

CENTRAL PUBLIC INFORMATION OFFICER

SUPREME COURT OF INDIA

APPELLANT(S)

VERSUS

SUBHASH CHANDRA AGARWAL

RESPONDENT(S)

1 . STATEMENT OF THE PROBLEM : -

Section 8(1)(j) under Right to Information Act , 2005 specifically refers to invasion of the right to Privacy of an individual and excludes from disclosure information that could cause unwarranted Invasion of privacy of such individual , unless the disclosure would satisfy the large public interest test . This clause also draws a distinction in its treatment of personal information , whereby disclosure of such information has no relation to public activity or interest .

On the relative scope of both the provisions , the court said ,

“ the scope of ‘ information ‘ under section 11 is much broader than that of clause (j) to Section 8 (1) , as it could include information that is personal as well as information that concerns the government and its working , among , others , which relates to or is supplied by a third party and treated as confidential . Third – party could include any individual , natural or juristic entity including the public authority .

2 . RESEARCH PROBLEM :-

Problem (i) : - On the filling of these applications , the CPI , Supreme Court denied furnishing the information asked in the RTI application by stating that the information sought is available

with the registry of Supreme Court of India .

Problem (ii) :- Upon denial of providing information , Subhash Chandra Agarwal filed an appeal to Central Information Commission ordered Supreme Court to disclose the information asked in the RTI application and to follow the procedure mentioned under , Section 6(3) of Right to Information Act , 2005 .

Problem (iii) :- Not pleased by the order of CIC , the CPIO of the Supreme Court , filed a writ petition before High Court under article 226 of the constitution but it ruled in favour of the respondent further CPIO took matters to the Supreme Court . The first two appeals were filed in the Supreme Court against the CIC order which directs access to the requested Information . The third appeal was against the order passed by the full bench of Delhi High Court regarding the same .

3 . OBJECTIVES OF THE STUDY : -

(i) To study whether the disclosure of information to the public relating to the office of Chief Justice of India and collegiums system amounts to the violation of judicial independence ?

(ii) To study if Section 8(1) (j) exempt the information sought in the public interest ?

(iii) To study whether the disclosure of the information requested relating to judges would bar or prevent the constitutional authorities from expressing views freely and frankly ?

4 . RESEARCH METHODOLOGY : -

The research intends to adopt the doctrinal method of study & try to analyze legal proposition , Legal framework in national as well as international level , case laws & mainly by use of secondary & primary data such as articles , news paper , reference books , website etc to reach a logical conclusion .

5 . SCHEME OF THE RESEARCH : -

For further progress the researcher have to divide the research work into several sections / parts . Which are as follows :-

(a) . THE PROVITIONS WHICH HAVE BEEN USED IN THIS PARTICULAR CASE .

(b) . FULL CASE ANALYSIS .

(b.i) . FACT OF THE CASE .

(b.ii) . ARGUMENT OF THE PARTIES .

(b.iii) . RATIO DECIDENDI (THE JUDGEMENT) .

(c) . RELEVANT CASES IN INDIA .

6 . BIBLIOGRAPHY : -

Primary source -

Acts , Statutes , Reports .

(i) The Right to Information act , 2005 .

(ii) Section 8 (1) (j) and section 11 under RTI Act , 2005 .

(iii) Constitution of India , 1950 article 226 .

Secondary source –

(i) lawsisto.com

(ii) ssonline.com

(iii) www.lawlex.com

(iv) clpr.org.in

(a).THE PROVITIONS WHICH HAVE BEEN USED IN THIS PARTICULAR CASE :

- The Right to Information Act , 2005.

- - Section 8 in the RTI Act , 2005.
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 - Section 11 in the RTI Act , 2005.
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 - Article 19(1)(a) in the Constitution of India 1949 .
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 - Section 3 in the RTI Act , 2005 .
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 - Section 2 in the RTI Act , 2005 .
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 - The Information Technology Act , 2000 .
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 - Section 6 in the RTI Act , 2005 .
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 - Article 21 in the Constitution of India 1949 .
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 - Article 124 in the Constitution of India 1949 .
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(b) . CASE ANALYSIS :

(b.i) . FACT :

In this case , three appeals were filled which arises from three different applications filed by respondent , Subhash Chandra Agarwal before Central Public Information Office (CPIO) , Supreme Court .

The three Applications were :-

- In the first application , Subhash Chandra filed RTI application to CPIO to furnish information about the complete correspondence of the Chief Justice of India as it was found that the Union Minister had influenced the judicial decision of Madras High Court judge ,Justice R.Reghupathi .
- In the second RTI application was filed regarding a request to furnish information about correspondence between the Constitutional authorities relating to appointment of three Supreme Court Judges . Justice A . K . Ganguli , Justice H . L . Dutta , Justice R . M . Lodha which superseded other senior judges .
- In the 3rd application was filed for furnishing information relating to the declaration of assets of judges made by them to Chief Justice of India and Chief Justice of States .

On filing of these application , the CPIO , Supreme Court denied fir furnishing requested information by stating that the information sought is available with the registry of Supreme Court of India .

Upon denial of providing information , Subhash Chandra Agarwal filed appeal to Central Information Commission (CIC) , and on 6th January , 2009 the Central Information Commission ordered Supreme Court to disclose the requested information and to follow the procedure mentioned under , section 6(3) of RTI Act , 2005 .

Upon aggrieved by the order of CIC , Central Public information Officer (CPIO) , filed writ petition before High Court but it ruled in favour of respondent .

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(1) Central Board of Secondary Education and ane V. Aditya Bandhopadhyaya and ors.
(2011) 8 SCC 497.

(b.ii) . ARGUMENT OF PARTIES :-

Arguments by Appellant :-

The appellant contended that the disclosure of information would hamper the independence of judiciary and judges are not suppose to be subjected to any “ litigative public debate “.

As per the RTI Act , a person is not allowed to be provided with all the requested details as three exist several restrictions and conditions mentioned in the Act . Under section 8(1)(j) of RTI Act , the information which is sought in this case is exempted and cannot be furnished .

Disclosure of information relating to appointment of judges would come into the ambit of the exempted category and if it is disclosed it would amount to hampering of their privacy and against the larger public interest .

The disclosure of information about the assets of the judges it their voluntary choice and if it is declared to the Chief Justice of India then it is made in the fiduciary capacity . And all other correspondence and discussions between the Chief Justice and other constitutional functionaries is shared with in the fiduciary capacity under section 8(1)(e).

Argument by Respondent :-

The respondent contended that the disclosure of information do not interferes with the independence of judiciary and the person under the RTI act has a right to seek

information in fact the disclosure would help in transparency and would serve larger public interest.

Further there is no fiduciary relationship exists between Chief Justice of India and other constitutional functionary under section 8(1)(e) of RTI Act . It was also contended that the fiduciary relation can only exist with the public . Further the respondent argued that the duty of public servant is not to act for the benefit of another public servant .

Same as the last page .

(b.iii) . RATIO DECIDENDI (JUDGEMENT) :-

On 13 November , 2019 Supreme Court dismissed the appeal and delivered the judgement in favour of respondent and upheld the Delhi High Court judgement by directing the Central Public Information Officer , Supreme Court to furnish information regarding collegium decision-making , personal assets of judges , correspondence with CJI . No general decision came up relating to the universal disclosure of above-mentioned information .

It was further held that bar on disclosure of information cannot be imposed on the ground of free and frank expression of collegium member and the disclosure will be based on case to case .khanna j . is of view that “ Determination of public interest will be based on case to case “.

Same as the previous one .

(c) . RELEVANT CASES IN INDIA :-

Ashish Bhardwaj vs. Department of Posts on 20 December , 2019 .

Deepak Bhatt vs. lit , Roper on 16 July , 2020 .

Sushil Kumar Meher vs. Indian Institute of Technology ...on 16 November , 2020 .

Ramesh P vs. Supreme Court of India on 25 January , 2021 .

Smt. C S Rajini Amaiah vs. the State Election Commission on 28 April , 2020 .

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