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

% **Decided on : 15.01.2016**

+ **W.P.(C) 6538/2014 & C.M.No.15596/2014**

RATTAN GUPTA Petitioner

Through: **Mr.Suhail Malik, Advocate**

Versus

LT. GOVERNOR, GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: **Mr.Satyakam, Addl. Standing
Counsel, GNCTD for R-1 to R-4
Mr.Harish Pandey, Adv. for R-5.**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

1. The petitioner is aggrieved by an order dated 19.05.2014 passed by the Assistant Registrar/Appellate Authority which directed payment of penalty of Rs.1000/-.

2. The fifth respondent, a member of Riviera Apartment Cooperative Group Housing Society (hereinafter referred to as 'the Society') – under Rule 165 of the Delhi Cooperative Society's Rule 2007, sought certain information with regard to seven cheques issued by the society between 28.10.2013 to 05.11.2013. The application made on 29.01.2014, was replied to on 27.02.2014 by the petitioner, the President of the Society stating that the books of accounts of the

society and statements of the Bank account were being reconciled by the bank.

3. The RTI applicant/the fifth respondent appealed to the Assistant Registrar (North) i.e. the appellate authority on 13.03.2014 complaining that the information sought from him had not been supplied. This notice was issued on 18.03.2014. In the meanwhile the petitioner appears to have sent information by post to the applicant which was received on 14.03.2014. Proceedings were adjourned to 15.04.2014 after which, the impugned order was made on 19.05.2014. The relevant para of the order reads as under:

“Sh.Sanjay Chiripal, Appellant and Sh.Mukesh Kumar, Assistant working in the Respondent Society (with authorization) were present on 15.04.2014. Applicant had sought certain information vide his RTI Application dated 29.01.2014 u/s 139 of the DCS Act, 2003 regarding cash withdrawn by society during the period 25.10.2013 to 05.11.2013. Society had replied, vide letter dated 27.02.2014, that the accounts are being updated and reconciled and the required information would be provided in about 10 days. The appellant further stated that he has received the said information on 14.03.2014 i.e. after a delay of almost 14 days. It is also stated that the ground taken by the society is not legally tenable and they have been providing information late on various previous occasions as well, forcing the appellant to file appeals. He emphasized that penalty should be imposed on society as he is forced to file appeals continuously.

Sh.Mukesh on behalf of the Society did not provide any reason for late provision of information but assured

that in future, information sought will be provided on time.

In this matter, there is no denying the fact that society has furnished the information late and I see no merit in explanation of society about the cause of the delay. However, in view of the assurance of the society at the time of hearing, I impose a token penalty of Rs.1000/- which will be recovered from the personal pocket of Sh.Rattan Gupta, President who is further directed to deposit the penalty of Rs.1000/- in Cooperative Education Fund in the office of RCS with seven days of receipt of this Order and provide a copy of the receipt to the appellate authority, failing which recovery proceedings as per Law will be initiated against him without any further information.”

4. It is vehemently contended by learned counsel for the petitioner that the impugned order is liable to be set aside firstly because reasonable opportunity envisioned in Section 139 was not provided before the penalty was imposed. Counsel urged secondly that the order was disproportionate given that the delay if any was of 13 days and easily explained by the circumstance that the information sought had to be compiled after obtaining the relevant documents from the bank.

5. This Court has considered the submissions. There is no doubt that the manner in which Section 139 of the Delhi Cooperative Act is phrased empowers the authority with a discretionary power to impose penalty in the event this infraction of the mandate under Section 139 (1). Equally, there is no dispute that the period prescribed therein is

30 days. During the course of hearing the Court was informed that the society has membership of 45 members; the petitioner is its President. It was also emphasised that the information applicant has tried to harass by making several applications most of which are unwarranted.

6. In the facts of this case, there is no doubt that given the nature of the society's membership (45), even if there was some difficulty at the initial stage of obtaining the details sought – which are trivial in nature i.e. cash withdrawal for 10 days period, that could have been easily overcome by the petitioner. The petitioner has not at any stage disclosed whether the information was elicited from the bank. Even if they had, the delay in obtaining it is unexplained. Furthermore, nothing precluded the petitioner from supplying the information which may have been in his possession. Having regard to the fact that the appellate authority exercised discretion, the impugned order per se cannot be faulted. As far as the complaint that opportunity was not granted is concerned, on the face of it the impugned order disclosed that the petitioner chose not to be present before the appellate authority and was able to give any reasonable explanation for the delay. Furthermore, the Court is of the opinion that the information sought is of such nature that the society would be ordinarily and reasonably be expected to possess it.

7. For the above reasons, there is no merit in the writ petition. It is accordingly dismissed. Further appeal before the Finance Commissioner was dismissed. We find no reason to interfere with that order as well. The petitioner shall pay cost quantified at Rs.25,000/-

to the fifth respondent/information applicant within two weeks from today. The cost shall be paid by the petitioner personally and certificate/affidavit to that effect be filed in Court.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JANUARY 15, 2016
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