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

+ W.P.(C) 8041/2014

MANIRAM SHARMA Petitioner

Through: Mr. J.K. Mittal and Mr. Rajveer
Singh, Advs.

versus

CENTRAL INFORMATION
COMMISSION & ANR.

..... Respondents

Through: Mr. Rajesh Gogna, CGSC for R2 with
Mr. V.K. Sharma, Designated Officer
to IC(VS).

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

27.04.2015

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1. This is a writ petition whereby a challenge is laid to the communication dated 31.3.2014 issued by the designated officer of the Central Information Commission (in short the CIC).
2. Mr. Gogna has produced the file concerning the matter. Incidentally, Mr. Gogna appears not only for respondent No.1, i.e. the CIC but also for respondent No.2, i.e. the Central Public Information Officer (in short the CPIO) of the Ministry of Home Affairs, Government of India.
3. Mr. Gogna is instructed by Mr. V.K. Sharma, the designated officer, who is attached with the Information Commissioner (VS) and is the author of the communication dated 31.3.2014.
4. The original file has been produced before me. The original file contains a note sheet dated 26/28.3.2014. The said note sheet, which I am

told, is the original order, bears the signatures not only of the Information Commissioner, Mr. Vijay Sharma, but also of two other functionaries. I am told by Mr. V.K. Sharma, the designated officer, that the signatures are those of: Ms. Richa Jha, Legal Consultant and Ms. Devi, Manager (Law). While the information Commissioner, Mr. Vijay Sharma has appended his signatures on what purports to be an order, on 28.3.2014; Ms. Richa Jha has signed on 26.3.2014. The signature of Ms. Devi is dated 28.3.2014.

5. Clearly, this procedure is not proper.

6. The concerned Information Commissioner, vide order dated 12.2.2014, had directed the CPIO to produce the following information:-

“...The respondent is directed to:

- (a) Provide the available information in context of the RTI application;
- (b) Show cause as to why action should not be taken against the respondent for contravening the timeline prescribed in the RTI Act; and
- (c) Comply with the above within 30 days of this order...”

7. Upon receipt of information, the order which is sought to have been passed and placed in original, in the official record, has been signed not only by the Information Commissioner, Mr. Vijay Sharma, but also by two other persons; one of whom is Legal Consultant, while the other is the Manager (Law) in CIC.

8. In my opinion, the function that the Information Commissioner was performing was a quasi-judicial function, to which, the other two persons could not have been parties.

9. I may only note that I have compared the impugned communication

dated 31.3.2014, with purported order placed in CIC's file. The said communication, basically, replicates what is, found in the original file.

10. It is not disputed before me by the counsel for the parties that the proceedings dated 12.2.2014 emanated from an appeal filed by the petitioner herein under Section 19 of the Right to Information Act, 2005 (in short the RTI Act). Therefore, in terms of Section 20 of the RTI Act, the requirement was to issue show cause notice (which the Information Commissioner did by order dated 12.2.2014) in case, he was of the view that the required information had either been refused or was not furnished within the time specified under Section 7(1) of the RTI Act or, was malafidely denied, or knowingly incorrect, incomplete or misleading information was given or, the information was destroyed, which was subject matter of the request made or, even obstructed.

11. The scheme of the RTI Act suggests that the power conferred on the CIC and the State Information Commissions to levy penalty is circumscribed by the provisions of Section 20 and the ingredients contained therein.

11.1 A Division Bench of this court vide a judgement dated 09.01.2012, passed in LPA No. 764/2011, titled: *Ankur Mutreja vs Delhi University* had an occasion to rule upon the scope and ambit of the proceedings carried out by the CIC under Section 20 of the RTI Act. The observations made by the Division Bench, which are pertinent qua the case, are recorded in paragraphs 8, 9 & 10. For the sake of convenience, the same are extracted hereinbelow:

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.

(emphasis is mine)

11.2 A perusal of the observations made in paragraph 10 of the Division Bench judgement would show that while there is no bar in the CIC entertaining an appellant / complainant before it in penalty proceedings, the matter is left to the discretion of the CIC. An appellant / complainant, cannot, as a matter of right, as held by the Division Bench, claim audience in the “penalty proceedings” carried out under Section 20 of the RTI, Act.

11.3 Mr Mittal, however, says that there are other judgements which he would like to place for consideration.

12. Having regard to the facts and circumstances, which arise in this case, I am inclined to accept the prayer of the petitioner to set aside the impugned communication dated 31.3.2014, and remand the case to respondent No.1, i.e. the CIC for fresh consideration, from the stage, at which, it was positioned when, order dated 12.2.2014 was passed. It is ordered accordingly.

13. Respondent no.1/CIC shall, thereafter, take a decision as to whether or not it wishes to involve the petitioner in the penalty proceedings contemplated under Section 20 of the RTI Act. Though the matter is left, as per the observations of the Division Bench, to the discretion of the CIC, the CIC will take into account the circumstances which obtained in this matter, one of which, is that, what was brought to light, before this court, could not have

got revealed but for the intercession of the petitioner.

13.1 For this limited purpose, the petitioner may appear before the CIC, which would then decide as to whether it would like the petitioner to participate in the penalty proceedings.

13.2 In case the CIC is of the view that the petitioner should participate in the proceedings, it will supply to the petitioner a copy of the reply filed by the delinquent officer to the show cause notice.

14. The writ petition is disposed of with the aforesaid directions.

RAJIV SHAKDHER, J

APRIL 27, 2015

s.pal