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

+ **W.P.(C) 11065/2015 & C.M.No.325/2016**

NARESH KUMAR Petitioner
Through Petitioner in person.

versus

CENTRAL INFORMATION COMMISSION AND ORS Respondents
Through None

+ **W.P.(C) 11189/2015**

NARESH KUMAR Petitioner
Through Petitioner in person.

versus

CENTRAL INFORMATION COMMISSION AND ORS Respondents
Through None

+ **W.P.(C) 11190/2015**

NARESH KUMAR Petitioner
Through Petitioner in person.

versus

CENTRAL INFORMATION COMMISSION AND ORS Respondents
Through None

+ **W.P.(C) 11192/2015**

NARESH KUMAR Petitioner
Through Petitioner in person.

versus

CENTRAL INFORMATION COMMISSION AND ORS

..... Respondents

Through None

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Date of Decision: 12th January, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present batch of writ petitions has been filed for remanding the proceedings back to the Central Information Commission (CIC) to consider passing orders under Section 20 (2) of the RTI Act.
2. The petitioner, who appears in person, states that the Central Information Commissioner vide order dated 17th October, 2013, despite recording that she was of the distinct opinion that the UTS-I division of the Ministry of Home Affairs was stonewalling the disclosure of information, did not direct initiation of the disciplinary action under Section 20 (2) of the RTI Act.
3. He also states that subsequently in some of the matters, the Coordinate Bench of CIC only directed the respondents to provide information to the petitioner on certain points as well as the right to inspect the relevant files, but did not allow his prayer for initiation of disciplinary action under Section 20 (2) of the RTI Act.

4. He further states that his written submissions were not taken on record on this point. According to him, the subsequent Commissioner had not kept in mind the observations made by the previous Commissioner.

5. In the opinion of this Court, the formation of opinion under Section 20 (2) of the RTI Act is in the exercise of supervisory powers of CIC and not in the exercise of the adjudicatory powers. This Court is also of the view that the information seeker has no locus standi in penalty proceedings under Section 20 of the RTI Act.

6. A Division Bench of this Court in ***Anand Bhushan Vs. R.A.Haritash, LPA No.777/2010, decided on 29th March, 2012*** while dealing with the similar arguments with regard to imposition of penalty under Section 20 (1) of the RTI Act, has held as under:-

“8. We have in Ankur Mutreja (supra) given detailed reasons for the conclusions aforesaid reached therein and which cover contentions 6(ii) to (viii) & (x) aforesaid of the counsel for the appellant herein and we do not feel the need to reiterate the same. We may only add that the role of the CIC, under the Act, is not confined to that of an Adjudicator. The CIC under the RTI Act enjoys a dual position. The CIC, established under Section 12 of the Act, has been, a) under Section 18 vested with the duty to receive and enquire into complaints of non-performance and non-compliance of provisions of the Act and relating to access to records under the Act; b) empowered under Section 19(3) to hear second appeals against decision of Information Officer and the First Appellate Authority; c) empowered under Section 19(8) to, while deciding such appeals, to require any public authority to take such steps as may be necessary for compliance of provisions of the Act; and, d) and is to, under Section 25 of the Act prepare annual report on the implementation of the provisions of the Act. The CIC thus, besides the adjudicatory role also has a supervisory role in the implementation of the Act.

9. *The power of the CIC, under Section 20, of imposing penalty is to be seen in this light and context. A reading of Section 20 shows (as also held by us in Ankur Mutreja) that while the opinion, as to a default having been committed by the Information Officer, is to be formed „at the time of deciding any complaint or appeal“, the hearing to be given to such Information Officer, is to be held after the decision on the complaint or the appeal. The proceedings before the CIC, of hearing the Information Officer qua whom opinion of having committed a default has been formed and of imposition of penalty, are in our opinion, in the exercise of supervisory powers of CIC and not in the exercise of adjudicatory powers. As already held by us in Ankur Mutreja, there is no provision, for payment of penalty or any part thereof, to the information seeker. The information seeker has no locus in the penalty proceedings, beyond the decision of the complaint/appeal and while taking which decision opinion of default having been committed is to be formed, and at which stage the complainant/information seeker is heard.*

10. *The Supreme Court in Competition Commission of India vs. Steel Authority of India Ltd. (2010) 10 SCC 744 held that the Competition Commission constituted under the Competition Act, 2002 discharges different functions under different provisions of the Act and the procedure to be followed in its inquisitorial and regulatory powers/functions is not to be influenced by the procedure prescribed to be followed in exercise of its adjudicatory powers. In the context of the RTI Act also, merely because the CIC, while deciding the complaints/appeals is required to hear the complainant/information seeker, would not require the CIC to hear them while punishing the erring Information Officer, in exercise of its supervisory powers.*

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13. *Needless to say that if the information seeker has no right of participation in penalty proceedings, as held by us, the question of right of being heard in opposition to writ petition challenging imposition of penalty does not arise. We therefore hold that no error was committed by the learned Single Judge in reducing the penalty without hearing the appellant.*

14. *That brings us to the question, whether the penalty prescribed*

in Section 20 of the Act is mandatory and the scope of interference with such penalty in exercise of powers of judicial review under Article 226 of Constitution of India.

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16. Once it is held that the quantum of fine is discretionary, there can be no challenge to the judicial review under Article 226 of the Constitution, of exercise of such discretion, of course within the well recognized limits. If this Court finds discretion to have been not appropriately exercised by the CIC, this Court can in exercise of its powers vary the penalty. In the facts of the present case, we find the learned Single Judge to have for valid reasons with which we have no reason to differ, reduced the penalty. We, therefore do not find any merits in this appeal and dismiss the same. No order as to costs.”

7. This Court is of the view that the aforesaid law is applicable to not only proceedings under Section 20 (1) but also under Section 20(2) of the RTI Act. Consequently, this Court is of the opinion that the CIC was well entitled in its discretion not to direct initiation of the disciplinary proceedings under Section 20 (2) of the RTI Act, especially, when the information sought by the petitioner had been directed to be provided to him.

8. It is pertinent to mention that the petitioner’s initial writ petition challenging the very same impugned orders had been dismissed by a coordinate Bench of this Court. Though the petitioner was given liberty in review petition to file a fresh petition seeking appropriate prayer, yet in the opinion of this Court the present petition amounts to re-litigation, as the same impugned orders have been challenged albeit on different grounds.

9. A Division Bench of this Court in ***N.D.Qureshi Vs. Union of***

India & Another, 2008 (13) DRJ 547 to which this Court was a party has observed as under:-

“12. Moreover, from the above narrated facts, it would be apparent that the petitioner has been re-litigating for a considerable number of years. In our view on the principle of res judicata and re-litigation the petitioner is even barred from raising new pleas for the same old relief. The Hon’ble Supreme Court in K.K.Modi Vs. K.N.Modi and others, reported in (1998) 3 SCC 573 has held that it is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. This re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. The Hon’ble Supreme Court has further held that if a spurious claim is made in a case, it may also amount to an abuse of process of the court. In our view, frivolous or vexatious proceedings amount to an abuse of the process of the court especially where the proceedings are absolutely groundless-like in the present case.”

(emphasis supplied)

10. Consequently, the present writ petitions and pending application are dismissed but with no order as to costs.

MANMOHAN, J

**JANUARY 12, 2016
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