

CENTRAL INFORMATION COMMISSION  
Appeal No. CIC/WB/A/2009/0000153 dated 20.2.2009  
Right to Information Act 2005 – Section 19

**Appellant** - Shri Alok Singhai  
**Respondent** - High Court of Delhi

Decision announced : 8.3.2010

**Facts:**

By an application of 5.7.08, Shri Alok Singhai of Rachna Nagar, Bhopal (MP) applied to the PIO, High Court of Delhi under **ID No. 138/08** seeking the following information:

“Details of information required: The copies of year wise returns/ declaration of movable/ immovable properties filed by Shri Ripusudan Dayal (retired Chief Justice of Sikkim High court ) from the date of resuming office in the capacity of metropolitan can Magistrate in Delhi till, his continuation in the Delhi Judicial Service Act.”

To this Shri Singhai received a response from PIO Shri P. S. Chaggar dated 1.8.08 refusing the information as below:

“In view of Rule 5 of Delhi High Court (Right to Information) Rules, 2006 the information sought cannot be supplied to you.’

Shri Singhai has then moved an appeal before the Registrar (Estt), Delhi High Court on the following grounds:

“The information was sought in public interest and not for any personal gain/ misuse since the appellant/ applicant is moving Hon’ble Supreme Court of India as also M. P. High Court against Justice Shri Dayal and thus purpose for obtaining the information is necessary and it cannot be denied since the Hon’ble Chief Justice of India also directed to keep transparency in such matters. Therefore, the reasons for nor providing information under pretext of Rule 5 of Delhi High Court (Right to Information) Rules, 2006 is not sustainable and the appellant has every right to obtain the required information. Hence this appeal.”

This appeal was dismissed in his order of 6.10.08 in appeal No. 19/2008 by Appellate Authority Shri Kalam Singh, who has held as follows:

“Rule 5 (a) of Delhi High Court (right to Information) Rules, 2006 provides as under:-

*Exemption from disclosure of information:- The information specified under section 8 of the Act shall not be disclosed and made available and in particular the following information shall not be disclosed.*

(a) *Such information, which is not in the public domain or does not relate to judicial functions and duties of the Court and matters incidental and ancillary thereto.*

(b) *Xxxxxx*

I am in agreement with the Public Information Officer that the information sought for is not in Public domain. Therefore, in view of Rule 5 (a) quoted above, the applicant is not entitled to the information sought by him.’

Appellant Shri Alok Singhai’s prayer before us in his second appeal is as below:

- “(i) the impugned order dated 1.8.2008 passed by the PIO Delhi High Court and order dated 6.10.2008 passed by the appellate authority, Delhi High Court be quashed;
- (ii) the Public Information Officer of Delhi High Court be directed to provide the desired information to the appellant forthwith;
- (iii) the appellant be compensated adequately for the harassment and mental agony;
- (iv) suitable penal action u/s 20 of RTI Act be taken against the erring Public Information Officer, High Court of Delhi for not providing desired information to the appellant;”

This was followed by a request of 22.6.09 from appellant Shri Alok Singhai for an early hearing. The appeal was heard on 8.3.2010 by videoconference with Bhopal. The following are present:

**Appellant** at NIC Bhopal

Shri Alok Singhai

Shri Narendra Bhavsar

**Respondents** at CIC, New Delhi

Shri Rajeev Bansal, nominated Counsel

Shri P. K. Gupta, PIO

Shri Gurcharan Singh, APIO

Shri Dibyanjan Gonda, Jr. Judicial Asstt.

Learned Counsel for respondents Shri Rajeev Bansal, was asked by this Commission whether the stand taken by the CPIO and Appellate Authority in the present case will still hold in light of the decision of the Full Bench of the High Court of Delhi on 12.1.2010 in **LPA No. 501/2009 – Secretary General, Supreme Court of India vs. Subhash Chandra Agrawal & Anr.** Learned Counsel in response submitted a written reply in the matter stating that the information now is that the Delhi High Court holds no such information, as is sought by appellant Shri Singhai, submitting in the written statement, as below:

“A bare perusal of Annexure-R1 reveals that Mr. Justice Ripusudan Dayal had joined judicial service on 22.2.1966. He joined the Delhi Judicial Service on 21.9.1971 as Sub Judge, First Class. With effect from 3.12.1980, he assumed the office as Commissioner of Payments in the Ministry of Commerce under the Sick Textile Undertakings (Nationalization) Act, 1974. Therefore, Mr. Justice Ripusudan Dayal ceased to be a member of Delhi Higher Judicial Service with effect from 3.12.1980.

The information sought for pertains to a period prior to 20 years from the date of moving the application. Hence the application itself is not maintainable and is liable to be rejected outright.”

Appellant Shri Alok Singhai submitted that the fact that the Registry of the High Court has sought one excuse or another to deny the information sought to appellant would indicate that in seeking to conceal the information that it holds with regard to Mr. Justice Ripusudan Dayal. Otherwise, there is no reason why the declaration of moveable / immoveable property filed by Shri Dayal during his service in the Delhi Judicial Services, which is required to be submitted by law, is not being disclosed. Shri Singhai went on to explain the reasons why he sought this information but was informed that this Commission is in no way authorized to seek such reasons.

### **DECISION NOTICE**

Sec. 8(3) of the Right to Information Act, 2005 states clearly, as follows:

**8(3)**

*Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section*

*Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.*

In other words, Learned Counsel for the Delhi High Court is entirely in error in submitting that because the information pertains to a period prior to 20 years from the date of receipt of the application, that it cannot be provided. Infact the reverse is the law. Also the law, however, is the fact that access to information can only be provided, as per Sec. 2(j), which reads as follows:

**2(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, videocassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;*

Appellant's plea that respondents have simply changed their stand is explained by the ruling of both a Single Judge in **WP(Civil) 288/2009 – Secretary General, Supreme Court of India vs. Subhash Chandra Agrawal & Anr.** of 2.9.'09, in which Hon'ble Ravinder Bhat J has ruled on the disclosability of the property statements of the Justices of the Supreme Court and upheld by the decision of the Delhi High Court in Full Bench in **LPA No. 501/2009** in which the Coram consisting of Hon'ble Chief Justice A. P. Shah, Hon'ble Mr. Justice Vikramajit Sein, Hon'ble Dr. Justice S. Muralidhar have ruled as follows:

### *DUTY TO DENY OR CONFIRM*

106. In the present case, the only information that was sought by the respondent was whether such declaration of assets were filed by Judges of the Supreme Court and also whether High Court Judges have submitted such declarations about their assets to respective Chief Justices in States. The respondent had not sought a copy of the declaration or the contents thereof or even the names etc., of the Judges providing the same. Release of this information would not amount to actionable breach of any confidentiality. The duty to confirm or deny would not amount to breach of confidentiality unless the request is so specific that the mere confirmation that information is held (without a disclosure of that information) would be to disclose the gist of the information. Philip Coppel explains the legal position as follows:

“The duty to confirm or deny”

“The duty to confirm or deny does not arise if, or to the extent that, a confirmation or denial that the public authority holds the information specified in the request would (apart from the Act) constitute an actionable breach of confidence. This is an absolute exclusion of duty. As a matter of practice, other than where the request is so specific that the mere confirmation that the information is held (without a disclosure of that information) would be to disclose the gist of the information, it is difficult to LPA 501/2009 page 75 of 88 contemplate circumstances in which a public authority could properly refuse to confirm or deny that it held information under S.41(2)”. (page 843)

107. In our opinion, the learned single Judge has summed up the position correctly in Para 58:

“From the above discussion, it may be seen that a fiduciary relationship is one whereby a person places complete confidence in another in regard to a particular transaction or his general affairs or business. The relationship need not be “formally” or “legally” ordained, or established, like in the case of a written trust; but can be one of moral or personal responsibility, due to the better or superior knowledge or training, or superior status of the fiduciary as compared to the one whose affairs he handles. If viewed from this perspective, it is immediately apparent that the CJI cannot be a fiduciary vis-à-vis Judges of the Supreme Court; he cannot be said to have superior knowledge, or be better trained, to aid or control their affairs or conduct. Judges of the Supreme Court hold independent office, and there is no hierarchy, in their judicial functions, which places them at a different plane than the CJI. In these circumstances, it cannot be held that asset information shared with the CJI, by

the judges of the Supreme Court, are held by him in the capacity of a fiduciary, which if directed to be revealed, would result in breach of such duty. So far as the argument that the 1997 Resolution had imposed a confidentiality obligation on the CJI to ensure non-disclosure of the asset declarations, is concerned, the court is of opinion that with the advent of the Act, and the provision in Section 22 – which overrides all other laws, etc. (even overriding the Official Secrets Act) the argument about such a confidentiality condition is on a weak foundation. The mere marking of a document, as “confidential”, in this case, does not undermine the overbearing nature of Section 22. Concededly, the confidentiality clause (in the 1997 Resolution) operated, and many might have bona fide believed that it would ensure immunity from access. Yet the advent of the Act changed all that; all classes of information became its subject matter. Section 8(1)(f) affords protection to one such class, i.e. fiduciaries. The content of such provision may include certain kinds of relationships of public officials, such as doctor-patient relations; teacher-pupil relationships, in government schools and colleges; agents of governments; even attorneys and lawyers who appear and advise public authorities covered by the Act. However, it does not cover asset declarations made by Judges of the Supreme Court, and held by the CJI.”

108. For the above reasons, we hold that Section 8(e) does not cover asset declarations made by Judges of the Supreme Court and held by the CJI. The CJI does not hold such declarations in a fiduciary capacity or relationship.

**POINT 3: *WHETHER INFORMATION ABOUT DECLARATION OF ASSETS BY JUDGES IS EXEMPT UNDER SECTION 8(1)(j).***

109. The learned Attorney General argued that the information, which is sought for by the respondent, is purely and simply personal information, the disclosure of which has no relationship to any public activity. He emphasized that access to such information would result in unwarranted intrusion of privacy. The submission is that such information is exempt under Section 8(1)(j) of the Act. On the other hand, Mr. Prashant Bhushan argues that information as to whether declarations have been made, to the CJI can hardly be said to be called “private” and that declarations are made by individual judges to the CJI in their capacity as Judges. He submitted that the present proceeding is not concerned with the content of asset declarations.

***RIGHT TO INFORMATION VIS-À-VIS RIGHT TO PRIVACY***

110. The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which the new cause of

action for damages resulting from unlawful invasion of privacy was recognized. This right has two aspects: (i) The ordinary law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (ii) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful government invasion. Right to privacy is not enumerated as a fundamental right in our Constitution but has been inferred from Article 21. The first decision of the Supreme Court dealing with this aspect is ***Kharak Singh v. State of UP***, AIR 1963 SC 1295. A more elaborate appraisal of this right took place in later decisions in ***Gobind v. State of MP***, (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.

111. The freedom of information principle holds that, generally speaking, every citizen should have the right to obtain access to government records. The underlying rationale most frequently offered in support of the principle are, first, that the right of access will heighten the accountability of government and its agencies to the electorate; second, that it will enable interested citizens to contribute more effectively to debate on important questions of public policy; and third, that it will conduce to fairness in administrative decision-making processes affecting individuals. The protection of privacy principle, on the other hand, holds in part at least that individuals should, generally speaking, have some control over the use made by others, especially government agencies, of information concerning themselves. Thus, one of the cardinal principles of privacy protection is that personal information acquired for one purpose should not be used for another purpose without the consent of the individual to whom the information pertains. The philosophy underlying the privacy protection concern links personal autonomy to the control of data concerning oneself and suggests that the modern acceleration of personal data collection, especially by government agencies, carries with it a potential threat to a valued and fundamental aspect of our traditional freedoms.

112. The right to information often collides with the right to privacy. The government stores a lot of information about individuals in its dossiers supplied by individuals in applications made for obtaining various licences, permissions including passports, or through disclosures such as income tax returns or for census data. When an applicant seeks access to government records containing personal information concerning identifiable individuals, it is obvious that these two rights are capable of generating conflict. In some cases this will involve disclosure of information pertaining to public officials. In others, it will involve disclosure of information concerning ordinary citizens. In each instance, the subject of the information can plausibly raise a privacy protection concern. As one

American writer said one man's freedom of information is another man's invasion of privacy.

*PROTECTION OF PERSONAL INFORMATION UNDER SECTION 8(1)(j)*

113. The right to information, being integral part of the right to freedom of speech, is subject to restrictions that can be imposed upon that right under Article 19(2). The revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information and, therefore, with a view to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal, Section 8 has been enacted for providing certain exemptions from disclosure of information. Section 8 contains a well defined list of ten kinds of matters that cannot be made public. A perusal of the aforesaid provisions of Section 8 reveals that there are certain information contained in sub-clause (a), (b), (c), (f),(g) and (h), for which there is no obligation for giving such an information to any citizen; whereas information protected under sub-clause (d), (e) and (j) are protected information, but on the discretion and satisfaction of the competent authority that it would be in larger public interest to disclose such information, such information can be disclosed. These information, thus, have limited protection, the disclosure of which is dependent upon the satisfaction of the competent authority that it would be in larger public interest as against the protected interest to disclose such information.

114. There is an inherent tension between the objective of freedom of information and the objective of protecting personal privacy. These objectives will often conflict when an applicant seeks access for personal information about a third party. The conflict poses two related challenges for law makers; first, to determine where the balance should be struck between these aims; and, secondly, to determine the mechanisms for dealing with requests for such information. The conflict between the right to personal privacy and the public interest in the disclosure of personal information was recognized by the legislature by exempting purely personal information under Section 8(1)(j) of the Act. Section 8(1)(j) says that disclosure may be refused if the request pertains 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." Thus, personal information including tax returns, medical records etc. cannot be disclosed in view of Section 8(1)(j) of the Act. If, however, the applicant can show sufficient public interest in disclosure, the bar (preventing disclosure) is lifted and after duly notifying the third party ( i.e. the individual concerned with the information or whose records are

sought) and after considering his views, the authority can disclose it. The nature of restriction on the right of privacy, however, as pointed out by the learned single Judge, is of a different order; in the case of private individuals, the degree of protection afforded to be greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. This is so because a public servant is expected to act for the public good in the discharge of his duties and is accountable for them.

115. The Act makes no distinction between an ordinary individual and a public servant or public official. As pointed out by the learned single Judge “----- an individual’s or citizen’s fundamental rights, which include right to privacy - are not subsumed or extinguished if he accepts or holds public office.” Section 8(1)(j) ensures that all information furnished to public authorities – including personal information [such as asset disclosures] are not given blanket access. 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 personal data inherent to the person and those that are not, and, therefore, affect his/her private life. To quote the words of the learned single Judge “if public servants ---- are obliged to furnish asset declarations, the mere fact that they have to furnish such declaration would not mean that it is part of public activity, or “interest”. ----- That the public servant has to make disclosures is a part of the system’s endeavour to appraise itself of potential asset acquisitions, which may have to be explained properly. However, such acquisitions can be made legitimately; no law bars public servants from acquiring properties or investing their income. The obligation to disclose these investments and assets is to check the propensity to abuse a public office, for a private gain.” Such personal information regarding asset disclosures need not be made public, unless a public interest consideration dictates it, under Section 8(1)(j). This safeguard is made in public interest in favour of all public officials and public servants.

116. In the present case the particulars sought for by the respondent do not justify or warrant protection under Section 8(1)(j) inasmuch as the only information the applicant sought was whether 1997 Resolution was complied with. That kind of innocuous information does not warrant the protection granted by Section 8(1)(j). We concur with the view of the learned single Judge that the contents of asset declarations, pursuant to the 1997 Resolution, are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under Section 8(1)(j); that they are not otherwise subject to disclosure. Therefore, as regards contents of the declarations, information applicants would have to, whenever they approach the authorities,

under the Act satisfy them under Section 8(1)(j) that such disclosure is warranted in “larger public interest”.

#### **DISCLOSURE OF ASSETS INFORMATION OF JUDGES – INTERNATIONAL TRENDS**

117. “Although Judges often balk at the invasion of privacy that disclosure of their private finances entails, it is almost uniformly considered to be an effective means of discouraging corruption, conflicts of interest, and misuse of public funds...” [*Guidance for Promoting Judicial Independence and Impartiality, 2001, USAID, Technical Publication*]. Income and Asset Disclosure is generally perceived to be an essential aid towards monitoring whether judges perform outside work, monitoring conflicts of interests, discouraging corruption, and encouraging adherence to the standards prescribed by judicial code of conduct. In countries where disclosure is mandatory, “the Guidance Principle” suggests that list of judges assets and liabilities must be declared at appointment and annually thereafter. “Guidance Principle” further stipulates that the information disclosure must be accurate, timely and comprehensive. Furthermore, security and privacy concerns of judges should be respected, oversight body monitoring the register must be credible and the public should have proper access to the public portion of the register.

118. Keith E. Henderson in his article “Asset and Income Disclosure for Judges: A Summary Overview and Checklist” states that even though the OAS Convention created the legal basis for income and asset disclosure of public officials, the legal question as to whether Judges are deemed to be public officials remains unclear or is being debated on in a number of countries. In some countries, Judges have raised issues of constitutional separation of powers and have taken the position that the judicial branch itself must pass and enforce its own disclosure laws and rules. This is exactly what is achieved by the 1997 and 1999 Resolutions. Other unresolved issues relate to how to effectively and fairly implement and enforce disclosure laws and how much of this personal information should be publicly available and in what form. The author has pointed out that there are three basic sources of the assets declaration obligation:

- a) Constitutional Obligation: Some constitutions impose an obligation to disclose assets of public officials e.g. Colombia, Constitution Article 122.
- (b) Legislative Obligation: Some countries regulate asset disclosure by statute, although there are different types of Acts creating this obligation e.g. Poland, El Salvador, etc.
- c) Court rules: In some countries, such as United States, Argentina, the judiciary itself regulates the conduct of Judges.

According to the author, while addressing the issue of assets disclosure, it is fundamental to find a balance between the kind of information that must be available to the public and the rights to privacy and security of the official or Judge. Corrupt “information keepers” or weak information systems and institutions can result in serious information leaks that could have serious human rights implications – particularly in transition countries. A cursory review of existing laws reveals that there is no one model law or policy regarding exactly the range of assets Judges should disclose. To some degree, it depends, inter alia, on the development context of the country in question. Regarding the kind of assets to be disclosed, different countries have likewise adopted different models depending on the development context:

**Broad Disclosure** - In the United States, there is an obligation to make a broad accounting of financial holdings, including a list of gifts, lecture fees or other outside incomes. However, there has been some criticism of some judges not fully disclosing their having received trip expenses from private sources and these rules are still under debate.

**Medium-size disclosure** - In Argentina, judges are exempt from declaring some kinds of property if it might jeopardize their security. For example, judges are not obligated to submit details of the place where they live or their credit card numbers.

**Narrow disclosure** - In many transition countries, judges must declare only incomes – assets are exempt. “

119. The Ethics in Government Act, 1978 of United States requires that federal judges disclose personal and financial information each year. Under the Act, federal judges must disclose the source and amount of income, other than that earned as employees of the United States government, received during the preceding calendar year. Judges must also disclose the source description and value of gifts, for which the correct value is more than certain minimal amount, received from any source other than a relative; the source and description of reimbursements; the identity and category of value of property and interests; the identity and category of values of liabilities owed to creditors other than certain immediate family members; and other financial information. The Act allows judges to redact information from their financial disclosure request under certain circumstances. A report may be redacted “(i) to the extent necessary to protect the individual who files the report; and (ii) for so long as the danger to such individual exists”. The Act further charges the US Judicial Conference Committee with the task of submitting to the House and Senate Committee on the Judiciary an annual report documenting redactions. When a member of the public requests for a copy of judges financial disclosure report, the Committee sends a notification of the request to the judge in

question asking the judge to respond in writing whether he would like to request new or additional redactions of information. If the judge does not request redaction from his/her report, a copy of the report is released to the requester. However, if the judge requests redaction upon receiving the request for a copy of the report, the Committee then votes on the redaction request, with a majority needed to approve or deny the request, and finally a copy of the report is released, with approved redactions, if any.

120. It will be useful to note certain developments which led to the federal judges' asset information being placed on the internet. In September, 1999, APBnews.com ("APB"), a site focused on criminal justice news, requested for financial disclosure reports filed by federal judges in 1998. The Judicial Conference Committee denied this request in December, 1999 ruling that the disclosure reports should not be turned over to APB because posting the reports on the internet would contravene the statutory requirement that all report registers identify themselves by name, occupation and address. After the Judicial Conference Committee denied APB's request, APB filed suit in the US District Court for southern districts of New York to obtain the report. But on March 14, 2000, the Judicial Conference Committee voted to reverse its decision and allowed the reports to be available on the internet, recognizing that the statutory language did not permit withholding the reports in their entirety from news organizations. Though the Act generally prohibits obtaining or using a report for commercial purposes, it contains an exemption for "news and communication media" involved in "dissemination to the general public". Thus APB could not be refused access to the reports. Before the forms were released to the APB, however, the Committee removed some personal information submitted by judges but not required by the Act, such as home addresses and names of spouses and dependants.

## EPILOGUE

121. It was Edmund Burke who observed that "All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust and that they are to account for their conduct in that trust." Accountability of the Judiciary cannot be seen in isolation. It must be viewed in the context of a general trend to render governors answerable to the people in ways that are transparent, accessible and effective. Behind this notion is a concept that the wielders of power – legislative, executive and judicial – are entrusted to perform their functions on condition that they account for their stewardship to the people who authorize them to exercise such power. Well defined and publicly known standards and procedures complement, rather than diminish, the notion of judicial independence. Democracy

expects openness and openness is concomitant of free society.  
Sunlight is the best disinfectant.

122. We are satisfied that the impugned order of the learned single Judge is both proper and valid and needs no interference. The appeal is accordingly dismissed.

Clearly, the above ruling would invalidate the stand taken by both the CPIO & Appellate Authority in responding to the present RTI application. Nevertheless, the plea now taken is that even were the Registry of the High Court now obliged to give information on the property statements, in the case of the person with regard to whom the property statements have been sought and who served in the Delhi Judicial Services only up to 3.12.'80, there is no information held by the High Court of Delhi, let alone copies of his property statement, which they can share with appellant Shri Alok Singhai. For this reason, although we agree with appellant Shri Alok Singhai that the orders of Appellate Authority Shri Kalam Singh in appeal No. 19/2008 be set aside in light of the ruling of the Delhi High Court, which is quoted by us above, we cannot direct the CPIO to provide information, which does not exist. This appeal is, therefore, disposed of accordingly.

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

(Wajahat Habibullah)  
Chief Information Commissioner  
8.3.2010

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(Pankaj K.P. Shreyaskar)  
Joint Registrar  
8.3.2010