



FAO (WCA) No. 417 of 2012

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27.08.2021 Present: Mr. Ashwani K. Sharma, Sr. Advocate with Mr. Mayank Sharma, Advocate, for the appellant.

Mr. Sarthak Mehta, Advocate, for respondents No. 1 and 2.

Mr. Ashok Sharma, A.G. with Mr. Vinod Thakur, Mr. Shiv Pal Manhans, Mr. Hemanshu Misra, Addl. A.Gs. and Mr. Bhupinder Thakur, Dy. A.G., for respondent-State.

Mr. Kewal Sharma, Additional Director (Panchayati Raj) in person.

On 08.07.2021, this Court passed the following order:-

"CMP No. 1739 of 2020"

By medium of this application, the appellant/applicant has sought direction to the Panchayat Secretary, Shingla, Development Block, Rampur, District Shimla, H.P. to provide the copy of death certificate and the names and addresses of legal representatives of deceased respondent No. 3 Sh. Baldev @ Bobby, on the ground that the aforesaid officer has refused to provide the requisite information. The copy of refusal order as also the translated version thereof annexed with the application, which reads as under:-

OFFICE OF GRAM PANCHAYAT SINGHLA
Development Block Rampur Bu. District Shimla H. P.
PANCHAYATI RAJ DEPARTMENT

Sr. No. G.P. Shingla RTI 8/2019 Dated 04.12.2019

To

Sh. Rajesh Kumar, Advocate
Distt. Courts Complex, Chamber No. 9,
Rampur Bar, Tehsil Rampur, Distt. Shimla, H.P.

Subject: Regarding supply of information under Right to Information Act, 2005.

With reference to above subject, the information required to be supplied by you which was forwarded through Block Development Office, Rampur Bu. Vide Endst No. 7384 dated 21.11.2019 which was received on 27.11.2019 wherein you have asked to supply information as regards

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the death certificate, Legal Heir Certificate and BPL Certificate in respect of Baldev resident of Village Dakolar, Post Office Shingla. As per the provisions contained in Section 8(1) and Section 11 of right to Information Act, 2005, the above Information cannot be supplied to you.

Copy forwarded for information to the Public Information Officer-cum-Superintendent Grade-2, Development Block Rampur, District Shimla, H.P.

sd/-
Public Information Officer-cum-
Panchayat Secretary, Gram
Panchayat, Shingla, Development
Block Rampur, District Shimla,
H.P.

This Court really wonders, as to how the information sought by the appellant could have been refused by the Panchayat Secretary.

Therefore, in such circumstances, Registry is directed to send the copy of this order to the Director, Panchayati Raj, for his comments, through FAX/email during the course of the day.

In the meanwhile, the application is allowed and the Panchayat Secretary, Gram Panchayat, Shingla, is directed to provide requisite information within a period of two weeks from today. Application stands disposed of.

List for hearing on 22.07.2021."

2. In compliance to the aforesaid order, the Additional Director (Panchayati Raj) has furnished his comments, relevant portion whereof reads as under:-

"1. That Sh. Rajesh Kumar sharma, Advocate, District Court Complex Rampur, Bushehar, district Shimla vide application dated 20.11.2019 sought information under RTI Act, 2005 from the Public Information Officer, O/o Block Development Officer, Rampur Bushehr, District Shimla for providing copy of Death Certificate, Legal heir Certificate and BPL Certificate with respect to late Sh. Baldev, Resident of village Dakolar, Post office Shingla.

2. That Public Information Officer, Superintendent Grade-II, O/O Block Development Officer, Rampur Bushehr forwarded

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the application on 21.11.2019 to the Public Information Officer-cum- Panchayat Secretary, Gram Panchayat Shingla, and on receipt of same the Public Information Officer-cum- Panchayat Secretary Shingla intimated Smt. Usha, w/o late Sh. Baldev that copies of Death Certificate, Legal Heir and BPL have been requested to be provided to the Advocate and whether the same in context to her husband shall be provided or not. It was intimated by Smt. Usha, (Third Party) w/o late Sh. Baldev to Public Information Officer-cum- Panchayat Secretary that copies of Death Certificate, Legal Heir and BPL certificates pertaining to her husband should not be provided to the Advocate and accordingly the Advocate was apprised by Public Information Officer-cum- Panchayat Secretary, Shingla that the said information cannot be provided as per Rule 8(1) and Section 11 of the RTI Act, 2005.

3. Regarding Death Certificate it is submitted that, Birth and Death Register is maintained by the Panchayat Secretary of concerned Gram Panchayat as a local Registrar Birth and Death.

Death Certificate is provided by the Panchayat Secretary to the family members of the deceased person only.

As the copy of Death certificate of late Sh. Baldev was requested to be provided under the RTI Act, 2005 and accordingly as per provision 11 (1) of the RTI Act, 2005 for providing Third Party information wife of deceased was inquired who refused to provide certificate of her deceased husband and accordingly as per Rule 8(1)(j) and 11 of the ibid Act, the applicant/Advocate was intimated accordingly by the concerned Public Information Officer-cum-Panchayat Secretary Shingla.

However, as per Section 19(1) and (3) of the RTI Act, 2005 there is a provision for filing First Appeal and Second Appeal for the applicant if he was not satisfied by the decision of the Public Information Officer-cum- Panchayat Secretary Shingla which was not availed by the applicant.

4. Regarding Legal Heir Certificate, it is submitted that Legal Heir Certificate is prepared by the Revenue Department Only.

5. Regarding BPL Certificate, it is submitted that vide Department of personnel letter dated 18.07.2017 (copy

enclosed). The Block Development Officer shall issue the BPL Certificate (by taking the authenticated entries in the 'Parivar Register' as the basis of such certificate)."

3. To say the least, the interpretation given by the Additional Director (Panchayati Raj) is based on total misunderstanding, misconception and mis-interpretation of the provisions of the Right to Information Act.

4. Once a party has died, his death certificate cannot be termed a 'Third Party Information', as that information relates/related only to the deceased. Therefore, it is not understood how this could be termed to be a third party information so as to claim exemption from disclosure under third party information, as contained in Sections 8(1)(j) & 11 of the Act, which reads as under:-

"Section 8(1)(j)-information which relates to personal information the disclosure of which has no relationship to any 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 interest:

11.Third Party information-(1) Where a Central Public Information Officer of the 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. "

5. It is more than settled that entries in Birth and Death Register are public documents and admissible under Section 35 of the Indian Evidence Act and it is not necessary to prove, who made the entries and what was the source of information.

6. Taking into consideration the aforesaid facts and circumstances, it is directed that henceforth whenever a copy of death certificate is demanded by any person or authority under Right to Information Act, or even on simple paper, the same shall be given by all the Panchayat Secretaries in the State of Himachal Pradesh, subject to of course on usual charges.

7. The Director (Panchayati Raj) is directed to issue necessary instructions in this regard within one week from today.

For compliance to come up on 03.09.2021. The personal presence of officer present is dispensed with.

(Tarlok Singh Chauhan)
Judge

August 27, 2021
(sanjeev)