

A BLOW TO DISCLOSURE NORMS

Relevant for: Developmental Issues | Topic: Important Aspects of Governance, Transparency & Accountability including Right to Information and Citizen Charter

The Supreme Court's November 13 judgment on Right to Information (RTI) reduced the scope of 'information' and widened that of 'restrictions'. The RTI Act would never be the same after this verdict. Deviating from earlier decisions that said that 'restrictions' should be interpreted strictly and 'information' liberally, the five-judge Bench expanded the power, length and depth of exceptions under Section 8 of the Act. The verdict also restricted the understanding of the terms 'held by' and 'under the control' of a public authority, making several classes of information inaccessible to the public. If the Chief Information Commissioner's stature and autonomy were reduced by the recent parliamentary amendment to the Act, the Supreme Court judgment amounted to a direct instruction to the Central Public Information Officers (CPIOs) on how not to give information on various counts.

Still, the decision is welcome for two reasons. One, it did not deny that the apex court is a public authority and answerable under the RTI Act. Two, judicial independence will only be strengthened with greater transparency.

However, the real issue with the verdict lies in the carefully worded paragraph 59, which could potentially be used by bureaucrats to shoot down many RTI applications during the first request. Instead of empowering citizens with greater access to information, the court has instead armed public servants to kill access requests.

Here, it needs to be recalled that the Supreme Court's 2012 judgment in *Girish Ramchandra Deshpande v. Central Information Commissioner* was hitherto being used as a precedent by the Department of Personnel and Training and various CPIOs to deny information on records of public servants. The case pertained to a Special Leave Petition on an RTI request related to the service record and assets of a serving bureaucrat. The Supreme Court held that such information could not be revealed unless there was a larger public interest demonstrated. In this case, the court held that the applicant was not able to show a bona fide public interest element and hence denied information to the person. The November 13 verdict could in effect supersede the *Girish Ramchandra Deshpande* verdict.

To cite paragraph 59 of the recent decision: "Reading of the aforesaid judicial precedents... would indicate that personal records, including name, address, physical, mental and psychological status... are all treated as personal information. Similarly, professional records, including... evaluation reports, disciplinary proceedings, etc. are all personal information. Medical records... information relating to assets, liabilities, income tax returns... are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive."

The last sentence of this paragraph, which makes the restrictions "indicative", could become another tool in the hands of public servants to deny access requests.

The Bench's long list contradicts the provisions for disclosure available under Sections 8(1)(j) and 8(2) of the RTI Act. One, personal information can be disclosed if it has any relationship with public activity or interest. Two, even if such details have no relationship with public interest, they can be given if the disclosure does not cause an unwarranted invasion of privacy. Three, even if the information causes unwarranted invasion of privacy, it could still be given if the larger public

interest justifies the act. Finally, even if there is no larger public interest, it could still be shared if the public interest in disclosure outweighs the interest in its protection.

The only points the Supreme Court Bench was asked to consider pertained to assets report and appointment criteria of public servants. Its declaration in the form of the above-cited paragraph was uncalled for. For instance, how can the court declare educational qualifications, performance report or disciplinary proceedings pertaining to public servants as being outside the ambit of disclosure? If a specific educational degree is 'qualification' for a post, is it not related to public activity? Similarly, if the cost of medical treatment is reimbursed by the state, how can medical record become personal information?

Every time, the applicant will now be made to prove public interest, a concept which has been made further complex and ambiguous by the court.

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