

Designated Appellate Authority : First Appellate Authority

Postal Address : Addl. Commissioner of Income Tax-cum-Appellate Authority
Kottayam Range
Public Library Building, Shastri Road
Kottayam, Kerala

Date : 15/04/2013

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

Name and address of the PIO & ACIT : **Mr Jojo P. Kuriakose**
Central Public Information Officer
Income tax Officer, Ward-2
Kottayam

Date of submission of RTI request : **11/03/2013**

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 documents related with this information are in fiduciary capacity with the department, therefore, it cannot be given as larger public interest also has not been proved in the application. (Annexure-1)

Brief facts of the case:

This is with reference to my RTI application No: ADR04/RTI/ACIT/KC-M/01 dated 11-03-2013 asking for copies of all pages of the IT returns filed by Kerala Congress (M) for the Assessment years 2010-11, 2011-12 and 2012-13. A copy of the above mentioned RTI application filed on 11/03/2013 is attached herewith. (Annexure-2)

As per the reply from the ITO in Memo No: RIA/W-2/KTM/2012-13 dated 09/04/2013, I was informed that the Income Tax Returns of the said political party for the assessment years 2010-11 2011-12 and 2012-13 as requested **could not be provided as the information sought by the appellant was held in fiduciary capacity and the application was not made in larger public interest.**

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 an RTI application filed by it 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. The Supreme Court's decision in the case of Girish Ramchandra Deshpande vs. Central Information Commissioner & Others, dated 3rd October, 2012, says that the individual's personal information such as assets & liabilities, movable & immovable properties cannot be provided as it qualifies to be under section 8(1)(j) of the RTI Act.

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 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
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B-35, Qutub Institutional Area, 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*