01 Delhi Passport Office on 28.6.2001 2. Photocopies of all the documents submitted as proof of address and identity on the basis on which the passport was issued.

3. Whether due process and procedure was No, police verification report was followed in issue of the passport, conducted and received clear on including police verification report. 21.10.2001.

4. Names and addresses of the witnesses As stated in (2) above. who had recommended and signed for issue of the passport. Copy of the noting of the officer who had Copy of the noting portion cannot be recommended issue of the passport. provided to you as it would be direct the resources of the public authority. Please refer to section 7(9) of the RTI Act, 2005

6. Photocopies of all documents cannot be provided to you as it is third party information and disclosure of the individual. Please refer to section 8(1) (j) of RTI Act, 2005. Whether application from the person for No record is found for renewal of the renewal of the passport has since been passport no B51313 7. received. If so, the status thereof is including date of receipt of the application and whether

marriage certificate attached. All details as mentioned in (1) to (5) As stated in (6) above. above in respect of the renewal of the passport. The following view was taken in the aforesaid case: It would thus be seen that if the information sought by the applicant is a personal information relating to a third party, it cannot be disclosed, unless the information relates to any public activity of a third party who has provided the said information or it is in public interest to disclose the information desired by the applicant. It further shows that a personal information cannot at all be disclosed if its disclosure would cause unwarranted invasion of the privacy of the third party which has provided the said information, unless the larger public interest justifies such disclosure.

4. The above referred provision came up for consideration before this Court in UPSC versus R.K. Jain [W.P(C) No.1243/2011] decided on 13.7.2012 and the following view was taken:

19. Therefore, personal information under the Act, would be information, as set forth above, that pertains to a person. As such it takes into its fold possibly every kind of information relating to the person. Now, such personal information of the person may, or may not, have relation to any public activity, or to public interest. At the same time, such personal information may, or may not, be private to the person.

20. The term personal information under section 8(1)(j) does not mean information relating to the information seeker, or the public authority, but about a third party. The section exempts from disclosure personal information, including that which would cause unwarranted invasion of the privacy of the individual. If one were to seek information about himself, the question of invasion of his own privacy would not arise. It would only arise where the information sought relates to a third party. Consequently, the exemption under Section 8(1)(j) is as regards third party personal information only.

21. ... The expression personal information used in Section 8(1)(j) means information personal to any person, that the public authority may hold. For instance, a public authority may in connection with its functioning require any other person to provide information which may be personal to that person. It is that

information, pertaining to that other person, which the public authority may refuse to disclose, if the information sought satisfies the conditions set out in clause (j) of Section 8(1) of the Act, i.e., if such information has no relationship to any public activity (of the person who has provided the information, or who is the source of the information, or to whom that information pertains), or to public interest, or which would cause unwarranted invasion of the privacy of the individual (unless larger public interest justifies disclosure).

22. Merely because information that may be personal to a third party is held by a public authority, a querist does not become entitled to access it, unless the said personal information has a relationship to a public activity of the third person (to whom it relates), or to public interest. If it is private information (i.e. it is personal information which impinges on the privacy of the third party), its disclosure would not be made unless larger public interest dictates it. Therefore, for example, a querist cannot seek the personal or private particulars provided by a third party in his application made to the passport authorities in his application to obtain a passport, merely because such information is available with the passport authorities, which is a public authority under the Act.

24. Public activity qua a person are those activities which are performed by the person in discharge of a public duty, i.e. in the public domain. There is an inherent public interest involved in the discharge of such activities, as all public duties are expected to be discharged in public interest. Consequently, information of a person which is related to, or has a bearing on his public activities, is not exempt from disclosure under the scheme and provisions of the Act, whose primary object is to ensure an informed citizenry and transparency of information and also to contain corruption. For example, take the case of a surgeon employed in a Government Hospital who performs surgeries on his patients who are coming to the government hospital. His personal information, relating to discharge of his public duty, i.e. his public activity, is not exempt from disclosure under the Act.

27.... whenever the querist applicant wishes to seek information, the disclosure of which can be made only upon existence of certain special circumstances, for example- the existence of public interest, the querist should in the application (moved under Section 6 of the Act) disclose/ plead the special circumstance, so

that the PIO concerned can apply his mind to it, and, in case he decides to issue notice to the concerned third party under Section 11 of the Act, the third party is able to effectively deal with the same. Only then the PIO/appellate authority/CIC would be able to come to an informed decision whether, or not, the special circumstances exist in a given case.

28. I may also observe that public interest does not mean that which is interesting as gratifying curiosity or love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their rights or liabilities are affected... xxx 34. It follows that the privacy of a person, or in other words his private information, encompasses the personal intimacies of the home, the family, marriage, motherhood, procreation, child rearing and of the like nature. Personal information, on the other hand, as aforesaid, would be information, in any form, that pertains to an individual. Therefore, private information is a part of personal information. All that is private is personal, but all that is personal may not be private.

37. In light of the above discussion, the following principles emerge for the exemption under Section 8(1)(j) to apply (i) The information sought must relate to Personal information as understood above of a third party. Therefore, if the information sought does not qualify as personal information, the exemption would not apply; (ii) Such personal information should relate to a third person, i.e., a person other than the information seeker or the public authority; AND (iii) (a) The information sought should not have a relation to any public activity qua such third person, or to public interest. If the information sought relates to public activity of the third party, i.e. to his activities falling within the public domain, the exemption would not apply. Similarly, if the disclosure of the personal information is found justified in public interest, the exemption would be lifted, otherwise not; OR (iii) (b) The disclosure of the information would cause unwarranted invasion of the privacy of the individual, and that there is no larger public interest involved in such disclosure.

5. In the case before this Court, it can hardly be disputed that the information provided by Shri Beant Singh to the Regional Passport Office, as proof of his

address and identity, would be a personal information, though its disclosure may not necessarily impinge on his privacy. Such information has no relationship to any public activity of Shri Beant Singh and in fact this is not the case of the respondent that Shri Beant Singh actually was engaged in public activity at any point of time. I find it difficult to accept the view of the Commission that a person providing information relating to his address and identity, while seeking issue of passport to him is engaged in a public activity. No element of public duty is involved in providing information in proof of the address and identity of the applicant, while seeking a passport. Therefore, such information would certainly be personal information of Shri Beant Singh, having no relationship to any public activity. This is not the case of the respondent that it was in public interest to disclose the documents submitted by Shri Beant Singh as proof of his address and identity. In any case, no public interest is shown to be involved in disclosure of such information pertaining to Shri Beant Singh. As observed by this Court in R.K. Jain (supra), the applicant should disclose, in the application itself, the special circumstances such as existence of public interest which would warrant disclosure of the information sought by him. No such circumstance, however, was disclosed by the respondent in his application to the PIO. Therefore, the information sought by the respondent, to the extent it pertains to the documents submitted by Shri Beant Singh, as proof of his address and identity, is clearly exempt from disclosure under Section 8(1)(j) of the Right to Information Act and to this extent the order passed by the Central Information Commission cannot be sustained.

6. As regards, noting on the file recommending issue of passport to Shri Beant Singh, the only ground given by the PIO for denying the said information to the respondent was that the information was exempt under section 8(1)(j) of the Act. It is not known whether such noting contains any information which would disclose the address, or any other personal information relating to Shri Beant Singh. In case the file noting sought by the respondent does not contain any information which can be said to be personal information within the meaning of Section 8(1) (j) of the Act, there can be no objection to its disclosure.

10. In W.P(C) No.2232/2012, the respondent can have no valid objection to provide the information as to whether the visa was issued in the name of Ms.

Neeru Duggal or not. It can have no valid objection to give the details of the passport including the dates of its first issue and subsequent renewals, if any. There can be no objection to disclose the nature of the documents submitted with the application, without disclosing the contents of those documents, since no personal information is disclosed in disclosing the nature of the documents alone. Similarly, there can be no objection to give the name of the police station from which the police verification was got done. The information as regards the foreign visits undertaken by the passport holder is not supposed to be available with the Regional Passport Office and, therefore, cannot be provided by it. The information at serial number 7 and 8, however, being personal in nature cannot be disclosed.

11. In W.P(C) No.3421/2012, the information as to date of issue of passport number and date of its expiry can certainly be disclosed since no personal information is contained in such details. However, copy of the application form cannot be provided since it would contain personal information of the passport holder.

12. In W.P(C) No.1263/2012, the information at serial number 1 and 2 is not expected to be available with the Regional Passport Office and, therefore, cannot be provided to the respondent. The information at serial number 3 (a) to (c) being personal information of the passport holder, cannot be provided to the respondent. The information at serial number 3 (d) (e) and (f), however, should be provided to him since it would contain no personal information within the meaning of section 8(1) (j) of RTI Act.

13. In W.P(C) No.8932/2011, the information sought by the respondent is not in respect of any passport holder, but in respect of the employees working in passport office, Bhopal. The second information, however, cannot be disclosed to him since the copies of the application for grant of passport would contain personal details of the passport holder. However, the information at serial number 3 i.e. list of authorized agents and rules governing them should certainly be supplied to the respondent if there is any such list and rules governing authorized agents.

14. In W.P (C) No.1677/2012, the information at serial number 1 cannot be provided to the respondent, the said information being personal information within the meaning of section 8(1) (j) of the Act. The information at serial number 2 i.e. validity of the passports of and as to whether new passports have been issued to them or not and if so what are the numbers of new passports cannot be refused to the respondent since these details would contain no personal information in respect of passport holder. However, the addresses of the passport holders cannot be disclosed to him. The information at serial number 3 i.e. the countries for which visas have given to the passport holders in which country they are residing and at what address and who had sponsored their visas is not expected to be available with the Regional Passport Office and, therefore, cannot be granted to the respondent.

15. In W.P(C) No.1794/2012, the information at serial number 1 i.e. name of the passport holder can be disclosed to the respondent without disclosing his address. However, copy of the old passport cannot be provided to him since it would contain address of the passport holder. However, old passport number and date of issue needs to be provided to the respondent. The information at serial number 3 and 4 being personal information of the passport holder cannot be provided to the respondent. The information at serial number 5 i.e. countries visited by the passport holder is not expected to be available with the Regional Passport Office and, therefore, cannot be provided. The information at serial number 6 i.e. date of issuing the renewal of new passport, however, needs to be provided to the respondent. As regards information at serial number 7 and 8, the respondent should be disclosed only the nature of documents submitted by the applicant without disclosing the contents of the documents. The information at serial number 9 i.e. countries visited by the passport holder is not expected to be available with the Regional Passport Office and, therefore, cannot be provided to the respondent.

16. In W.P(C) No.2231/2012, the information at serial number 1 i.e. copy of the documents and application submitted by the passport holder cannot be provided since they would contain personal information relating to the passport holder. The information at serial number 2 and 3 can be provided to the extent as to whether

the passport holder had applied for renewal of the passport and if so on which date. The documents submitted by him cannot be disclosed. As regards information at serial number 4 and 5 i.e. reports of the police, the same cannot be provided to the respondent since it would contain personal information in respect of the passport holder. The respondent, however, shall be informed as to whether the Talkal facility was availed by the passport holder or not. The item at serial number 6 in this case, however, is not in the nature of information and, therefore, can be ignored.

17. The aforesaid writ petitions stand disposed of in terms of this order. There shall be no orders as to costs. The order shall be complied within four (4) weeks.
V.K.JAIN, J SEPTEMBER 17 2013/rd

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