

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

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Date of decision: 27th February, 2015

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LPA 444/2012 & CM No.10451/2012 (for stay)

**PREM LATA CPIO TRADE MARKS
REGISTRY, DELHI**

..... Appellant

Through: Ms. Kiran Suri, Sr. Adv. with Mr. P. Buttan, Mr. Fahad Imtiaz, Ms. Ritika Gambhir & Ms. Vithika Garg Advs.

Versus

**CENTRAL INFORMATION
COMMISSION & ORS.**

... Respondents

Through: Mr. Dev P. Bhardwaj, CGSC with Ms. Anubha Bhardwaj & Ms. Aditi Bhati, Advs. for UOI.
Mr. Ashish Singh, Adv. for R-2.
Mr. Gaurav Arora & Mr. Himanshu Arora, Advs. for R-3, 6 to 9.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra-court appeal impugns the order dated 26th April, 2012 of the learned Single Judge of this Court, of dismissal of W.P.(C) No.2458/2012 preferred by the appellant.

2. The writ petition from which this appeal arises, was filed impugning the order dated 24th November, 2011 (the said order, on the first page bears the date of decision as 25th October, 2011 but is signed on 24th November, 2011) and three orders, all dated 7th February, 2012, of the Central Information Commission (CIC) under the Right to Information Act, 2005 (RTI Act), in exercise of powers under Section 20(2) of the RTI Act, recommending disciplinary action against the appellant in her capacity as the Central Public Information Officer (CPIO) of the Trade Marks Registry, Delhi and in exercise of powers under Section 20(1) imposing penalty of Rs.25,000/- on the appellant and further issuing notices to show cause under Section 20(1) of the Act to the appellant.

3. The appeal came up before this Court first on 31st May, 2012 when the same was admitted for hearing and the order of the CIC in so far as recommending disciplinary action against the appellant was stayed. As far as the order imposing penalty of Rs.25,000/- on the appellant was concerned, we were on that date informed that a sum of Rs.10,000/- had already been deducted from the salary of the appellant. We accordingly ordered that there shall not be any further deduction from the salary of the appellant. The said interim order has continued in force. The appeal was vide order dated 21st

January, 2013 ordered to be listed in the category of 'Regulars' as per its turn. The appellant filed CM No.13772/2014 for expeditious hearing of the appeal pleading, (i) that she had joined the service, in the Trade Marks Registry, a subordinate office of the Ministry of Commerce & Industry, in January, 1994 as Sr. Examiner of Trade Marks through UPSC as a direct recruit and was in June, 2006 promoted as Assistant Registrar of Trade Marks; (ii) that she was in June, 2011 eligible for promotion to the post of Deputy Registrar of Trade Marks; (iii) however as per the recommendation dated 24th November, 2011 supra of the CIC, disciplinary proceedings were initiated against her on 7th May, 2012; (iv) that though the said disciplinary proceedings were stayed vide interim order in this appeal but the proceedings qua her of the DPC held for promotion to the post of Deputy Registrar held on 29th May, 2013 were kept in sealed cover in view of a charge sheet having been served on her; and, (v) that she is due for retirement on superannuation on 30th June, 2015 and in the continued state of affairs, her pensionary benefits are likely to be withheld.

4. The said application was allowed and the appeal posted on 27th November, 2014 for hearing. After hearing the senior counsel for the appellant and the counsel for the Union of India on 27th November, 2014,

orders were reserved. The counsel for the respondents no.3 & 6 to 9 made an application explaining reason for his absence on 27th November, 2014 and seeking hearing of the appeal. The counsel for the respondents no.3 & 6 to 9 was also heard on the appeal on 6th January, 2015. On that date, the counsel for the respondent no.2 also appeared. Both were given liberty to file written arguments and judgment was again reserved.

5. We have considered the matter.

6. The appellant filed the writ petition from which this appeal arises pleading,

- (i) that while working as the Assistant Registrar of Trade Marks, she was also designated as the CPIO of the Trade Marks Registry;
- (ii) that the respondent no.2 M/s. Vidhani Trade Mark Co., Patents and Trade Mark Attorneys, on 19th October, 2010 filed an RTI application seeking certain information with respect to a proceeding for renewal of registration of trade mark “HEMA (Label)” pending before the Trade Marks Registry and in which proceedings the said M/s. Vidhani Trade Mark Co. were the agents for the party seeking cancellation of the said trade mark;

- (iii) that the said M/s. Vidhani Trade Mark Co. preferred first appeal under RTI Act and vide order dated 30th December, 2010 wherein the Appellate Authority, without serving notice of the appeal on the CPIO, disposed of the appeal observing that the CPIO could not provide the information in prescribed time due to administrative reason and directing the CPIO to provide the necessary information;
- (iv) that the said M/s. Vidhani Trade Mark Co. thereafter preferred second appeal under the RTI Act to the CIC;
- (v) that in the meanwhile vide reply dated 26th August, 2011, the information sought by M/s. Vidhani Trade Mark Co. was supplied;
- (vi) that the CIC disposed of the said second appeal vide order dated 12th September, 2011, recording that the appellant in response to the application dated 14th October, 2010 had failed to furnish the information sought, inspite of the direction of the first Appellate Authority also and that in some other matters also penalty of Rs.25,000/- have been imposed on her, issued notice to show cause to the appellant as to why penalty under Section 21 should not be imposed on her and as to why disciplinary proceedings should not be recommended against her;

(vii) that the appellant submitted her reply to the aforesaid show cause notice contending, (a) that the information sought was available in the public domain and M/s. Vidhani Trade Mark Co. themselves had referred to the details available on the website; (b) there are prescribed rules of procedure for inspecting and obtaining the copies of the relevant records viz. the Trade Marks Rules, 2002; (c) that when M/s. Vidhani Trade Mark Co. had sought information, the proceedings initiated by them with respect to the same trade mark were pending in the Intellectual Property Appellate Board (IPAB) and M/s. Vidhani Trade Mark Co. had also inspected the file containing the said information by paying the inspection fee; and, (d) that the information was sought by M/s. Vidhani Trade Mark Co. as an agent but without authorization on behalf of his client and not as an individual; the said reply was accompanied with a detailed date sheet of the litigation pending with respect to the subject trade mark;

(viii) that it was also contended in the reply that in any case the information sought had already been supplied; reference was also made to various judgments on the legal position governing the issue;

- (ix) that the CIC however without considering the said reply to the show cause notice, vide order dated 25th October, 2011 supra recommended disciplinary action against the appellant;
- (x) that the order dated 7th February, 2012 of the CIC imposing penalty of Rs.25,000/- on the appellant emanated from the application of respondent No.6 M/s. Sachdeva & Sons Rice Mills Ltd. filed through respondent No.3 M/s. Arora Registration Service, Patents and Trade Marks Attorneys for registration of the Trade mark “INDIAN HERITAGE SELECT” in respect of rice;
- (xi) that the said M/s. Arora Registration Service filed an application under the RTI Act seeking information with respect to registration of the said trade mark and thereafter filed first appeal to the Appellate Authority under the RTI Act and which appeal was disposed of, again without service of notice thereof on the appellant, vide order dated 5th January, 2011 observing that the CPIO had not been able to provide information within the prescribed time for administrative reasons and had been directed to provide information;
- (xii) that the said M/s. Arora Registration Service thereafter filed second appeal under the RTI Act to the CIC;

- (xiii) that in the meanwhile the information sought by M/s. Arora Registration Service in their RTI application was supplied;
- (xiv) that in the said second appeal, the CIC vide order dated 17th August, 2011 summoned the appellant in exercise of powers under Section 18(3) of the RTI Act, to explain as to why the RTI applications were not being dealt in accordance with the provisions of the RTI Act;
- (xv) that the appellant replied to the show cause notice denying that the procedure prescribed had not been followed and stating that the complete file, with respect to which information was being sought, stood uploaded on the official website of the Trade Marks Registry and hence there was no need for responding to the RTI application;
- (xvi) that the CIC however issued notice under Sections 20(1) and 20(2) to the appellant and vide order dated 7th February, 2012, without considering the response of the appellant to the show cause notice, imposed penalty of Rs.25,000/- on the appellant to be recovered in five equal installments of Rs.5,000/- from the pay and allowances of the appellant;

(xvii) that though earlier the Trade Marks Registry was maintaining physical records but stood computerized and all applications were being electronically processed;

(xviii) that a Public Notice dated 22nd June, 2010 had also been issued to the effect that the Trade Marks Registry had made available to the public complete details of pending trade mark applications, registered trade mark including prosecution history, examination report, copy of the application, e-register of Trade Marks, copy of Trade Marks Certificate, Opposition details etc. on its website;

(xix) that similarly on 10th March, 2011 another Public Notice was issued to the effect that accepted cases were being automatically published in the Trade Mark Journal;

(xx) that information could also have been obtained by the aforesaid M/s. Vidhani Trade Mark Co. and M/s. Arora Registration Service by filing request on Form TM-58 under the Trade Marks Rules;

(xxi) that on 6th May, 2011 another Public Notice was issued to the effect that processing of all trade mark applications and matters relating thereto was being done electronically and advising all

stakeholders not to pressurize individual officers in charge of the section to get any work done out of turn;

(xxii) that the appellant at the relevant time, apart from being the CPIO of the Trade Marks Registry, was also the Hearing Officer of the Trade Marks Registry and in charge of the Legal Section;

(xxiii) that M/s. Vidhani Trade Mark Co. and M/s. Arora Registration Service who had made the applications aforesaid were / are regular practitioners, for long, of the Trade Marks Registry and were fully aware of all the aforesaid;

(xxiv) that information sought by M/s. Vidhani Trade Mark Co. and M/s. Arora Registration Service was already in public domain and thus the question of the same being held by any Public Authority did not arise;

(xxv) that the earlier order dated 26th July, 2011 of the CIC imposing penalty of Rs.25,000/- on the appellant had been challenged in the High Court vide W.P.(C) No.7382/2011 and vide interim order in which the order of penalty had been stayed (we may mention that the said petition is still pending consideration);

(xxvi) that the legal question whether information relating to the Court proceedings could be processed under the RTI Act notwithstanding the rules of procedure of the Court concerning the disclosure of such information was also pending consideration before this Court in W.P.(C) No.3530/2011 titled *The Registrar, Supreme Court of India Vs. R.S. Misra* and vide interim order dated 23rd May, 2011 wherein there was a stay of the order of the CIC directing disclosure under the RTI Act and the CIC was also restrained from proceeding with other matters involving similar question (the said petition is also still pending consideration);

(xxvii) that the position of the Trade Marks Registry which performs *quasi* judicial function is the same as that of the Courts and since under the Trade Marks Act and Trade Marks Rules there is a procedure for disclosure of information, the same information could not be sought through the medium of RTI Act;

(xxviii) that the orders of the CIC recommending disciplinary action against the appellant and imposing penalty on the appellant do not deal with the aforesaid legal issues arising viz. (a) whether M/s. Vidhani Trade Mark Co. and M/s. Arora Registration Service, being

Trade Mark agents could in their capacity as agents and without authorization from their clients seek information under the RTI Act; (b) whether the CPIO is bound to supply information which is already in public domain; (c) if the answer to the said question is in the negative whether the CPIO in response to repeated RTI queries is required to state the said reasons; and, (d) if not so whether disciplinary action can be recommended against the CPIO and penalty imposed on the CPIO inspite of CPIO entertaining such *bona fide* doubts as to the legal position;

(xxix) that the CIC did not consider that the appellant was performing *quasi* judicial functions and was thus aware of the legal position; and, (xxx) that disciplinary proceedings had been ordered and penalty imposed on the appellant without holding that the appellant had refused / delayed supplying information with *mala fide* intention.

We may record that as far as the two other orders, also dated 7th February, 2012 are concerned, the learned Single Judge in the order impugned in this appeal has held that vide the same, show cause notice only was issued to the appellant and the appellant was entitled to contest and the writ petition qua the said orders was thus premature. It has not been

informed to us that pursuant to the show cause notices issued to the appellant vide the said orders, any adverse order has been passed against the appellant. We are thus not recording the case made out by the appellant in the writ petition with respect to the other two orders dated 7th February, 2012.

7. The learned Single Judge, in the order impugned before us, dismissed the writ petition of the appellant qua the orders dated 25th October, 2011 and 7th February, 2012 without calling reply from any of the respondents, finding / observing / holding that:-

- A. the issues of law aforesaid raised by the appellant in the writ petition did not arise for adjudication in the facts and circumstances of the case as the subject orders of the CIC had been passed on account of the appellant not performing her statutory duty as CPIO of a Public Authority, of furnishing response to an application under the RTI Act;
- B. that the appellant could not in the garb of issues of law refuse to perform her duty to tender her response to an application under the RTI Act;
- C. that though the appellant may have been well within rights to deny the information by raising of issue of law and/or exemptions under Section 8 of the RTI Act but the same did not

absolve of her statutory obligation of replying to an RTI application within time;

D. unless it was so held, the RTI Act would be rendered meaningless as the same would amount to the CPIO, at his / her whims and fancies deciding which RTI applications had to be responded to and which ought not to be responded to;

E. that the CPIO is duty bound to furnish a reply to a RTI application because an RTI applicant whose application is being rejected has the right to know the reasons / basis / grounds on which his application has been refused;

F. the fact that the appellant as CPIO was getting repeated applications seeking information which was not to be furnished, is no ground for the appellant not to inform the said reason to the RTI applicant;

G. that the CIC is concerned only with the RTI Act and not with any other law and not concerned with the fact that the RTI applicant had any other way to seek information;

H. that though there was no finding in the orders of the CIC of the appellant having *mala fide* denied the request for information but the

CIC had given the reason, of the appellant repeatedly, without any reasonable cause having denied information.

8. The senior counsel for the appellant argued that the appellant as CPIO of Trade Marks Registry was inundated with more than 1000 applications under the RTI Act, besides performing her duty as the Hearing Officer and head of the Legal Section of the Trade Marks Registry. It was further argued that the appellant, throughout her career had never been charge sheeted nor was there any adverse mark in any of the Annual Confidential Reports of the appellant. Reliance was also placed on:-

(a) Judgment dated 1st June, 2012 of the same learned Single Judge of this Court who has penned the judgment impugned in this appeal, in W.P.(C) No.11271/2009 titled ***Registrar of Companies Vs. Dharmendra Kumar Garg*** quashing the notice to show cause issued by the CIC to the CPIO of the Office of the Registrar of Companies observing that the CPIO may genuinely and *bona fide* entertain the belief that information sought cannot be provided for one reason or the other and merely because the CIC eventually finds that the view taken by the CPIO was not correct, cannot automatically lead to issuance of show cause notice and that if the CIC starts imposing

penalties on CPIOs without any justification, it would instill a sense of constant apprehension in those functioning as CPIOs and would put undue pressure on them;

(b) *Namit Sharma Vs. Union of India* (2013) 1 SCC 745 laying down that since orders of CIC are subject to judicial review before the High Court and then before the Supreme Court, the CIC should give appropriate attention to the doctrine of precedents and should not overlook the judgments of the Court dealing with the subject (it was informed that the said judgment was partly reviewed but not affecting the part on which reliance is placed);

(c) Order dated 13th January, 2007 in F.No.CIC/AT/A/2006/00503, 506 & 510 titled *S.P. Goyal Vs. S.B. Gujarathi* holding that the RTI Act entitles a citizen to access information 'held' by Public Authority in terms of Section 2(j) of the Act; that the term 'held' implies information exclusively in possession of the Public Authority; that if the information is already in public domain, there can be no right to access the same in the hands of the Public Authority;

(d) Order dated 12th April, 2007 of the CIC in F.No. CIC/AT/A/2007/2012 titled *K. Lall Vs. M.K. Bagri* to the same effect;

- (e) ***Khanapuram Gandaiah Vs. Administrative Officer*** (2010) 2 SCC 1 laying down that though under the RTI Act, copies of opinions, advices, circulars can be given but applicant is not entitled to seek information as to why such opinions, advices, circulars etc. were framed, particularly in matters pertaining to judicial decisions;
- (f) ***A.M. Attar Vs. Central Information Commissioner*** MANU/DE/4314/2009 but which is not found to be having any application to the present controversy; and,
- (g) ***Union of India Vs. B.C. Chaturvedi*** (1995) 6 SCC 749 laying down that where punishment / penalty imposed is disproportionately excessive so as to shock the judicial conscience, the High Court can modify the punishment / penalty by moulding the relief to avoid infringement of Article 14 of the Constitution.

9. It was the argument of M/s. Vidhani Trade Mark Co. and M/s. Arora Registration Service:-

- (I) that the appellant being a public servant could not have filed this appeal without seeking permission from her employer in accordance with Rule 19 of the Central Civil Services (Conduct) Rules;

(II) that the appellant has no locus to oppose the penalty imposed on her and the order of the CIC recommending disciplinary action against her;

(III) that the appellant till date has not supplied the information which she was directed to provide;

(IV) that the impugned orders are in accordance with Section 20 of the Act; and,

(V) reliance was placed on *Kerala Public Service Commission Vs. State Information Commission* AIR 2011 Kerala 135 where a Division Bench of that Court held that RTI Act being a subsequent legislation, information thereunder has to be provided notwithstanding existence of the rule concerning the Public Authority for issuance of copies and dissemination of information to candidates.

10. We had during the hearing enquired from the counsels whether the appellant continues to be the CPIO of the Trade Marks Registry. The answer was in the negative.

11. We had further enquired from the counsels whether any *mala fides* on the part of the appellant in denying information were pleaded.

12. Though the answer was in the negative but attention was invited to the orders of the CIC observing that the appellant in the past also had failed to furnish information.

13. On enquiry whether the issue with respect to seeking information from the Courts under the RTI Act, which can be obtained by applying for certified copies in accordance with the rules and procedures of the Courts has been conclusively settled, it was informed that the same is still at large.

14. M/s. Vidhani Trade Mark Co. has also filed written note of submissions reiterating the aforesaid arguments.

15. We do not find any merit in the objection raised by the counsels for M/s Vidhani Trade Mark Co. and M/s Arora Registration Service that the appellant being a public servant could not have filed the writ petition or this appeal, without seeking permission under Rule 19 of the Central Civil Services (Conduct) Rules. The said rule prohibits a government servant from, without the previous sanction of the Government, having recourse to any Court for the vindication of any official act which has been the subject matter of adverse criticism or an attack of defamatory character. The proviso thereto however provides that if no such sanction is received by the

government servant within a period of three months from the date a request therefor has been made, the government servant shall be free to assume that the permission has been granted. Though the counsel for the Central Government has been appearing in this case but no such objection was taken. It is significant that the right if at all any, to object on this ground could be of the Central Government as the employer of the appellant and cannot be of M/s Vidhani Trade Mark Co. and M/s Arora Registration Service. Reference in this regard may be made to, a judgment of a Single Judge of this Court in *S. Malgaonkar Vs. Jagmohan* 20 (1981) DLT 5 holding that such rule is prohibitory in respect of the conduct of government servant and not prohibitory as against actions and taking cognizance of offence by the Court, and to a comparatively recent judgment of the Bombay High Court in *Shobhana Bhartia Vs. State of Maharashtra* MANU/MH/0352/2009 also holding that the breach even if any of the said rule can only have personal consequence on the government servant qua his service and cannot affect the proceedings so initiated and otherwise maintainable in a Court of law. Moreover, Rule 19 does not put a blanket prohibition on the government servant from taking recourse to the Court. Recourse to the Court is prohibited only for vindication of any official act

which has been the subject matter of adverse criticism or an attack of defamatory character. The act of the appellant, with which these proceedings are concerned, though undoubtedly an official act but has not been the subject matter of any adverse criticism or an attack of defamatory character. Rather, the same has been the subject matter of a proceeding under the RTI Act and the order of the CIC cannot be said to be adversely criticizing the said official act. Rather, the CIC has held the appellant to have not performed the official act which she was required to have performed and has accordingly penalized the appellant therefor. We fail to understand as to how Rule 19 can come in the way of the appellant taking legal recourse against the said order of the CIC. The said rule is not meant to leave a government servant remediless against a disciplinary action or to make the said remedy dependent on sanction of the Government.

16. We also find the argument, that the appellant has no locus to oppose the penalty imposed upon her to be preposterous and the same has to be noted only to be rejected.

17. We have gone through the records and considered the respective contentions on merits.

18. One of the defenses of the appellant to the proceedings initiated against her under Section 20(2) of the RTI Act and which culminated in the order dated 25th October, 2011 supra was that the information sought and of not furnishing which she has been held guilty of, was not the information which was required to be furnished by her as CPIO, for the reason of having already been placed in public domain i.e. on the website of the Trade Marks Registry. The CIC in the order dated 25th October, 2011 in this regard has held that it does not concern the CIC, as to whether or not the RTI applicant already had the information which he was seeking through the mode of RTI Act and the only concern was that the appellant as CPIO ought to have replied within 30 days of receipt of the RTI application, irrespective of any other extraneous facts and circumstances. It was further held that it was open for the appellant as CPIO to intimate the said reason to the RTI applicant within 30 days but the appellant having not done so had without any reasonable cause and persistently failed to furnish the information within the time prescribed. Though the appellant urged the said defence before the learned Single Judge also but the learned Single Judge also held that the appellant in the garb of such issues of law refused to perform her duty to tender her response to an application under the RTI Act. The learned

Single Judge thus appears to have agreed with the reasoning in this respect given by the CIC.

19. We have examined the provisions of the RTI Act in this respect. As per the preamble, the said Act was enacted *inter alia* to set out the practical regime for citizens to secure access to information under the control of public authorities. The various Sections of the RTI Act relevant in this context are as under:

- (i) Section 3 vests in all citizens, right to information;
- (ii) Section 4 obliges all public authorities to, (a) *inter alia* computerise all records and connect the same through a network all over the country on different systems so that access to such records is facilitated (Section 4(1)(a)); (b) publish a statement of the categories of documents that are held by it or are under its control (Section 4(1)(b)(vi)); (c) publish details in respect of the information available to or held by it, reduced in an electronic form (Section 4(1)(b)(xiv)); (d) publish the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use (Section 4(1)(b)(xv)); (e) publish such other information as may be prescribed, and to update

the publications every year (Section 4(1)(b)(xvii)); (f) Section 4(3) mandates every public authority to disseminate all the said information widely and in such form and manner which is easily accessible to the public; (g) the explanation to Section 4 provides that such dissemination means making known the information to the public through notice board, newspapers, public announcements, media broadcasts, internet or any other means, including inspection of offices of any public authority; (h) Section 4(2) is as under:

“(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.”

(iii) after Section 4 provided *inter alia* as aforesaid, the RTI Act proceeds to, vide Section 5 provide for appointment by the public authorities *inter alia* of CPIOs and extracts of Section 5 relevant for our purpose are as under:

“(1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be

necessary to provide information to persons requesting for the information under this Act.

(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.”

(iv) and vide Section 6 provides for the procedure for obtaining information under the Act and the extracts of Section 6 relevant for this purpose are as under:

“Request for obtaining information—(1)*A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made accompanying such fee as may be prescribed, to—*

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her;

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.”

(v) Section 7 provides for disposal of request for obtaining information by requiring the CPIO to either provide the information as expeditiously as possible and in any case within 30 days of receipt of request and subject to payment of such fee as may be prescribed or reject the request for any of the reasons as specified in Sections 8 & 9;

(vi) Section 8 provides for exemptions from disclosure of information and Section 9 provides for rejection of a request for information where providing access to information shall involve infringement of copyright subsisting in a person other than the State.

20. The question which in our view thus arises is, whether information which has *suo motu* been made available by a public authority through various means of information including internet in fulfillment of its obligation under Section 4 of the RTI Act, can be requested for under Section 6 of the Act. If the answer to the said question is in the negative then the axiomatic question which arises is, whether the CPIO to whom such a request has nevertheless been made, is obliged under Section 7 of the Act to reject the said request by stating that the information sought has *suo motu*

been made available by the public authority on internet and can be so accessed.

21. We, for the reasons following, are of the view that neither can information already *suo motu* made available by the public authority in discharge of obligations under Section 4 be requested for under Section 6 of the Act nor is the CPIO required to reject the said request giving the reason of the information having *suo motu* been made available on the internet.

22. The scheme of the RTI Act, in placement of various Sections thereof, clearly is to in the first instance require the public authorities to *suo motu* make available / accessible to the public as much information (in their possession and control) as possible by placing the same in public domain including on the internet and to thereafter devise a process to enable the public to request for / seek such information from the public authorities which the public authorities have not *suo motu* made available. This is evident particularly from Section 4(2) *supra* which requires public authorities to constantly endeavour to provide as much information *suo motu* to the public through the medium including of internet so that the public have minimum resort to the use of the RTI Act to obtain information. The unequivocal meaning flowing therefrom is that resort to the RTI Act to

obtain information i.e. by requiring the public authorities under Section 5 to appoint CPIOs to deal with requests for information to be made under Section 6 is only qua the information which has *suo motu* not been so made available to the public by the public authority. Section 6 again provides that “a person who desires to obtain any information under this Act...” The same, read with “...so that public have minimum resort to the use of this Act to obtain information” in Section 4(2) can only mean that resort to Section 6 is permissible only for information not made available under Section 4. Unless the Act is so interpreted, the words “so that the public have minimum resort to the use of this Act to obtain information” in Section 4(2) and the words “a person who desires to obtain any information under this Act” in Section 6 would be rendered otiose.

23. It even otherwise belies logic as to why Sections 5 to 7 providing for appointment of CPIOs, making of request for information and providing of information or rejection of request for information should be read as applicable also to the information which has already *suo motu* been made available by the public authority to the public at large and as to why the CPIOs should be required to, in response to a request under Section 6, again provide information which the public authority has *suo motu* made available

on internet. Any other meaning or interpretation ascribed to the said provisions would render infructuous the obligation discharged by the public authority of *suo motu* making information available on internet. The Legislature, while enacting Section 4, obliging the public authority to *suo motu* make all information available, was fully aware of the high cost entailed in so making the information made available. Section 4(1)(a), while providing for computerisation by public authorities of all records, makes the same subject to availability of resources. To hold, that notwithstanding the public authority, at a huge expense, having *suo motu* made information available to the public at large, is also to be burdened with dealing with request for the same information, would amount to a huge waste of resources of the public authorities. Experience of operation of the Act for the last nearly ten years has shown that the officers of the public authorities designated as CPIOs have other duties also and the duty to be discharged by them as CPIO is an additional duty. It cannot also be ignored that dealing with request for information is a time consuming process. If it were to be held that information already made available under Section 4 will have to be again provided under Sections 6 & 7, it will on the one hand not advance the legislative intent in any way and on the other hand may allow misuse of the

provisions of the Act for extraneous reasons and allowing harassment of CPIOs by miscreants.

24. The purport of the Act is to make the information available to the public at large free of cost. The same can be deciphered also from Section 4(4) of the Act providing for dissemination of information in a cost effective and easy mode and to the extent possible in electronic format, available free. Provision of information requested for under Section 6 of the Act is subject to payment of cost thereof. It belies logic as to why the provisions of the Act should be interpreted as conferring a right to seek information, subject to payment of cost, that information which is already available for free. This will also lead to undue enrichment to the public authority.

25. Also, Section 7 provides for disposal of a request for information either by providing information or by rejecting the request for the reasons specified in Sections 8 & 9. The Legislature has been clear in specifying the grounds on which the request for information can be rejected. Sections 8 & 9 as already noticed above, provide for information which is exempt for disclosure or information disclosure of which would infringe a subsisting copyright. The same do not include the ground of, the information having *suo motu* been already made available for free by the public authority. The

only interpretation can be, that the public authority is neither required to provide such information nor required to reject the request on the ground of the information having already *suo motu* been made available.

26. We are therefore unable to agree with the reasoning given in the order dated 25th October, 2011 of the CIC and affirmed by the learned Single Judge, that the said defense of the appellant for not dealing with the request for information was extraneous to the facts and circumstances or that it was open to the appellant to reject the request for information citing any of the provisions under Section 8 or 9 of the Act. As aforesaid, the reason for which the appellant claimed to have not dealt with the request i.e. of the information having already been made available *suo motu* and being in public domain, does not find mention in Section 8 or 9 of the Act and the request for information was thus not required to be rejected also, under Section 7 of the Act.

27. Unfortunately, neither the CIC nor the learned Single Judge have returned any finding on whether the information so requested for had in fact been made available by the Trade Marks Registry *suo motu*. We thus have no means of knowing whether the said defence of the appellant for not dealing with the request, was on merits thereof correct or not.

28. Be that as it may, from what we have discussed above, it follows that it was necessary for the CIC to decide the said aspect and without deciding which it could not have held that the appellant, without any reasonable cause, failed to furnish the information. In the light of what we have held above, it certainly follows that the factum of the information sought having already *suo motu* been made available to public at large, would be a reasonable cause for neither furnishing the information nor required to be rejected.

29. We may in this regard also notice ***Manohar Vs. State of Maharashtra*** (2012) 13 SCC 14 *inter alia* laying down that before imposing any penalty under Section 20(1) or 20(2) of the Act, it is incumbent on the CIC to hold whether the information requested for, was required to be furnished or not and without deciding so, penalty could not have been imposed.

30. The same reasons also apply equally to the order dated 7th February, 2012 imposing penalty of Rs.25,000/- on the appellant.

31. Thus, the orders of the CIC affirmed by the learned Single Judge are liable to be set aside on this ground alone.

32. We do not deem it appropriate to decide the question, whether under RTI Act that information also can be requested, which is available under

other Rules / modes viz. by applying for inspection or certified copies of the record of Courts or other quasi judicial adjudicatory bodies, in this proceeding as the same is already pending consideration in other cases.

33. Resultantly, the appeal succeeds; the order of the learned Single Judge as well as the orders dated 25th October / 24th November, 2011 and 7th February, 2012 of the CIC are set aside. Axiomatically, the sum of Rs.10,000/- already deducted under the order of the CIC from the salary of the appellant be refunded to the appellant.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

FEBRUARY 27, 2015

‘pp/bs’