

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 08.05.2018
Judgment pronounced on: 02.08.2018

+ **W.P.(C) No.6436/2016**

M. L. SHARMA

.....Petitioner

Through: Mr. R.K. Saini, Advocate with
petitioner in person.

versus

CENTRAL INFORMATION COMMISSION
& ORS.

....Respondents

Through: Mr. Gautam Narayan, ASC with Ms.
Mahamaya Chatterjee, Advocate for
GNCTD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

Background Facts:

1. This writ petition is directed against the order of respondent no.1 i.e. the Central Information Commission (hereafter referred to as "CIC").

1.1 The petitioner, evidently, is aggrieved by the impugned order dated 18.06.2015, passed by the CIC and, therefore, seeks a direction from this Court to set aside the same, *albeit*, with exemplary cost.

1.2 A further relief is sought by the petitioner, which is, that the CIC should be directed to adjudicate upon the complaint filed with it in consonance with the provisions of section 18(3) of the Right to Information Act, 2005 (in short "RTI Act").

2. Briefly, the backdrop, in which, the instant writ petition has been filed is as follows: -

2.1 The petitioner had filed, on 22.09.2014, an application under Section 6 of the RTI Act with regard to the grant released by DAVSS Jangpura, New Delhi, in favour of, one, Mr. Dharmendra Kumar, TGT (Maths).

2.2 The period for which this information was sought spanned between 1994 to 2007. Furthermore, names of persons who had directed the release of the grant, whether in the Managing Committee or otherwise was also sought.

2.3 It appears that this application, filed by the petitioner, with the Deputy Director of Education (South East) (in short "DDE") was transferred to another zone in exercise of powers conferred under Section 6(3) of the RTI Act.

2.4 The information, though, with regard to the same was furnished to the petitioner by the DDE (South East) vide communication dated 03.11.2014.

2.5 The petitioner, being aggrieved, preferred an appeal under Section 19 of the RTI Act. This appeal was filed on 14.11.2014. The First Appellate Authority ("FAA") heard the appeal on 12.12.2014. The FAA rendered its decision on 18.12.2014. By virtue of this order, a direction was issued to the Public Information Officer (PIO), DDE (South East) to provide to the petitioner the relevant information within a period of 10 days.

2.6 It is the case of the respondents that the concerned authorities had addressed a communication dated 27.02.2015 to the petitioner, under intimation to the DDE (South East) (i.e. respondent no.2 herein) that a reply to the petitioner's RTI application was sent to him under the cover of letter

dated 11.11.2014, which was, returned to it by the postal department without furnishing any reason.

2.7 The record shows that on 11.03.2015 the petitioner lodged a complaint under Section 18 as against an appeal with CIC under Section 19 of the RTI Act. The burden of the complaint was that the penalty proceedings should be initiated against DDE (South East)/ respondent no.2 for failure to disclose the relevant information.

2.8 The CIC issued notice in the complaint on 01.06.2015 with a direction to the petitioner to appear before it on 16.06.2015. A perusal of the notice would show that the complaint made to the CIC was, inadvertently, treated as a second appeal.

2.9 In order to set the record right, the petitioner filed an application dated 10.06.2015. Furthermore, on 15.06.2016, the petitioner filed a reply in response to the notice dated 01.06.2015, issued by the CIC, which, in effect, was an additional submission made on behalf of the petitioner in support of his complaint. The matter, it appears, was placed before the CIC on 16.06.2015, when, a reply filed qua the application preferred by the petitioner was handed over to his representative, one, Ms. Kasturi Sharma.

3. The matter, thereafter, was taken up by the CIC on 18.06.2015. On the said date, upon the CIC noticing that the requisite information had been furnished, decided to close the complaint. In the operative portion of its order the CIC recorded as follows: -

“Decision:

3. Both the parties made their submissions. The respondent authority has presented the papers containing information to the complainant during

11

hearing. As the Complainant is satisfied with the same, the Commission closes the complaint."

3.1 A perusal of the operative portion would show that having received the information, the petitioner indicated to the CIC that he was satisfied and, accordingly, the complaint was ordered to be closed.

3.2 The petitioner, however, has chosen to agitate the matter further by instituting the present writ petition.

Submissions of Counsel:

4. Mr. R.K. Saini, advanced submissions in support of the petitioner's case, while Mr. Gautam Narayan, additional standing counsel, assisted by Ms. Mahamaya Chatterjee, Advocate, appeared on behalf of respondent nos.2 to 4.

4.1 Mr. Saini submitted that there had been an enormous delay in submitting information to the petitioner. It was contended that, when, the petitioner's application was transferred from one department to another, on 03.11.2014, there was a delay of 14 days, though, the transfer should have taken place, if at all, within a maximum period of 5 days as provided in the proviso to Section 6(3) of the RTI Act.

4.2 Learned counsel further submitted that even when the FAA vide order dated 18.12.2014, directed that the information sought, was to be supplied within 10 days the needful was not done within the time frame stipulated therein.

4.3 The emphasis of the learned counsel was, that, since a complaint under Section 18 of the RTI Act had been filed, the CIC could not have closed the complaint just because information had been supplied as the

relief sought for by the petitioner, in effect, was that the PIO, DDE (South East) should be penalised under Section 20(1) of the RTI Act after a decision was taken in that behalf in appropriate penalty proceedings.

4.4 It was submitted that the very nature of the complaint would show that the petitioner was not satisfied with its closure as was noted in the operative part of the impugned order *vis-à-vis* the relief sought, though he may have been satisfied in respect of the information received.

4.5 In support of his submission, Mr. Saini relied upon the judgment of the Supreme Court in *Chief Information Commissioner v. State of Manipur*, AIR 2012 SC 864 as also the judgment of a Single Judge of this Court dated 28.10.2013, passed in W.P.(C) No.6755/2012, titled: *J.K. Mittal vs. Chief Information Commissioner and Anr.*

5. Mr. Gautam Narayan, on the other hand, submitted that the petitioner had no locus to insist on levy of penalty even if it is assumed that there was delay in furnishing the information. According to Mr. Narayan, the CIC performed a dual role, which was, that of an adjudicator of lis brought before it and also supervisory functions. Learned counsel contended that insofar as the penalty proceedings are concerned, they would fall within the ambit of supervisory functions of the CIC. In support of his submissions, learned counsel relied upon the following judgments of this Court: -

- (i) *Ankur Mutreja vs. Delhi University*, LPA No.764/2011, decided on 09.01.2012.
- (ii) *Naresh Kumar vs. Central Information Commission & Ors.*, W.P.(C) Nos.11065, 11189, 11190, 11192/2015, decided on 12.01.2016.
- (iii) *Anand Bhushan vs. R.A. Haritash*, LPA No.777/2010 decided on 29.03.2012.
- (iv) *Maniram Sharma vs. Central Information Commission and*

Ors., W.P.(C) No.8041/2014, decided on 27.04.2015.

Reasons:

6. I have heard learned counsel for the parties and perused the record. According to me, what emerges from the record is as follows: -

6.1 There was, undoubtedly, a delay in furnishing the information to the petitioner. In fact, when, the petitioner's application was transferred from one Department to the other in exercise of powers vested under Section 6(3) of the RTI Act, the time taken, was beyond the maximum time provided for in the proviso to that very Section which, as correctly stated on behalf of the petitioner, is a period of 5 days from the date of receipt of the application. The application, admittedly, was received on 22.09.2014, whereas the same was transferred on 03.11.2014.

6.2 Thereafter, despite the FAA's order dated 18.12.2014, to effect, that the relevant information should be supplied to the petitioner within a period of 10 days, the same was not furnished within the stipulated timeframe.

6.3 Admittedly, there was some amount of delay, though, the position with regard to this aspect is not clear. Respondent Nos. 2 to 4 have taken a stand, to which I have made a reference above, that the concerned School Authority had, in fact, via letter dated 11.11.2014 addressed to the petitioner gave the requisite information, which, however, was returned without any remarks by the postal department.

6.4 The petitioner, thereafter, abandoned the appeal remedy and instead of filing a second appeal with the CIC, preferred to lodge a complaint under Section 18 of the RTI Act.

14

7. Given this backdrop, the question which arises for consideration is: what were the options available to CIC *qua* a complaint when the information sought had been furnished, though, beyond the prescribed time?

7.1 To answer this poser, one would have examine the contours of the provisions of Section 18 along with those of Section 19 and 20.

7.2 A close scrutiny of provisions of Section 18 and 19 would show that the procedure prescribed under Section 18 as against Section 19 of the RTI Act is different. To enable a person to trigger an inquiry by the CIC under Section 18 of the RTI Act, he would have to, in the first instance, satisfy the CIC or the State Information Commission ('SIC'), his case falls under any one or more of the circumstances specified in clause (a) to (f) of sub-section (1) of Section 18.

7.3 Once, the CIC or the SIC, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter it is empowered to initiate an inquiry *qua* the same.

7.4 While making an inquiry into the matter, the CIC/SIC can exercise powers which a Civil Court exercises while trying a suit under the Code of Civil Procedure, 1908 in respect of matters set forth in clauses (a) to (f) of sub-section (3) of Section 18.

7.5 Sub-section (4) of Section 18 states that notwithstanding anything contained in any other Act of the Parliament or the State Legislature, the CIC or the SIC, as the case may be, may during an inquiry of any compliant under the RTI Act examine the record to which the RTI Act applies, which is under control of a public authority. The provision goes on to state that no such authority is empowered to withhold the record sought, on any ground

15
whatsoever.

7.6 Thus, once the CIC/SIC comes to the conclusion, based on an inquiry that the complainant's case (in this case the petitioner) falls under any one or more of the circumstances set forth in clause (a) to (f) of sub-section (1) of Section 18 it can trigger an inquiry and, if the inquiry, leads to the conclusion that what is stated in the complaint is correct, then, it has the power to initiate proceedings under Section 20 of the RTI Act.

7.7 Therefore, the contention advanced on behalf of the petitioner that the procedure prescribed under Section 18 is different from that of Section 19 is in my view correct.

7.8 Resultantly, the only order, if at all, which the CIC could have passed in this case was an order of penalty under Section 20, provided that after an inquiry, it came to the conclusion that the conduct of the PIO was not *bona fide*. In this context, one may usefully refer to relevant observations of: the Supreme Court in the matter of *Chief Information Commissioner vs. State of Manipur (supra)*, (paragraphs 29 to 31): -

“29. If we look at Section 18 of the Act it appears that the powers under Section 18 have been categorized under clauses (a) to (f) of Section 18(1). Under clauses (a) to (f) of Section 18(1) of the Act the Central Information Commission or the State Information Commission, as the case may be, may receive and inquire into complaint of any person who has been refused access to any information requested under this Act [Section 18(1)(b)] or has been given incomplete, misleading or false information under the Act [Section 18(1)(e)] or has not been given a response to a request for information or access to information within time-limits specified under the

Act [Section 18(1)(c)]. We are not concerned with provision of Section 18(1)(a) or 18(1)(d) of the Act. Here we are concerned with the residuary provision under Section 18(1)(f) of the Act.

30. Under Section 18(3) of the Act the Central Information Commission or the State Information Commission, as the case may be, while inquiring into any matter in this Section has the same powers as are vested in a civil court while trying a suit in respect of certain matters specified in Section 18(3)(a) to (f). Under Section 18(4) which is a non obstante clause, the Central Information Commission or the State Information Commission, as the case may be, may examine any record to which the Act applies and which is under the control of the public authority and such records cannot be withheld from it on any ground.

31. It has been contended before us by the respondent that under Section 18 of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under Section 18 is an order of penalty provided under Section 20. However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bona fide.

32. We uphold the said contention and do not find any error in the impugned judgment of the High Court whereby it has been held that the Commissioner while entertaining a complaint under Section 18 of the said Act has no jurisdiction to pass an order providing for access to the information.

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39. The nature of the power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act.

(emphasis is mine)

8. The contention advanced by Mr. Narayan, that the petitioner has no *locus standi*, to be heard, as a matter of right, in penalty proceedings would be right, at a stage, which would be reached only after the CIC comes to the conclusion that it was a matter fit for initiation of penalty proceedings.

8.1 The CIC, in my view, will have to ascertain as to whether there was delay and if, there was delay, how much was the delay, and the reasons for the same, that is, whether or not the delay was deliberate and/or intentional.

8.2 While ascertaining the answers to these questions, the CIC will necessarily have to hear the PIO as well.

8.3 In support of his submissions, Mr. Narayan had relied upon the judgment of the Division Bench in *Ankur Mutreja's case*. The Division Bench in *Ankur Mutreja's case* was dealing with the order of the CIC passed in appellate proceedings and not *qua* a complaint filed under Section

18. That being said, in so far as the penalty proceedings are concerned, the observations contained therein would apply, *albeit*, at the appropriate stage. For the sake of convenience, the relevant observations made by the Division Bench in *Ankur Mutreja's* case are extracted herein:

8. *It is clear from the language of Section 20(1) that only the opinion, whether the Information Officer has "without any reasonable cause" refused to receive the application for information or not furnished information within the prescribed time or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information etc., has to be formed "at the time of deciding the appeal". The proviso to Section 20(1) of the Act further requires the CIC to, after forming such opinion and before imposing any penalty, hear the Information Officer against whom penalty is proposed. Such hearing obviously has to be after the decision of the appeal. The reliance by the appellant on Section 19(8)(c) of the RTI Act is misconceived. The same only specifies the matters which the CIC is required to decide. The same cannot be read as a mandate to the CIC to pass the order of imposition of the penalty along with the decision of the appeal. Significantly, Section 19(10) of the Act requires CIC to decide the appeal "in accordance with such procedure as may be prescribed". The said procedure is prescribed in Section 20 of the Act, which requires the CIC to, at the time of deciding the appeal only form an opinion and not to impose the penalty.*

9. *The aforesaid procedure is even otherwise in consonance with logic and settled legal procedures. At the stage of allowing the appeal the CIC can only form an opinion as to the intentional violation if any by the Information Officer of the provisions of the Act. Significantly, imposition of penalty does not follow every violation of the Act but only such violations as are without reasonable cause, intentional and malafide.*

10. *While in deciding the appeal, the CIC is concerned with the merits of the claim to information, in penalty proceedings the CIC is concerned with the compliance by the Information Officers of the provisions of the Act. A discretion has been vested in this regard with the CIC. The Act does not provide for the CIC to hear the complainant or the appellant in the penalty*

proceedings, though there is no bar also there against if the CIC so desires. However, the complainant cannot as a matter of right claim audience in the penalty proceedings which are between the CIC and the erring Information Officer. There is no provision in the Act for payment of penalty or any part thereof if imposed, to the complainant. Regulation 21 of the Central Information Commission (Management) Regulations, 2007 though provides for the CIC awarding such costs or compensation as it may deem fit but does not provide for such compensation to be paid out of the penalty if any imposed. The appellant cannot thus urge that it has a right to participate in the penalty proceedings for the said reason either.

11. The penalty proceedings are akin to contempt proceedings, the settled position with respect whereto is that after bringing the facts to the notice of the Court, it becomes a matter between the Court and the contemnor and the informant or the relator who has brought the factum of contempt having been committed to the notice of the Court does not become a complainant or petitioner in the contempt proceedings. His duty ends with the facts being placed before the Court though the Court may in appropriate cases seek his assistance. Reference in this regard may be made to Om Prakash Jaiswal v. D.K. Mittal (2000) 3 SCC 171, Muthu Karuppan, Commr. of Police, Chennai v. Parithi Ilamvazhuthi (2011) 5 SCC 496 and Division Bench judgment of this Court in Madan Mohan Sethi v. Nirmal Sham Kumari MANU/DE/0423/2011. The said principle applies equally to proceedings under Order XXXIX, Rule 2A of the Civil Procedure Code, 1908 which proceedings are also penal in nature.

12. Notice may also be taken of Section 18 of the RTI Act which provides for the CIC to receive and inquire into complaints against the Information Officer. The legislature having made a special provision for addressing the complaints of aggrieved information seekers is indicative of the remedy of such aggrieved information seekers being not in the penalty proceedings under Section 20."

(emphasis is mine)

9. The view taken by the Division Bench of this Court in *Ankur Mutreja*

(*supra*) has been followed in other cases which were cited by Mr. Narayan i.e. *Anand Bhushan, Naresh Kumar vs. CIC & Ors.* and *Maniram Sharma vs. CIC & Ors.*(*supra*). Therefore, in a nutshell what emerges is that the CIC, while deciding an application under Section 18, if satisfied, that a reasonable ground obtains to inquire into the matter, is required to make an inquiry and, thereafter, if satisfied as to the veracity of the averments made in the complaint, is empowered to initiate penalty proceedings under Section 20 of the RTI Act.

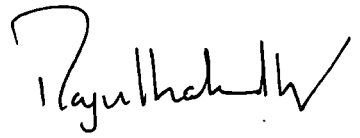
10. The CIC, in this case, has, clearly, not inquired into the grievance of the petitioner, which is that information was not given to him within the time limit specified in the Act. The CIC on the other hand, simply closed the petition on the ground that the petitioner was satisfied with the information received. While this may be true, the grievance articulated in the complaint which was that there was unexplained delay in furnishing the information, in my view, is an aspect to which the CIC did not apply its mind to.

11. Therefore, for the foregoing reasons, I am inclined to set aside the order dated 18.06.2015. It is directed accordingly.

Conclusion:

12. The CIC will hear the petitioner afresh and decide the matter in consonance with the regime of Section 18 and other attendant provisions of the RTI Act and the rules framed thereunder. In case, the CIC comes to the conclusion that proceedings under Section 20 need to be initiated, then, it would decide as to whether or not audience is to be granted to the petitioner in line with the ratio of the decisions of the Division Bench of this Court rendered in *Ankur Mutreja* and *Maniram Sharma* (*supra*).

13. The writ petition is disposed of in the aforesaid terms. There shall, however, be no order as to cost.


(RAJIV SHAKDHER)
JUDGE

AUGUST 02, 2018

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