

Designated Appellate Authority : Appellate Authority
Postal Address : Chief Commissioner of Income Tax, Orissa,
Room No.-101, Aayakar Bhawan,
Rajaswa Vihar, Bhubaneswar-751007

Date : 25/09/2012

Name and Address of the appellant : **Anil Bairwal,**
National Coordinator,
Association for Democratic Reforms

Name and address of the ITO : **Mr A.K.Behera,**
Income Tax Officer, Bhubaneswar
Ward – 1(2), Room No 404, Aayakar Bhawan,
Rajaswa Vihar,
Bhubaneswar-751007

Date of submission of RTI request : **31/08/2012**

Date of payment of Additional fee (if any) : **None**

Particulars of the order appealed against:

That the information sought by the appellant pertains to third party and the third party has raised objection in providing the necessary information as the party does not receive any grant from the Government directly or indirectly u/s 2(h). Therefore the information cannot be provided to the applicant. (Annexure-1)

Brief facts of the case:

This is with reference to my RTI application No: ADR04/RTI/ACIT-BJD/04 dated 31-08-2012 asking for copies of all pages of the IT returns filed by Biju Janata Dal for the Assessment years 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12. A copy of the above mentioned RTI application filed on 31/08/2012 is attached herewith. (Annexure-2)

As per the reply from the ITO in letter No: ITO/W-1(2)/BBSR/RTI/2012-13/9497 dated 12/09/2012, I was informed that the said information could not be provided as the information sought by the appellant pertains to third party and the third party has raised objection in providing the necessary information.

About the Appellant:

Anil Bairwal is part of Association for Democratic Reforms (ADR) which works for improving governance, democratic, political and electoral process in the country. Earlier also, ADR had filed a Public Interest Litigation (PIL) in Delhi High Court which resulted in the landmark and historic judgment of Supreme Court (March 13, 2003) making it mandatory for candidates contesting elections of State Assemblies and Parliament to disclose their criminal and financial antecedents, by way of a sworn affidavit to be filed as an essential part of the nomination form.

Also, based on a RTI application filed by ADR to get Income Tax details of the Political Parties, the Information Commission vide its order number *CIC/AT/A/2007/01029 & 1263-1270; Date of Decision: 29.04.2008* directed the public authorities (Income Tax Departments) holding Income Tax returns of the political parties to make them available to the appellant. (Annexure-3)

Grounds for Appeal:

1. Section 8(1)(j) of the Right to Information Act, 2005 is not applicable here because of the following reasons-

Section 8(1)(j) of the RTI Act, 2005 states:

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.

The information sought is in the larger public interest and does not warrant to invasion of the privacy of the individual. In fact, the Central Information Commission vide its order number *CIC/AT/A/2007/01029 & 1263-1270; Date of decision: 29/04/2008* directed the public authorities (Income Tax Departments) holding Income Tax returns of the political parties to make them available to the appellant. It passed the judgement stating that the tax returns of political parties were to be made public and also directed the authorities to furnish copies of the IT returns of the parties to the public.

The Commission in its order said that:

"In this case, the information asked for is available with the public authority, i.e. Income Tax Department and is asked for by a citizen. The information relates to various political parties and has been provided by them to a Public Authority in obedience to the provisions of law."

.....

"Thus information, which is otherwise exempt, can still be disclosed if the public interest so warrants. That public interest is unmistakably present is evidenced not only in the context of the pronouncements of the Apex Court but also the recommendations of the National Commission for the Review of the Working of the Constitution and of the Law Commission."

2. Section 8(1)(e) reads as follows:

"Information available to a person on his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information"

A fiduciary relationship implies that a person voluntarily places confidence in another person (in this case, The Income Tax Department), to share the information with that person. **The information provided by the political party to the Income Tax Department is a statutory requirement and is not done in fiduciary capacity.** It is part of political party's public duty and is done in relation to public and legal activity and not in fiduciary capacity. Hence Section 8(1)(e) is not applicable in this case and the requested information should be given to the applicant.

3. Also, in one of the judgements of CIC (CIC/DS/A/2011/000666 Dated 02/11/2011), in response to the complaint by the appellant (Association for Democratic Reforms), a **show-cause notice was issued to the PIO, Kozhikode for not providing the IT returns of a political party as requested by the appellant.** (Annexure-4)

The Commission in its order said that

"The Commission expresses surprise at the manner in which the CPIO and the first Appellate Authority while being in the full knowledge of the decision of the Central Information Commission dated 29 April referred to above have chosen to ignore it"

.....

"Through this order notice is issued to the CPIO under provisions of Section 20(1) to show cause why penalty should not be imposed upon him for mala-fidely denying the request for information and knowingly obstructing the furnishing of information"

Since political parties are working in the public domain and using public funds, it hence proves that the RTI and this First Appeal is in the larger public interest. Therefore, as per the directions of the Central Information Commission, the information sought by the appellant is clearly to be made available under the Right to Information Act.

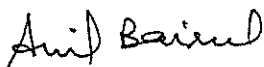
Prayers or relief sought and grounds thereof:

Based on the above mentioned judgement of the Central Information Commission, the appellant has already sought information pertaining to Income Tax Returns of various Political Parties from Income Tax Department and has been provided the same for a number of political parties.

Hence keeping in mind the above grounds for appeal and the fact that this information is clearly to be given under RTI as per the order of Central Information Commission, I request you to kindly direct the PIO/CPIO concerned to provide the requested information to the undersigned at the earliest.

I hereby declare that the aforementioned facts are true to the best of my knowledge.

Appellant's signature



Anil Bairwal
National Coordinator, Association for Democratic Reforms
Table no. 04
B-1/6, Hauz Khas
New Delhi- 110016
Phone – 011-40817601

Enclosures:

- Annexure 1:** Copy of the letter from the concerned ITO
Annexure 2: Copy of the original RTI Application
Annexure 3: Copy of the CIC Judgement: *CIC/AT/A/2007/01029 & 1263-1270*
Annexure 4: Copy of the CIC Judgement: *CIC/DS/A/2011/000666*



भारत सरकार
GOVERNMENT OF INDIA
कार्यालय मुख्य आयकर आयुक्त, ओडिशा
OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX, ODISHA
आयकर भवन, राजस्व विहार
AAYAKAR BHAWAN, RAJASWA VIHAR,
भुवनेश्वर-751007
BHUBANESWAR - 751007
Phone: 0674-2586966 Fax: 0674-2580263; 2580267

F.No.CCIT/Estt./RTI Corresp/2012-13/
Dated, Bhubaneswar the 03rd October 2012.

To

**The Joint Commissioner of Income Tax,
Range-1,
Aayakar Bhawan,
Bhubaneswar.**

Sir,

Sub: Forwarding of Application for Appeal under the RTI Act, 2005 of Shri Anil Bairwal – reg.

Kindly find enclosed herewith an application for appeal under the RTI Act, 2005 received from Shri Anil Bairwal on 28.09.2012. Shri Bairwal has filed First Appeal under section 19 of the RTI Act, 2005 against the order the Income Tax Officer, Ward-1(2), Bhubaneswar & CPIO. As you are the First Appellate Authority in this case, the same is forwarded herewith for necessary action at your end.

Yours faithfully,

Encl: As above.

Sd/-
(Dipi Agrawal)
Asst. Commissioner of Income Tax (Hqrs)(Admn) & CPIO,
Office of the Chief Commissioner of Income Tax,
Bhubaneswar.

Memo No.CCIT/Estt./RTI Corresp/2012-13/13996
Dated, Bhubaneswar the 03rd October 2012.

✓ Copy to: Shri Anil Bairwal, National Coordinator, Association for Democratic Reforms, Table No.04, B-1/6, Hauz Khas, New Delhi- 110016 for kind information.

(Signature)
(Dipi Agrawal)
Asst. Commissioner of Income Tax (Hqrs)(Admn) & CPIO,
Office of the Chief Commissioner of Income Tax,
Bhubaneswar.



GOVERNMENT OF INDIA
OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX
RANGE – 1, BHUBANESWAR
3RD FLOOR, AAYAKAR BHAWAN, RAJASWA VIHAR, BHUBANESWAR – 751 007
TELE: 0674 2587729; FAX : 0674 258 5075

Appeal No. : JCIT/R-1/RTI/2012-13/01
Name of the Appellant & Address : Shri. Anil Bairwal
National Coordinator, Association for Democratic Reforms
Table No.4, B-1/6, Hauz Khas, New Delhi -110016
Date of receipt of Appeal : 03.10.2012
Date of Order : 12.10.2012

ORDER U/S 19 (1) r.w.s 19 (6) OF THE RTI ACT, 2005

The instant appeal has been received by the undersigned on 03.10.2012 by transfer from the O/o the Chief Commissioner of Income Tax, Odisha, Bhubaneswar vide their letter No.3995 dated 03.10.2012.

2. Brief facts of the case/appeal are as under;

- a. The appellant vide his RTI application dated 31.08.2012 has sought certain information on a political party from the CPIO i.e ITO, Ward 1 (2), Bhubaneswar.
- b. The CPIO vide his reply No.9497 dated 12.09.2012 denied the information sought for as pertaining to a third party and the third party opposing the disclosure thereof.
- c. The instant appeal is against the denial of information by the said CPIO.

3. In the appeal, the appellant seeks for directing the CPIO to provide the requested information submitting that sections 8 (1) (e) & (j) of the RTI Act, 2005 are not applicable in the instant case and also relying upon the judgments of Hon'ble CIC in the case of Ms. Anumela dated 29.04.2012 and Shri.Anil Bairwal (the appellant himself) dated 02.11.2011.

4. I have carefully examined the information sought by the appellant in his application, the reply given by the CPIO and various submissions made by the appellant in his appeal.

5. The information sought by the applicant relate to Income Tax (IT) returns of Biju Janata Dal (BJD for short, a political party) for Assessment Years (AYs) 2002-03 to 2011-12 as to whether the BJD

is filing IT returns, complete in all respect, for these AYs, if so provide copies thereof and if not details of action taken thereon.

The appellant submits that, the CIC in the aforementioned decisions directed for providing the copies of IT returns of the political parties and hence in the instant case also the information sought may be provided.

6. Hon'ble Supreme Court vide their order dated 03.10.2012 in the case of Girish Ramachandra Despande vs CIC & Ors in SLP (Civil) No. 27734 of 2012 held that **“the details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information”.**

Examining the CIC decisions relied upon by the appellant for his case vis-à-vis the order of the Hon'ble Apex Court as quoted above, it is seen that IT returns are not to be disclosed as they are exempted under section 8 (1) (j) of the RTI Act, 2005 unless there involves a larger public interest. The decisions relied upon by the appellant precede the order of the Hon'ble Apex Court and hence the ratio laid down thereby is final and binding on all public authorities.

7. An argument can be put forth that the BJD (political party) is not a “person” as contemplated in section 8 (1) (j) or in the impugned Apex Court order.

The information in question is covered by the Income Tax Act, 1961 wherein the “person” is defined in Section 2 (31) as “person includes (i) an individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or body of individuals whether incorporated or not, (vi) a local authority, and (vii) every artificial juridical person, not falling within any of the preceding sub-clauses”. The definition of “person” as per the above section is an inclusive definition and not an exclusive one.

The said political party is a Trust and hence squarely covered by the said section of the IT Act, 1961 and for the very reason covered by the said Apex Court order.

8. Next issue to be examined is whether any larger public interest is served in disclosing the information as sought by the appellant or not (as per the provisions and intent of the RTI Act and the said Apex Court order).

I have examined the issue carefully and gone through various submissions made by the appellant in the appeal and whereupon could not satisfy myself that the disclosure of the information sought would serve any larger public interest.

9. Further, it is seen that the third party i.e. the BJD has on two occasions vide their letters dated 22.11.2011 and 05.09.2012 has objected disclosing the information sought when notice was given by the CPIO under section 11 of the RTI Act which was duly considered by the CPIO in denying the information sought by the applicant.

10. In view of the discussion in the preceding paragraphs, I hereby conclude that;

- a. I am bound by the order of the Hon'ble Supreme Court dated 03.10.2012 in the case of Girish Ramachandra Despande vs CIC & Ors in SLP (Civil) No. 27734 of 2012 in deciding this appeal against the appellant (with due respect to the two orders passed by the Hon'ble CIC mentioned earlier).
- b. The information sought by the appellant is covered by section 8 (1) (j) of the RTI Act, 2005 and also a third party information.
- c. The appellant could not satisfy that the disclosure of information is going to serve any larger public interest.

Accordingly, agreeing with the reply furnished by the CPIO, the appeal filed by the appellant is hereby rejected.

11. In case the appellant wishes to file an appeal against this order, he may do so within 90 days from the receipt of this order before the Appellate Authority mentioned below;


Central Information Commission,
2nd Floor, "B" Wing, August Kranti Bhawan
Bhikaji Cama Place, New Delhi -110066

sdl-

(Suresh Sivanandan)
Joint Commissioner of Income Tax
Range - 1, Bhubaneswar &
Appellate Authority

Memo No:- JCS1/R-7/2012-13/4417
Bhubaneswar - Dated - 12-10-2012
Copy to ; 15

- ✓ 1. Shri. Anil Bairwal
National Coordinator, Association for Democratic Reforms
Table No.4, B-1/6, Hauz Khas, New Delhi -110016
2. ITO, Ward 1 (2), Bhubaneswar/
The CPIO
3. File


(Suresh Sivanandan)
Joint Commissioner of Income Tax
Range - 1, Bhubaneswar &
Appellate Authority
12.10.12



भारत सरकार
GOVERNMENT OF INDIA
कार्यालय मुख्य आयकर आयुक्त, ओडिशा
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F.No.CCIT/Estt./RTI Corresp/2012-13/
Dated, Bhubaneswar the 03rd October 2012.

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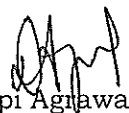
Yours faithfully,

Encl: As above.

Sd/-
(Dipi Agrawal)
Asst. Commissioner of Income Tax (Hqrs)(Admn) & CPIO,
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Memo No.CCIT/Estt./RTI Corresp/2012-13/13996
Dated, Bhubaneswar the 03rd October 2012.

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