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

+ **W.P.(C) 5252/2014 and CM No. 10428/2014**

POWER FINANCE CORPORATION LTD. Petitioner
Through: Mr Jagdeep Kishore, Advocate.

versus

SUSHMA SINGH & ORS. Respondents
Through: Mr Sunil Bhasin, respondent no.3 in person.
Mr Sanjeev Narula, Sr. Standing counsel for CIC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **28.11.2017**

VIBHU BAKHRU, J

1. The petitioner – a Public Sector Enterprise – has filed the present petition, *inter alia*, impugning an order dated 15.05.2014 (hereafter ‘the impugned order’) passed by the Central Information Commission (hereafter ‘the CIC’), whereby the petitioner has been directed to provide records and files notings of the Vigilance Unit held with the Power Finance Corporation Ltd. (hereafter ‘PFC’) Management and Ministry of Power in connection with the inquiry process and dismissal of respondent no.3 (the appellant before the CIC).

2. Mr Jagdeep Kishore, learned counsel for the petitioner has assailed the impugned order essentially on four fronts. First, he submits that the procedure followed by the CIC is flawed. He states that there was no appeal

pending before the CIC, which would warrant issuance of the impugned order. The impugned order was passed allegedly for non compliance of an earlier order dated 27.08.2013, which in turn was passed in an appeal filed by respondent no.3 against an order passed by the Public Information Officer of the petitioner (hereafter 'the CPIO'). He submits that the CIC cannot entertain an appeal directly from an order of the CPIO and respondent no.3 ought to have been relegated to exhausting his remedies before the First Appellate Authority (hereafter 'the FAA').

3. Second, Mr Kishore submits that an order directing information cannot be passed in proceedings relating to complaint under Section 18 of the Right to Information Act, 2005 (hereafter 'the Act').

4. Third, Mr Kishore submits that the impugned order is *ex facie* perverse as the petitioner could not be directed to provide information regarding the files available with another public authority – the Ministry of Power which was not a party to the proceedings before the CIC.

5. Lastly, Mr Kishore submitted that the impugned order was in variance with the oral decision communicated to the parties on the date of the hearing - that is, on 07.05.2014 - and the impugned order was received after the concerned CIC who had heard the petitioner, had demitted office.

6. The relevant facts necessary to address the aforesaid controversy are briefly stated hereinafter.

6.1 Respondent no.3 was an employee of the petitioner and was dismissed from services with the petitioner in July 2011. At the material time he held the designation of Deputy General Manager (Finance).

6.2 Respondent no. 3 filed an application dated 11.07.2013 under the Act requesting for “*certified copies of all the file notings and records relating to my dismissal including all the correspondences in this regard.*”

6.3 The CPIO rejected the aforesaid request by a letter dated 08.08.2013, *inter alia*, stating that the information desired by respondent no.3 had no relationship to any public activity and, therefore, was exempted from disclosure under Section 8(1)(j) of the Act.

6.4 Aggrieved by the same, respondent no.3 preferred an appeal before the CIC, which was disposed of by an order dated 27.08.2013 passed (in file no.CIC/LS/C/2013/000061). By the said order, the CIC held that since the information sought for by respondent no.3 was relating to himself and not any third party, disclosure of the same would not cause any unwarranted invasion of the privacy of any third party. The CIC, therefore, concluded that denial of information sought on the ground that it was exempt under Section 8(1)(j) of the Act was “totally unjustified”. Accordingly, CIC directed as under:-

“12. As noted above, the appellant is seeking information about his own dismissal from service, he is not seeking information about a third party. Disclosure of requested information is not likely to cause invasion of privacy of any third party. Further more, the departmental proceedings have been concluded against him in all respects and nothing more is pending. Hence, denial of information under clause (j) of section 8(1) by the CPIO is totally illegal and unjustified. In my opinion, the order passed by the CPIO is patently illegal and unjustified and it cannot be allowed to stand and warrants to be set aside. I, therefore, set aside the order of the CPIO and direct him to provide certified photo copies of the information/ documents requested for by the appellant in 04 weeks time.”

6.5 The petitioner claims that the said order was passed without any notice to the petitioner or without affording the petitioner any opportunity to be heard. Notwithstanding the same, the CPIO of the petitioner provided the information as sought for by respondent no.3 under the cover of his letter dated 20.09.2013.

6.6 According to respondent no.3, the information provided was incomplete and, accordingly, he sent a letter dated 30.10.2013 now demanding the information that he claimed was missing from the records provided to him. The relevant extract of the said letter indicating the information that was alleged to be missing is as under:

- “a) Records and files noting of the vigilance unit held with the PFC Management & Ministry of Power in connection with the inquiry process and dismissal of the appellant are completely missing.
- b) Mostly, the information is found to be incomplete and inadequate in those cases where the references for the supporting documents forming a part of the information are being provided in the noting/main documents but the same have not been furnished by you. For instance, the references of the flat A, E, B, E & A and so on have been provided in the rely of the presenting officer of the inquiry held in the case (refer to page no.28 of your information) but these supporting documents are not found to have been attached therewith. In view of this, there is a need to be provided such supporting documents wherever it has been referred in your records, to qualify for a proper and valid information.
- c) At the page no.21 of the details of the note sheet, it is claimed that the Board of directors, PFC was apprised of the case for its consideration in its meeting held on 19th

April, 2011, however, the agenda and minutes of the BOD in this regard are found to be missing in the received information.

- d) No record of the correspondences held by the appellant with the PFC Management through his innumerable letters in connection with the ref. case to begin with making a representation to the CMD against the impugned order of his transfer until it is finally culminated in to his dismissal in violation of all the canons of justice including the principle of natural justice of the Constitution.
- e) Duly executed affidavit by PIO to this effect that all the available information/records related to the dismissal of the appellant, have been provided to the appellant in response to his RTI application dated 11-7-13 filed with the Corporation was complete in all respects as directed by the Hon'ble Information Commission and no such record was held back by you in this regard."

6.7 The petitioner claims that on receipt of the aforesaid letter, the CPIO once again provided certain additional information under cover of his letter dated 07.01.2014. In the meanwhile, on 20.11.2013, respondent no.3 filed a complaint, captioned as an "appeal under Section 18 of the RTI Act for contempt notice issuance – non implementation of the CIC order" with the CIC. In his complaint, respondent no.3 alleged that the order dated 27.08.2013 passed by the CIC was not complied with. Pursuant to the aforesaid mentioned complaint, the CIC issued a notice dated 24.02.2014, calling upon the petitioner to submit its comments. In response thereto, CPIO of the petitioner sent a letter dated 04.03.2014 contending that all relevant information had been provided to respondent no.3.

7. I have heard the learned counsel for the petitioner as well as respondent no.3 in person.

8. Respondent no.3 contended that he had been unfairly dismissed from service and was entitled to the information as sought by him. He stoutly disputed that the information as sought for him was provided by the petitioner; in particular, he submitted that the notings of the vigilance file had not been provided. On a pointed query, as to why the information sought by him was not specifically mentioned in his application under the Act, he stated that at the material time, he did not know as to how the process had been followed and he became aware of the missing information only when some of the information was provided to him.

9. It is apparent from the narration of facts that the procedure as prescribed under the Act has not been followed. First of all, the appeal before the CIC pursuant to which the order dated 27.08.2013 was passed was wholly incompetent.

10. The CIC is an authority constituted under Section 12 of the Act and has required to perform the functions as set out under the Act. In terms of Section 19(3) of the Act, a Second Appeal against the decision rendered under Section 19(1) of the Act would lie with the CIC. Section 19(1) provides for an appeal to an officer senior in rank to the Public Information Officer in each public authority (also referred to as the First Appellate Authority).

11. Section 19(1) and (3) of the Act are set out below:-

“19. Appeal. -

(1) Any person who, does not receive a decision within the

time specified in sub-section (1) or clause (a) of sub section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or the State Public Information Officer, as the case may be, in each public authority: Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

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(3) A second appeal against the decision under sub section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission: Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.”

12. It is at once clear that CIC had no jurisdiction to entertain the appeal directly from a decision of the CPIO.

13. It also appears from the order dated 27.08.2013 that there was no representation on behalf of the petitioner. The contention that the petitioner was not served with any notice of the said appeal or hearing, is also uncontroverted. Thus, plainly, the order dated 27.08.2013 passed by the CIC is not sustainable.

14. It is seen that the impugned order has been passed pursuant to a complaint preferred by the respondent no.3 under Section 18 of the Act. It

is now well settled that the CIC's power to pass orders pursuant to a complaint made under section 18 of the Act does not extend to directing disclosure of information.

15. In *Chief Information Commr.& Anr v. State Of Manipur & Anr:(2011)15 SCC 1*, the Supreme Court had held as under:

“28. The question which falls for decision in this case is the jurisdiction, if any, of the Information Commissioner under Section 18 in directing disclosure of information. In the impugned judgment of the Division Bench, the High Court held that the Chief Information Commissioner acted beyond his jurisdiction by passing the impugned decision dated 30th May, 2007 and 14th August, 2007. The Division Bench also held that under Section 18 of the Act the State Information Commissioner is not empowered to pass a direction to the State Information Officer for furnishing the information sought for by the complainant.

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. Under Section 18(3) of the Act the Central Information Commission or 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.

30. 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.

31. 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.”

16. Thus, the impugned order inasmuch as it directs the petitioner to disclose information to respondent no.3, is not sustainable.

17. The contention that CIC could not have issued directions to the petitioner to provide information available with the Ministry of Power is also merited. Plainly, the petitioner could only be called upon to provide information that is available with it and not any information available with any other public authority, which was not a party before the CIC.

18. In view of the above, the impugned order is not sustainable. In view

of this conclusion, this Court does not consider it necessary to examine the contention whether the oral order communicated at the hearing held on 07.05.2014 was infact in variance with the impugned order that was communicated subsequently.

19. For the reasons stated above, the impugned order is set aside.

20. It is clarified that this would not preclude respondent no.3 to file a separate application under the Right to Information Act, 2005 indicating the specific information required by him. Needless to state that if such application is made, the petitioner shall consider the said application in accordance with law.

21. The petition and the pending application are disposed of.

NOVEMBER 28, 2017
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VIBHU BAKHRU, J

