

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)
Phone: 011- 26181927 | Fax: 011- 26185088

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Central Information Commissioner

CIC/MLABE/A/2017/187230

Kalyan Kumar Ganguly v. PIO, ESIC, Kolkata

RTI	:	16.08.2016
FAO	:	20.10.2016
Second Appeal	:	15.11.2016
Hearing	:	02.05.2017
Appellant	:	Present
Public authority	:	Shri S.C. Majumdar, CPIO Shri P.S. Pal, Assistant
Decided on	:	11.05.2017

FINAL ORDER

FACTS:

1. The appellant sought information regarding M/s. Laxmi Distribution bearing employer code no. 31-3166-102. Specifically he sought the relationship between one Mr. H.B.Singhvi and M/s. Laxmi Distribution; return of contribution filed for the period 10.10.2008 to 31.03.2009 and whether it was certified by chartered accountants or not; total number of employees working in the said establishment etc through eight points. CPIO denied on the grounds that the information sought was relating to third party. Being dissatisfied by the Order given by FAA who upheld the decision of CPIO, the appellant approached this Commission.

Decision :

2. The CPIO stated that the then CPIO Shri A.N. Tiwari considered the application of appellant who referred to M/s. Laxmi Distribution about the information sought and the company was unwilling to disclose the information to the appellant. Further, the CPIO stated that the appellant was an ex-employee of M/s. Laxmi Distribution. The appellant retired on 30.04.2016 after rendering his services for about 30 years.

3. The appellant also submitted that the PF amount was deducted for the period 1986 to 1988 but it was not deposited, and no benefits were given from 1986 to 2016. It is a gruesome situation for a senior citizen who worked in an establishment for nearly 30 years.

4. The PF account is not like any other individual private bank account where all his personal money also could be transacted, which could be his personal information. The PF account does not contain any other money except accumulated amount of both the contributions over a period of time. Contending that it is their personal information or third party information is meaningless here. First of all it is mandatory by law to contribute these two amounts to the PF account. Hence, it is not private information. It is not personal because it has nothing to do with their private activity. It is relating to social security of workers at post-retirement period, which need to be secured for such longer periods. That is the public interest. If it is kept secret, and an individual PF subscriber is cornered under fear or favour not to challenge the fraud, employer can perpetuate the fraud. Hence a third person or trade union leader or citizen can seek such information. Thus the argument of PIO that worker can ask only about his information about PF account is not tenable. The information sought is available with employer and trustee. It cannot be denied to worker in particular and people in general. It is also far fetching to contend that because the amount is made known there would be a fraud.

5. Assuming for a moment, without agreeing, that PF account is personal information, we need to satisfy other conditions under Section 8 to deny the disclosure such as – (a) whether it has any relationship to public activity? Answer: Yes, it is related to security of workers at large. Relates to millions of workers/employees, (b) whether it has any public interest? Answer: Yes. Securing the money of workers for their future security is public interest, (c) will it cause unwarranted invasion of privacy of any individual? Answer: No. Except PF account details it does not contain any other information. Its disclosure do not cause any invasion of privacy, (d) is there a larger public interest? Answer: Yes, as explained above, (e) whether this information can be denied to Parliament or Assembly? Answer: No, (f) whether public interest in disclosure outweighs the harm to protected interests? Answer: Yes. In fact there is no harm to any protected interest. If this information is protected, the interests of

the workers will be harmed, it will embolden the employers to defraud the workers and misappropriate their money temporarily or permanently. Transparency of this information will facilitate verification by any citizen or trade union leaders and the EPFO personnel and employer will be compelled to deposit the money regularly in PF accounts without delay.

Is it personal information?

6. The expression 'personal information' applies to 'individuals' and not 'bodies/institutions' or entities working for the public good. The use of the term "personal information" under Section 8(1)(j) means information involving a private individual. Black's law dictionary, sixth edition, inter alia, defines the word "personal" as under:-

"The word "personal" means appertaining to the person; belonging to an individual; limited to the person; having the nature or partaking of the qualities of human beings, or of movable property."

7. The Supreme Court in **Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi**: (2012) 13 SCC 6:

"21. Another very significant provision of the Act is Section 8(1)(j). In terms of this provision, 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 would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest."

8. Delhi High Court explained the term 'personal information' in **Naresh Trehan vs. Rakesh Kumar Gupta and Ors.** (2015) 216 DLT 156; Justice Vibhu Bhakru said: (paragraph 22)

"22. The U.S. Supreme Court has also interpreted the expression "personal" to be used in the context of an individual human being:

"Person" is a defined term in the statute; "personal" is not. When a statute does not define a term, we typically "give the phrase its ordinary meaning," [Johnson v. United States, 559 U.S., 559 U.S. 133, 130 S. Ct. 1265, 176 L. Ed. 2d 1, 8 (2010)]. "Personal" ordinarily refers to individuals. We do not usually speak of personal characteristics, personal effects, personal correspondence, personal influence, or personal tragedy as referring to corporations or other artificial entities. "

9. Interestingly, here in second appeals like this, the employers is objecting to disclosure and pretending to protect 'privacy' of other worker's PF account

information. This is an effort to prevent complaints against employer's acts of breach of PF Act. The EPFO, for unknown reasons is supporting these employees by rejecting the information request like this. In the name of 'privacy' of other workers, the PIO is protecting dubious interests of employer and harming the interests of the workers.

Is it third party information and invades privacy?

The proviso to Section 11(1) is very significant.

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 or State 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.

10. Delhi High Court in **Arvind Kejriwal vs. Central Public Information Officer** AIR 2010 Delhi 216 considered Section 11 of the RTI Act. "The third party may plead a 'privacy' defence. But such defence may, for good reasons, be overruled. After consulting the third party as prescribed under Section 11(1) of the RTI Act, the CIC may still decide that information should be disclosed in public interest overruling any objection that the third party may have to the disclosure of such information".

11. Section 8(1)(j) prescribed 'public interest' as a requirement to decide the disclosure of information though exempted. The CPIO or First Appellate Authority is not just an executive officer in his office but an "authority" under RTI Act with a responsibility to use his personal discretion as per law while deciding RTI request. Whether every MP is a public personality and his activities are public in nature, including financial transactions? If there is any public interest, is it larger enough to share with public in general? The public interest under section 8(1)(j) requires three conditions to be considered: absence of relationship with public activity or interest or, possibility of unwarranted invasion of privacy or, existence

of larger public interest. Language of section 8(1)(j) is very clear i.e., it demands satisfaction of CPIO.

12. In **G.R. Rawal Vs Director General of Income Tax (Investigation), Ahmadabad**, Appeal No. CIC/AT/A/2007/00490 on 05-03-2008 CIC Full Bench has explained:

"Authority may order disclosure of such information if they are satisfied that the larger public interest justifies disclosure. This would imply that even a personal information which has some relationship to any public activity or interest may be liable to be disclosed. An invasion of privacy may also be held to be justified if the larger public interest so warrants. It is, therefore, necessary to analyze the ambit and scope of both the expressions "personal information" and "invasion of privacy". However, there could be circumstances when it becomes necessary to disclose some of this information if it is in larger public interest. Thus, for example, if there is a doubt about the integrity of any person occupying a public office, it may become necessary to know about one's financial status and the details of his assets and liabilities not only of the person himself but also of other close members of the family as well. Similarly, if there is an allegation about the appointment of a person to a public office where there are certain rules with regard to qualification and experience of the person who has already been appointed in competition with others, it may become necessary to make inquiries about the person's qualification and experience and these things may not be kept confidential as such."

13. In this regard, the Commission opines that information relating to wages of the employees has to be voluntarily disclosed by the public authority under Section 4(1)(b)(x) of RTI Act, 2005 states that:

"...publish within one hundred and twenty days from the enactment of this Act: the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations".

14. The workers' list, their salaries, and PF account the money deposited in the form of contributions by employer and employee as per a statute and a scheme under statute cannot be considered as 'third party' information. The workers file RTI application only when there is some grievance or complaint regarding the depositing or non-depositing of amount or wrong assessment of contribution, non-payment of interest on delayed crediting of contribution. None of this could be private information of some job holder or employer. The PF account is different from savings bank account of a person. The PF account is exclusively meant for holding contributions by both employer and employee and no other amount gets deposited or withdrawn.

15. The Commission after perusing the records finds that the appellant has been harassed for no rhyme or reason and he has been deprived from getting information, in this regard, the Commission suggests the appellant to make a representation to the respondent authority as well as CPIO, EPFO, Salt Lake City, Kolkata about the documents that he is wanting for.

16. The Commission directs the CPIO, ESIC to provide information sought, after securing them from the establishment M/s. Laxmi Distributions. Further, the Commission directs CPIO, EPFO, Salt Lake City, Kolkata to provide all the details to the appellant with regard to his PF details. The Commission also directs M/s. Laxmi Distributions to provide the information sought. All the information shall reach the appellant free of cost within 21 days from the date of receipt of this Order.

Sd/-

(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Copy of decision given to the parties free of cost.

Addresses of the parties:

1. The CPIO under RTI,
ESIC, Regional Office,
Panchdeep Bhawan, 5/1,
Grant Lane, Kolkata-700012.
2. Shri Kalyan Kumar Ganguly,
PO-GVMA, Chowmastha,
PS-Ashoke Nagar, Dist-North
24 Parganas, Pin-743704,
West Bengal.
3. M/s. Laxmi Distributions
P.O. Alampur, Daga Complex,
Near Green View Clinic,
P.S. Sankrail, Dist. Howrah,
Pin – 711302