

## **CASE COMMENT:**

**CENTRAL PUBLIC INFORMATION OFFICER, SUPREME COURT OF INDIA**

**..... VERSUS**

**SUBHASH CHANDRA AGARWAL**

The respondent Subhash Chandra Agarwal, an RTI activist filed separate applications to the CPIO of the Supreme court of India. Firstly, he had asked the CPIO to furnish information related to the asset declaration of sitting judges owing to a 1997 Supreme court resolution requiring judges to make such declarations to the chief justice of the supreme court. Secondly, he sought information on the official correspondence related to the appointment of judges to the supreme court. The RTI applications were rejected by the CPIO and as per the requirements of the act reasons were given for the same, that the information sought was not available in the registry. The respondent preferred an appeal to the Chief Information commission, who directed the CPIO to furnish the Information as it would not impinge on the Constitutional status of the Judges. The CPIO then took the matter to the Delhi High court which held the following:

- That the Chief justice is a public authority as per requirements 2[h] of the RTI Act
- That Asset declaration by judges as per the 1997 resolution can be classified as 'information' as per section 2[j] of the Act
- That the Chief justice does not hold such declarations as made to him, in a fiduciary capacity
- That arguments advanced in light of section 8(1)j of the Act are not valid and cannot be made applicable.

The CPIO was aggrieved following the decision of the High court, thus he preferred an appeal to the Supreme court where the matter was being heard for final adjudication.

### **Substantial questions of Law:**

1] Whether the concept of Independence of Judiciary requires and demands prohibition of furnishing of the Information sought? Whether the information sought amounts to interference in the functioning of the Judiciary?

2] Whether the information sought cannot be furnished to avoid any erosion in the credibility of the decisions and to ensure a free and frank expression of honest opinion by all the constitutional functionaries which is essential for effective consultation and for taking the right decisions?

3] Whether the information sought is exempt from disclosure under article 8 (1) j of the Act?

**Contentions by the appellants:**

**[Mr. KK. Venugopal: Attorney General of India & Mr. Tushar Mehta: Solicitor General on behalf of the supreme court]**

- The disclosure of the Information sought would mean a failure to recognise the constitutional status of the judges. They must not be subjected to *'litigative public debates'*
- The RTI is not an absolute and unfettered right, it is subject to limitations as expressly provided in the statute. References were made to *Budan Singh and Anr v. Nabi Bux & Dollfus midget compagnie SA v. Bank of England*.
- The Information on assets qualifies as personal information and has no bearing on public activity or interest.
- The Information on assets is voluntarily declared by the judges of the Supreme court to the Chief Justice as *pater familias*. Fiduciary- Beneficiary relationship is thus made out, which falls under the exemption clauses as under section 8e of the Act.

**Contentions by the respondent**

**[Mr. Prashant Bhushan, Ld. Advocate for the respondent]**

- The information sought does not undermine the independence of the Judiciary. Openness in the functioning would ensure transparency and accountability, the pivotal points of the RTI Act.

- Citizens have been given the constitutional right as per the RTI Act to seek information, and the nature of the act is premised not on secrecy but disclosure as that will further enhance its independence. The information sought is in larger public interest
- Information sought cannot be protected under the garb of right to privacy as under section 8(1)j as public interest in question outweighs the privilege of exemption.
- Those records that have any personal information can be severed as per section 10 of the Act and the necessary information sought can be revealed.
- Duty of a public servant is not to act for the benefit of another servant. Thus the contention of the appellants stating that a fiduciary beneficiary relationship exists between the CJI and the other judges of the supreme court is null and void.
- Confidentiality is not mentioned within the exemption clauses as under section 8 of the Act.

#### **What was held:**

Referring to section 11b of the Australian Freedom of Information Act, the judges opined that irrelevant factors must not be considered when judging whether the information must be disclosed or not. The information applicant is not required to justify as to why he has sought the disclosure of certain information as per clause 2 of section 6 of the Act. As held earlier, nor his intentions are to be determined for filing of the applications. Grounds for denial of disclosure of information such as such disclosure leading to confusion, embarrassment or instigating intensive public debate are not valid. The information sought with respect to the asset declaration of judges does not fall under personal information under section 8[1] j thus the arguments advanced in light of privacy rights being compromised, are not valid. With respect to the information sought regarding the judicial appointments, it was opined that the citizens have a right to know the norms that would be followed when appointing judges in the judiciary. The criteria for appointment of judges must be in the public domain to ensure that the public have greater confidence in the judiciary and that the mandate as per section 4 of the RTI Act is fulfilled. Consequently, the judgement of the delhi high court was upheld and the appeal was dismissed.

**Comment:**

The verdict given by the judges has ensured that the purpose of the enactment of the RTI Act, i.e, ensuring transparency and accountability within the judiciary is maintained and that the sanctity of constitutional functionaries is upheld.

**Role of Asset Declaration in maintaining transparency:**

Asset declarations that are made publicly by those that hold public offices serve a twofold purpose. Firstly, it ensures that transparency within democratic institutions is maintained by checking into illicit entrenchments. Secondly if asset statements of public authorities are in the public domain, instances of corruption or potential conflict of Interest can also be curbed. Transparency international has laid down certain guidelines for implementation of the asset declaration regimes to improve their working and functioning. Disclosure systems must be such that they complement the socio-political and cultural environment. They must address fundamental administrative, privacy related and other concerns so that they don't stand in the way. Most disclosure regimes include the top tiers of executive, legislature as well as judiciary and their financial credentials must be in the public domain regardless of rank or seniority. The United Nations Convention against corruption provided a legal framework for asset declaration for all signatories and India too was a signatory to the same. Article 8 of UNCAC provides that each signatory country must promote *inter alia* integrity, honesty and responsibility among its public officials, in accordance with fundamental principles of its legal system. Article 10 advocates for public reporting, which reads as;

*Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:*

*a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;*

*b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and*

*c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.*

So, why should the public have access to financial documents if they are not elected by them as opposed to politicians? The simple answer to that would be to reduce instances of corruption in the judiciary. Possession of assets beyond what is constitutionally permissible falls outside the purview of law. If the judges are constitutionally appointed, they must not possess finances beyond what they are entitled to. Thus, making a public declaration of their financial credentials is necessary.

In India, seniority of judges becomes the de facto criterion for promotion. Once judges are elevated to higher ranks, they have the liberty to use their contempt of court powers to put an end to any allegations of corruption. The instances of Judicial corruption are lesser compared to politicians, but it is not the case that there are none. Those that tried to make such allegations have faced contempt of court proceedings.

### **Judicial Independence & Accountability**

When considering Judicial independence, it must be noted that there are two interpretations of the same, institutional and decisional. Institutional independence is by virtue of the doctrine of separation of powers, wherein the judiciary is kept separate from the other two branches of the government. This is to prevent the other branches of the government from improperly influencing the court. But occasional interference is done to maintain checks and balances in the system. Decisional independence is that which empowers the judges to be free from external agents that could work from their self interests rather than in the interests of justice and the collective interest of the people. The correspondence sought by the respondent with respect to the influence of a judicial decision thus was in the interests of the general public and good governance. In a democracy, accountability is the basic tenet as the system is based on the consent of the governed. Thus impartiality in adjudication can only be achieved by fervent

commitment to justice and not personal interests. The public thus have a right to know the criterion for appointment and the set of norms involved.

### **Information and Personal information**

Information can be legitimate, i.e falling under section 4 clauses b and c of the Rti Act or that which does not fall under the same. Such Information that falls under the former category is already made available in the registry as ready documents already after the institution of the Act or can be made available if requested. Information falling under the category of the latter is not available to the CPIO, thus he cannot by that reason disclose it. Thus there is no choice but to reject the application. However if public interests outweigh the privacy interests then the information requested for must be disclosed. The judgement of the supreme court clearly laid down that the information with request to declaration of assets does not qualify as personal information. Information classified as private cannot just be put in that category just because it is not publicly declared. A reasonable test to determine the same would be that such a revelation amounts to stripping him off his dignity or if it were to offend his sentiments.

### **Right to Privacy and the Plea of Confidentiality**

The right to privacy is distinct from the right to keeping confidential certain information, as the former is based on preserving and protecting human dignity, which is at the core of a person's existence and protects his personality. The latter arises from a duty of faith from the virtue of one's office. The KS Puttaswamy judgement has referred to section 8 (1) j of the RTI Act and gave the right to privacy a constitutional status. The ld. judges divided the right to privacy into informational, bodily and privacy of choice. It was laid down that privacy rights must be respected whilst giving careful attention to the legitimate concerns of the state. Thus there a person can have reasonable expectations of his right to privacy being protected. The legitimate state aim in the present case is in fact to preserve the sanctity of democratic institutions. The other aspect being reasonable expectations of anonymity. As public officials, accountability at personal as well as professional level must be maintained, the former being the suo moto disclosure of assets as in the present case and the latter to deliver toward the commitment of justice without biases or external influences.

## **Conclusion**

Transparency and accountability are long-standing principles of good governance. These enduring values stand amidst changing world orders not because of its appeal to the expectant public but more because they form a double edged sword vital in ridding nations of corruption. India too must develop better asset disclosure regimes to fulfill its commitments toward being steadfastly loyal to the principles of justice, which is the cornerstone of a democracy.

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