

CENTRAL INFORMATION COMMISSION

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Shri Basant Seth & Prof. M. Sridhar Acharyulu

Central Information Commissioners

CIC/DS/A/2011/004218

CIC/DS/A/2011/004189

CIC/DS/A/2011/004205

CIC/DS/A/2011/004216

CIC/DS/A/2011/004220

CIC/DS/A/2011/004231

CIC/DS/A/2011/004234

CIC/DS/A/2011/004188

Appellant : Anil Bairwal

Public Authority: Commissioner of Income Tax-1

Date of Hearing : 14.06.2016

Date of decision : 10.08.2016

1. Appellant, Mr Anil Bairwal, filed RTI application wherein he had sought information in respect of tax returns of Members of Parliament. Mr. Anil Bairwal was absent. There are eight such second appeals before this bench.
2. Mr. Vikas Chaudhary, ACIT/CPIO, Circle 64(i) was present before the Commission in Appeal No. 4218, and Ms. Archana Sinha, advocate represented Commissioner of Income Tax –

Patna. The representatives from Chandigarh, Pune, Hisar and Bombay were not present at their scheduled NIC studios.

Factual background

3. Appellant filed RTI Applications, in February 2010, seeking Income Tax Returns (ITR) related information of following 20 Lok Sabha members:

Sl. No.	Name of the MP	Party	State (Constituency)	Permanent Address
1.	Shri Naveen Jindal	<i>INC</i>	Haryana (Kurukshetra)	Jindal House, Mohan Nagar, Pipli Road, Kurukshetra-136118, Haryana.
2.	Shri Uday Singh	<i>BJP</i>	Bihar (Purnia)	Maul Babu Hata, Madhubani, Purnea, Bihar
3.	Smt. Meneka Gandhi	<i>BJP</i>	Uttar Pradesh (Aonla)	A-4, Maharani Bagh, New Delhi-110065.
4.	Shri Sachin Pilot	<i>INC</i>	Rajasthan (Ajmer)	Village-Baidpura, Dist-Gautam Budh Nagar, UP.
5.	Shri Dushyant Singh	<i>BJP</i>	Rajasthan (Jhalawar Baran)	Raj Niwas, Dholpur, Rajasthan.
6.	Dip Gogoi	<i>INC</i>	Assam (Kalibabor)	Village Nazir Ali, PO/Dist-Jorhat, Assam.
7.	Kumari Selja	<i>INC</i>	Haryana (Ambala)	87, Durrand Road, Ambala Cant. Haryana.
8.	Shri Jyotiraditya Madhavrao Scindia	<i>INC</i>	Madhya Pradesh (Guna)	Jai Vilas Palace, Lashkar, Gwalior-470004, Madhya Pradesh.
9.	Shri Navjot Singh Sidhu	<i>BJP</i>	Punjab (Amritsar)	213, E-Block Ranjit Avenue Amritsar, Punjab.
10.	Shri Beni Prasad Verma	<i>INC</i>	Uttar Pradesh (Gonda)	Village Sirauli, PO Gauspur, Dist Barabanki-225001.
11.	Dr. Shafiqurr Ahman	<i>BSP</i>	Uttar Pradesh (Shabhal)	Mohalla Deepa Sarai, Sambhal,

	Barq				Dist-Moradabad-244001.
12.	Smt. Usha Verma	SP	Uttar Pradesh (Hardoi)		78, Peni Purva Railway Ganj, Hardoi-229123.
13.	Shri Ajit Singh	RLD	Uttar Pradesh (Baghpat)		12, Tughlak Road, Nerw Delhi-110011.
14.	Lalu Prasad Yadav	RJD	Bihar (Saran)		Village Samanpura, Bihar Veterinary College, Patna-800014 and 5, Deshratna Marg, Patna (Bihar).
15.	Shri Mohan Jena	BJD	Orissa (Jaipur)		At. Sasansima, PO Dhanmandal, Dist-Jaipur, Orissa-754024.
16.	Shri Baju Bajn Riyan	CPM	Tripura (Tripura East)		Vill and PO-East Bagafa, PS Santir Bazar, Dist-South Tripura-799144.
17.	Shri T. R. Baalu	DMK	Tamil Nadu (Madras South)		28, United India Colony, First Cross Street, Kodambakkam, Chennai-600024.
18.	Shri Sharad Chandra Govindrao Pawar	NCP	Maharashtra (Madha)		Govind Bagh, Baramati, Dist. Pune-413002.
19.	Shri Shivaji Adhalrao Patil	SHS	Maharashtra (Shirur)		At Post-Landewadi, Taluka-Ambegaon, Dist-Pune-410503.
20.	Smt. Paramjit Kaur Gulshan	SAD	Punjab (Faridkot)		472, Model Town Urban Estate, Phase-1 st Bhatinda-151001.

The appellants asked information about these MPs falling under different zones of IT department, in eight appeals:

- Whether these MPs have filed their ITRs for the years 2004 to 2009?
- The years for which these MPs have not filed their ITRs,

- c) The details of ITR and Assessment Orders for all the years for which these MPs have filed their returns.
4. The CPIO Ms. Monika Rana, Asst Commissioner of IT Circle 40(1) considered information sought as third party information. She issued notices under Section 11(1) of RTI Act to two MPs as they come under their Circle's territorial jurisdiction; Smt. Kumari Shelja and Shri Ajit Singh, in response, requested not to disclose their ITRs. Based on that, CPIO refused information under 8(2)(j) and (e) of RTI Act of 2005.
 5. In First Appeal the authority, Mr. Rajiv Kumar, Additional Commissioner of Income Tax, Range-40, New Delhi declined to interfere with the order of CPIO dated 7.4.2010.
 6. Mr. Anil Bairwal filed second appeal dated December 19, 2011 praying for disclosure of ITRs, Assessment Orders and other details, claiming overriding public interest. He stated that there was enormous increase in the properties of the MPs as reflected in ADR reports, which was not considered and that the people have right to know it.
 7. Assuming that the issue is of larger public interest, Learned CIC Shri Rajiv Mathur had referred the matter to a larger bench.

Hearing before the Bench on 23rd May 2016.

8. Appellant Anil Bairwal was not present. Mr. Vikash Chaudhary submitted that he joined just two weeks before as CPIO. He did not bring the file of earlier PIO. When questioned whether public interest factor in disclosure or protection was examined, CPIO could not reply saying he joined two weeks ago and he did not have file. Mrs Sinha, counsel representing IT Commissioner, Patna, was also not in a position to assist the bench on this question as she did have any file.
9. Points (a) and (b) of RTI application are: whether these MPs have filed their ITRs for the years 2004 to 2009, the years for which these MPs have filed their ITRs or not, should have been answered by the public authority. . It was not done. Point (c) was refused.

Appellant's contention

10. The appellant contended as per records: To secure the purity of elections and probity in public life, the [Representation of the People Act](#), 1950 was amended in 2002, [Section 33A](#) and [33B](#) have been introduced requiring contesting candidate and give their economic, academic and criminal background. (ADRN Vol(2002) 5 SCC 294).
11. [Section 125-A](#) inserted in 2002 provides for prosecution if the candidate fails to furnish the information specified in [Section 33A](#) or gives false information which he knows or has reason to believe to be false.
12. In support of public interest in furnishing information, the appellant submitted the following points in two appeals bearing No. 4218 and 4231 came up for hearing on 22.11.2012 before the Commission:
 - As per study of ADR, average increase in assets of MPs based on their self-declaration with election commission shows a **very high increase** from year 2004 to 2009.
 - As per election commission directives, this information is already available in public domain.
 - PMO has asked Ministers to voluntarily declare their assets and liabilities.
 - A register of member's interest of Rajya Sabha MPs is already in public domain and Lok Sabha is planning to have on similar lines as recommended by Chairman of Ethics Committee, 2001.
 - Supreme Court in its judgement in ***PV Narasimha Rao v. CBI*** and (Writ Petition No. 490/2002), in **PUCL and Ors. Vs Union of India**, has held that MPs & MLs public servants and they have to disclose their assets .
 - CIC in its decision dated 29.04.2008 in **Ms. Anumeha C/O Association of Democratic Reforms** while permitting disclosure of IT returns of Political Parties observed that the contention that all IT returns are permanently barred from disclosure is not correct. This

information can be disclosed in public interest either in a given case or a class of cases under Income Tax Law.

13. According to ADR study highlights two major facts:

a) **Disproportionate Increase in Assets of Elected Representatives:** Analysis of MPs from the Lok Sabha 2014 Elections, Rajya Sabha 2016 Elections as well as MLAs from the recently concluded State Assembly Elections (Tamil Nadu, Puducherry, Kerala, Assam, West Bengal) reveals that many MPs and MLAs have registering an 'abnormal' increase in the value of their assets since the last elections. ***The assets of 4 current Lok Sabha MPs have increased over 1200%. 22 other Lok Sabha MPs have declared an asset increase of over 500%. The case is similar for State Assemblies as one MLA from Assam has declared an increase of over 5000% in his assets from 2011 to 2016.***

b) **Absence of Income Tax Declaration in the affidavits of MPs & MLAs:** Analysis of data reveals that a large number of MPs and MLAs do not disclose details of their Income Tax Returns. ***24 Current Lok Sabha MPs have declared assets worth Rs 1 crore but have not filed their Income Tax Returns as per their self-sworn affidavits. The case is similar for State Assemblies as 84 MLAs from Kerala and 58 MLAs from West Bengal have not disclosed details of their Income Tax Returns.***

14. Appellant explained that these 20 MPs were selected to seek ITR related information, to show the fact that cutting across regions, professional background, political background, political affiliations, social standing, generally all MPs showed an increase in their assets. As can be seen from the first table (titled "Asset Comparison for Re elected MPs 2009") in the attached document, **each of the 20 MPs has declared a substantial increase in the value of their assets from the Lok Sabha 2004 Elections to the Lok Sabha 2009 Elections.** The increase in the percentage of assets ranges from 95% to 1746%. It is worth pointing out that **only 4 MPs from the list of 20 considered by us were re-elected in the Lok Sabha 2014 Elections.** As the

second table (titled "Asset comparison for re-elected MPs 2014") suggests, each of the 4 MPs has declared increase in assets between the Lok Sabha 2009 and the Lok Sabha 2014 Elections, ranging from 100% to 273%. ADR has issued two documents - "Income Tax Returns of 20 MPs- ADR submission-June 23, 2016", b) NEW Report on Asset Comparison of Re-elected MPs and MPs who re-contested but lost in Lok Sabha 2009 elections.

Table 1 Asset Increase from Lok Sabha 2004 to Lok Sabha 2009 Elections

Sl. No.	Name	Party 2009	State	LS Seat 2009	LS Seat 2004	Assets 2009	Assets 2004	Asset Increase	% Increase in Asset
1	Sachin Pilot	INC	Rajasthan	Ajmer	Dausa	4,64,89,558 4 Cror+	25,19,000 25 Lacs+	4,39,70,558 4 Cror+	1746%
2	UDAY SINGH ALIAS PAPPU SINGH	BJP	BIHAR	Purnia	Purnea	41,91,30,669 41 Cror+	3,06,54,143 3 Cror+	38,84,76,526 38 Cror+	1267%
3	NAVEEN JINDAL	INC	HARYANA	Kurukshetra	Kurukshetra	1,31,07,30,000 131 Cror+	12,12,95,000 12 Cror+	1,18,94,35,000 118 Cror+	981%
4	USHA VERMA	SP	UTTAR PRADESH	Hardoi	Hardoi	1,01,11,699 1 Cror+	9,76,000 9 Lacs+	91,35,699 91 Lacs+	936%
5	DUSHYANT SINGH	BJP	RAJASTHAN	Jhalawar-Baran	Jhalawar	6,41,10,900 6 Cror+	70,82,067 70 Lacs+	5,70,28,833 5 Cror+	805%
6	DIP GOGOI	INC	ASSAM	Kaliabor	Kaliabor	25,39,058 25 Lacs+	3,42,751 3 Lacs+	21,96,307 21 Lacs+	641%
7	SELJA	INC	HARYANA	Ambala	Ambala	4,67,11,386 4 Cror+	71,76,087 71 Lacs+	3,95,35,299 3 Cror+	551%
8.	DR. SHAFIQR RAHMAN BARQ	BSP	UTTAR PRADESH	Sambhal	Moradabad	70,59,763 70 Lacs+	13,49,151 13 Lacs+	57,10,612 57 Lacs+	423%
9	BENI PRASAD VERMA	INC	UTTAR PRADESH	Gonda	Kaiserganj	2,01,83,574 2 Cror+	41,12,560 41 Lacs+	1,60,71,014 1 Cror+	391%

Table II **Asset Increase from Lok Sabha 2009 to Lok Sabha 2014 Elections of four MPs who are re-elected**

S. No.	Name	Party 2014	State 2014	Constituency in Lok Sabha 2014	Assets in Lok Sabha 2014	Assets in Lok Sabha 2009	Increase	% Increase
1	Dushyant	BJP	RAJASTHAN	JHALAWAR-BARAN	23,90,06,838 23 Crore+	6,41,10,900 6 Crore+	17,48,95,938 17 Crore+	273%
2	Jyotiraditya M. Scindia	INC	MADHYA PRADESH	GUNA	33,08,88,751 33 Crore +	14,90,94,212 14 Crore+	18,17,94,539 18 Crore+	122%
3	Maneka Sanjay Gandhi	BJP	UTTAR PRADESH	PILIBHIT	37,41,32,826 37 Crore+	18,28,33,477 18 Crore+	19,12,99,349 19 Crore+	105%
4	Adhalrao Shivaji Dattatrey	SHS	MAHARASHTRA	SHIRUR	25,38,80,475 25 Crore+	12,71,13,134 12 Crore+	12,67,67,341 12 Crore+	100%

As this table suggests, each of the 4 MPs has declared increase in assets between the Lok Sabha 2009 and the Lok Sabha 2014 Elections, ranging from 100% to 273%.

15. The trend of increase in assets of MPs and MLAs is spread over almost all parties except in case of Communist parties. An analysis of the Lok Sabha 2014 Elections, the recently held Rajya Sabha elections (June 2016) as well as the recently concluded State Assembly Elections in Tamil Nadu, Kerala, Puducherry, West Bengal & Assam that reveals a disproportionate increase in the assets of a large number of elected representatives as declared by them in their self-sworn affidavits filed with the Election Commission. Analysis also reveals that a substantial number of elected representatives have failed to disclose details of their last filed Income Tax Returns. The general public or the voters cannot trace the reasons for such significant increase in the assets of MPs and MLAs or the reason for non-declaration of income tax declaration by many MPs/MLAs.
16. ADR study recommends that the information pertaining to the IT Returns of our Elected Representatives should be placed in the public domain as the MPs/MLAs are repositories of public trusts and they have a public duty to perform. It also needs to be emphasized that Elected Representatives are in public service by their own choice and transparency in their working and financial operations is essentially in larger public interest. By virtue of the office they hold, there is a real potential for misuse. Abnormal multiplication of assets in a period of 5 years might raise several questions.

Respondent's contention:

17. Respondents (IT Authorities) presented that Income Tax returns filed by MPs were their private information and hence hit by Section 8(1)(j) of RTI Act. In support of their argument they cited ***Girish Ramachandra*** case in which Supreme Court held that details disclosed by a person in his IT returns is personal information which stands exempted, unless larger public interest is involved.

Analysis:

18. The applicant had stated that ADR, a public spirited NGO, publishes reports under title National Election Watch, about assets, educational qualifications, criminal background/cases of contesting, elected, re-elected, re-contested and lost candidates/MPs and it has secured for voters the right to information about educational, economical and criminal antecedents of contesting candidates much before RTI Act. (**ADR vs. UOI**, 2002 AIR 2112). This is later codified by Parliament of India.
19. The Appellant sought information from various offices of Income Tax Authority, whether 20 MPs have filed their IT returns for all the five years 2004-09, year for which they did not file their return, details of their IT returns and assessment orders for all these years. But all these points were rejected en bloc invoking section 8(1)(j).
20. The CPIOs could have examined each point of RTI application instead of rejecting en bloc. Whether MPs filed IT returns for each year from 2004-09? Answer could have been 'yes' or 'no'. What are the years for which they did not file? Answer could have been mentioning of year, if IT Return was not filed, if any, or 'filed for every year' if those were filed. The CPIO could have culled out some information out of Assessment orders without disclosing the personal information adopting doctrine of severability of Section 10. There was no attempt to answer any question by any CPIO in any of these applications. Above all, each CPIO failed to show how he understood that there was no larger 'public interest'.
21. After being elected the MPs have to submit their annual assets statement every year to the speaker of the Lok Sabha or Chairperson of Rajya Sabha, as the case may be. Members of Parliament are required to file a declaration of assets and liabilities with the Speaker of Lok Sabha and the Chairman of Rajya Sabha. The rules to this effect were made in 2004 under the Representation of Peoples Act, 1951. These declarations have to be made by MPs within 90 days of taking their seat in Parliament. The Rajya Sabha rules specify that MPs are required to update their declarations every year. They are accessible.

22. IT department has heavily relied on **Girish Ramachandra** to deny the information. Former Central Information Commissioner Mr. Shailesh Gandhi, in a writ petition WPC 8753/2013 before Bombay High Court questioned the reasoning and legality of the judgment of Supreme Court in **Girish Ramachandra**. He cited Supreme Court in **Uoi v ADR (2002) 5 SCC 294** saying that standard of disclosure for public servants has been set higher. He also relied on **R Rajagopal v State of Tamil Nadu (1994)6 SCC 632** and in **ADR v PUCL (2002) 6 SCC 632**, and in **PUCL v UOI AIR 2003 SC 2363** wherein it was held that public interest element involved in divulging information relating to public servants, MPs and Ministers outweighs the right to privacy. Mr. Shailesh Gandhi pointed out that **Girish Ramachandra** did not consider above two important judgments. Bombay High Court rejected this contention and reiterated the conclusion of **Girish Ramachandra** in its order dated 1st June 2015.

23. Though CPIO has rightly consulted third parties as per Section 11(1) but ignored its proviso. 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.

24. 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”.

25. 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.

26. Section 11(1) also deals with examination of public interest after consulting with the third parties, whose information was sought. The CPIO claimed to have consulted only two MPs out of twenty.

27. 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.

28. The larger public interest has to be examined under RTI Act, public interest referred to in section 11(1) proviso where public interest in disclosure has to be outweighed in importance any injury to interest of third party; Appellant has a duty to explain 'public interest' and CPIO need to examine the same.

29. Section 138(1)(b) of the Income Tax Act is also similarly couched with requirement of examining the public interest factor, which is very significant. This section is referred to by Sh. A.N. Tiwari, IC in *Ms. Anumeha, C/O ADR* (29.04.2008) which decided:

39. In fact provision for disclosure of such information exists in the Income Tax Act itself. Section 138(1)(b) of the Income Tax Act empowers the Commissioner of Income Tax to disclose, "in public interest", any information which comes into the hands of the public authority. That Section reads as follows:- "(b) Where a person makes an application to the [Chief Commissioner or Commissioner] in the prescribed form for any information relating to any assessee [received or obtained by any income-tax authority in the performance of his functions under this Act], the [Chief Commissioner or Commissioner] may, **if he is satisfied that it is in the public interest so to do**, furnish or cause to be furnished the information asked for and his decision in this behalf shall be final and shall not be called in question in any court of law."

40. That this Section states is that any information in the hands of the Income Tax authorities would be ordinarily held as confidential, but can be made public, if in the judgement of the Commissioner of Income Tax, it serves public purpose. Therefore, the contention that all Income Tax Returns — an information provided by assesseees to Income Tax authorities — are permanently barred from disclosure, is not correct. This information can be **disclosed in public interest**, either in a given case, or a class of cases, under Income Tax laws. As has been shown in the preceding paragraphs there is public interest in disclosing the class of information, viz. Income Tax Returns of the Political Parties.

30. The CPIOs being authorities are under RTI Act, should proceed according to procedure prescribed under that law and consult each and every third party about whose ITR related

information is being sought. There is nothing on record to show that CPIOs of various wings of respondent authority have issued notice to all the 20 MPs and they responded, except regarding two MPs. The turn of CPIOs examining larger public interest did not arise.

31. The Bench directs the respondents to examine each point of RTI request, issue notices to all third parties as required under Section 11 in all eight cases, secure responses, duly consider the larger public interest after giving sufficient opportunity to the appellants, and decide on information with speaking orders on each point, within three months from the date of receipt of this order.

(Basant Seth)

(M. Sridhar Acharyulu)

Central Information Commissioners