

No ITO/Ward 3(1)/2010-11/ 234

Paramjit Kaur
RTI Response
Office of the
Income-tax Officer,
Ward-3(1) (CPIO)
SCO 73-75, Sector 17-D,
Chandigarh.
Dated: 26.4.2010

To

Sh. Anil Bairwal,
Association for Democratic Reforms,
B-16, Hauz Khas,
New Delhi-110016

Sir,

Sub: Application for information under section 6(1) of the
Right to Information Act, 2005 -

Kindly refer to your application No. ADA/IT/8/22/02/10 dated 22.2.10 addressed to the Public Information Officer, CCIT, Chandigarh which was received in this office on 27.3.2010.

2. After examination of your application, it is decided that your request cannot be entertained because the information sought by you is covered u/s 8 of the Act the following reasons.

3. The information sought by you is related to third party. This is a personal information and its disclosure would cause unwanted invasion of the privacy of the person involved and no larger public interest is involved which justifies the disclosure of information. As per clause 'j' of section 8 of the Right to Information Act 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" is not to be disclosed to any individual.

In view of above section the information of any individual is not to be disclosed under this act. The applicant may enquire only for his own matters, or the matters of public interest. This information is not covered under any of the conditions of Right to Information Act. However it is submitted that, as per record of this office Smt. Paramjit Kaur Gulshan, d/o Sh. Dhanna Singh Gulshan has been filing income tax returns in this ward regularly.

4. As per section 19(1) of the RTI Act, you can file appeal against this order before the Appellate Authority within 30 days of the receipt of this order.

Yours faithfully,

Suman Luthra

(Suman Luthra)
Income Tax Officer,
Ward-3(1), CPIO
Chandigarh

Copy submitted to the Addl. Commissioner of I.Tax, Range-iii, Chandigarh for information.

(Suman Luthra)
Income Tax Officer,
Ward-3(1), CPIO
Chandigarh

Permitted Case
- 1st Appeal order

GOVERNMENT OF INDIA



Addl. Commissioner of Income Tax,

RANGE-III

SCO 73-74-75, SECTOR 17-D,

CHANDIGARH (160017)

Ph: 0172-2722662

Fax: 0172-2702165

No: Addl. CIT/R-III/CHD/10-11/1085

Dated: 21.06.2010

Name of the applicant:

Sh. Anil Bairwal,
National Coordinator
Association for Democratic Reforms
B-1/6, Hauz Khas
New Delhi-110016

Sub: Order u/s 7(1) of the Right to Information Act, 2005

The appellant Sh. Anil Bairwal, National Coordinator, Association for Democratic Reforms, B-1/6, Hauz Khas, New Delhi-110016 has filed an appeal vide no. ADR/IT/3/06/05/10 dated 6.5.2010, received in this office on 25.5.2010 against order passed by the CPIO i.e. ITO Ward 3(1), Chandigarh vide her letter no. 234 dated 26.4.2010. The said appeal has been filed on the following grounds of appeal:

Grounds of appeal :

"1 Selection 8(1) (j) of the RTI Act is not applicable in this case due to the following reasons:

The section reads as follows:-

" 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 disclosures of such information":

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

- a) The information in the Tax Returns & Assessment Orders is not the information the disclosure of which would cause unwarranted invasion of the privacy of the parliamentarians. Most of the information requested is already available from a variety of diverse sources. The information about the Assets and Liabilities is easily available from the affidavits that they submit to Election Commission as part of the election processes. The same information is also available on an annual basis from the Lok Sabha/Rajya Sabha Secretariat under the Declaration of Assets and Liabilities Rules 2004. In view of this, it is unreasonable to claim that disclosure would cause unwarranted invasion of the privacy of the parliamentarians.
- b) Parliamentarians are expected and usually claim to work in public interest. They work wholly in public domain by their own choice. Transparency in their working and financial operation is essential in larger public interest. The disclosure of their Tax Returns to general public would promote such transparency and is in public interest. Therefore the information requested should have been provided to the applicant.
- c) According to recent report of Association of Democratic Reforms (ADR) and National Election Watch (NEW), the average increase in the assets for MPs and MLAs bases on their self declarations with Election Commission of India (ECT) has been very high. For the Lok Sabha MPs, the average increase was 289% or Rs. 2.9 crores per MP within 5 years. This report has been attached as annexure-3. For the MLAs in Haryana this increase was 388% or Rs. 4.8 crores per MLA, for MLAs in Maharashtra, it was 339% or Rs. 2.45 crores per MLA and for the MLAs in Jharkhand it 3454% or Rs. 58 lakhs per MLA. The results are similar for other elected representatives from other states. Since our MLAs/MPs do not declare their sources of income anywhere, the income tax returns are the only information that people can use to vet the information regarding the asset increases. These reports have generated huge public interest and a few representative newspaper cuttings are attached as an example in annexure-4. Thus, the information of Income Tax details of our MPs and MLAs will be in great public interest and it should be provided to the applicant.

- d) There is also the issue of "Conflict of Interest". Parliamentarians are also engaged in policy making covering wide spectrum of issues dealing with large amount of public funds. The disclosure of the information of divers sources of income, tax exemptions & tax deductions received will help to maintain and enhance public confidence and trust in the integrity of Parliamentarians.

1. It is also pertinent to note from the judgment of the Supreme Court dated 13.03.2003, on Writ Petition (Civil) No. 515 of 2002 (Association for Democratic Reforms vs. Union of India and another):-

"A member of Parliament or State Legislature is an elected representative occupying high public office and at the same time, he is a 'public servant' within the meaning of Prevention of Corruption Act as ruled by this Court in the case of P.V. Narasimha Rao Vs. State [(1998) 4 SCC 626]. They are the repositories of public trust. They have public duties to perform. It is borne out by experience that by virtue of the office they hold there is a real potential for misuse. The public awareness of financial position of the candidate will go a long way in forming an opinion whether the candidate, after election to the office had amassed wealth either in his won mane or in the name of family members viz., spouse and dependent children."

It went on to say that:

" Incidentally, the disclosure will serve as a check against misuse of power for making quick money—a malady which nobody can deny, has been pervading the political spectrum of our democratic nation."....

"Assets and liabilities' is on of the important aspects to which extensive reference has been made in Association for Democratic Reforms case."

Hence it is imperative to increase transparency of all financial dealings of Parliamentarians as well as maintain and enhance public confidence in them. Therefore, non disclosure of Tax Return and Assessment orders of Parliamentarians to the public acts as a hindrance to this process.

2. It is also pertinent to note the observations of the Apex Court categorically stating the importance of transparency in Union of India v. Association for Democratic Reforms & another (AIR 2002 SC 2112):-

"To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country

would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted."

Hence disclosure of Tax Returns and Assessment orders of Parliamentarians to the public would help increase transparency thereby maintaining and strengthening accountability of Parliamentarians towards the public.

4 It is also pertinent to note the recommendations of The National Commission to Review the Working of the Constitution in its report submitted in March 2002:-

".. the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income-tax return filed by the candidates, parties and their will-wisher. At the end of the election each candidate should submit an audited statement of expenses under specific head."

The National Commission has further suggested that the Election Commission should devise specific formats for filing such statements so that fudging of accounts becomes difficult.

Hence Parliamentarians cannot be insulated from the demand of transparency.

Parliamentarians are being allowed to escape the obligations/norms transparency imposes, and inferentially, escape accountability, even though these Parliamentarians almost always influence and, frequently control, State power. The seems like and unfair proposition- especially in a democracy- as accountability is the underpinning of the action of all stake-holders who have anything to do with state power.

Thus, the value of assets of Parliamentarians is already in the public domain. Various declarations are made by them to the Election Commission and in the Lok Sabha and Rajya Sabha. However there is no public disclosure of the source of income of Parliamentarians. Moreover and analysis of the assets increase of Members of Parliament (refer to attached report) depicts some figures which seem disproportionate and questionable. There are parliamentarians who have increased their assets more than one thousand times over while in Parliament. Thus there is a need to attain more transparency regarding financial details of Parliamentarians. By bringing Tax Returns and Assessment orders of Parliamentarians to the public domain the confidence of the common man in his chosen representative would increase."

The appellant Sh. Anil Bairwal was given opportunity of being heard in respect of the appeal filed by him, fixing the case for 9.6.2010. In response to this Sh. Anil Bairwal vide his letter dated 7.6.2010 showed his inability to attend the appellate proceedings on the date fixed and requested to consider the grounds of appeal filed by him in his first appeal application.

The appellant's request has been carefully considered. It is found that information regarding filing of income tax return by Smt. Paramjit Kaur Gulshan, has already been supplied by the CPIO vide her letter referred to above. However, information regarding details of I.Tax returns and assessment orders sought by the appellant has been denied as the same is subject to confidentiality u/s 138 of the Income Tax Act, 1961. Although the provisions of the Right to Information Act, 2005 override the provisions of the Income Tax Act, 1961, it has also to be borne in mind that section 8(1)(j) of the Right to Information Act, 2005 make it amply clear that information related to third party is a personal information and its disclosure would cause unwanted invasion of the privacy of the person involved. Moreover Smt. Paramjit Kaur Gulshan was given an opportunity to file her objection with regard to providing of information to the applicant. In response to the opportunity given, Smt. Paramjit Kaur vide her reply objected for the same.

Further, the appellant in his appeal has cited order no. CIC/AT/2007/01029 & 1265-1270 dated 29.04.2008 passed by Central Information Commission in the case of an appellant namely Ms. Anumeha, C/o Association for Democratic Reforms, B11/6, Hauz Khas, New Delhi-110 048, directing the Income Tax Department holding income Tax Returns of political parties, to make the information available to the appellant. It is pertinent to mention here that the order referred to above is with regard to the political parties and not political persons. Since the instant appeal relates to the information about the political person i.e. Smt. Paramjit Kaur Gulshan, MP, directions given by the CIC do not apply here.

Keeping in view the above facts of the case and also the objection raised by the person concerned i.e. Smt. Paramjit Kaur Gulshan, I am of the opinion that information sought has rightly been denied by the CPIO i.e. ITO Ward 3(1), Chandigarh.


(Kalpana Kataria)
Addl. Commissioner of Income Tax,
Range - III, Chandigarh.

Copy to the Income Tax Officer Ward 3(1), Chandigarh

(Kalpana Kataria)
Addl. Commissioner of Income Tax,
Range - III, Chandigarh.