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

\+ **W.P.(C) 5371/2016 & CM No. 22392/2016**

V. RAJAN ..... Petitioner

Through: Mr Rituraj Biswas and Mr Rituraj Choudhary, Advocates.

versus

NEERAJ KUMAR & ANR. ..... Respondents

Through: Mr Y. Mishra, Advocate for R-1. Ms Shikha Tandon and Ms Anu shrivastava, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **02.11.2017**

1. The petitioner has filed the present petition, *inter alia,* impugning an order dated 22.04.2016 passed by the Central Information Commission (hereafter 'the CIC'), whereby the CIC had directed respondent no. 2 to pay the compensation of ₹65000/- to respondent no. 1 (who was the appellant before the CIC). In addition, the CIC has also imposed a penalty of ₹25000/- on the petitioner (who was then the CPIO of respondent no. 2/Public Authority) as well as penalty of ₹9500/- on Shri Sanjeev Shrivastava, Assistant Public Information Officer (APIO).

2. Briefly stated, the facts necessary to address the controversy are as under:-

2.1 Respondent no.1 filed an application with respondent no.2, *inter alia,* seeking the following information:-

a. National Housing bank conducted an investigation regarding irregularities of Shivkala Charms, golf course cooperative housing society limited, plot no.7, sect.PI-II, provide a copy of that investigation report.

b. On the basis of above investigation report, provide copies of the letters which was sent by National Housing Bank to public/private banks/NBFC's concerned with financial irregularities for action against the cooperative society.

c. Provide updated information about the action has been taken by the respective banks perspective of letters written by National Housing bank"

2.2 The petitioner who was at the material time the Public Information Officer of respondent no. 2 responded to the aforesaid request by stating that "*we have no information to furnish in this regard*".

2.3 Respondent no. 1, thereafter, filed an appeal before the First Appellate Authority (hereafter 'the FAA') which was also disposed of by an order dated 17.10.2014.

3. Respondent no. 2 became aware that a letter dated 18.04.2012 had been addressed by the petitioner (in his capacity as a Deputy General Manager of respondent no.2) to the Chief Executive Officer of one Indo Pacific Housing Finance Ltd., *inter alia,* stating as under:-

> "1. It has come to our notice that HFCs and banks have made multiple financing of the flats in a Housing Project, namely, "Shiv Kala Charms" undertaken by Golf Course Sehkari Awas Samiti Limited on Plot No.7, Greater Noida. Base on the information available, list of flats financed by HFC's prepared by us is annexed herewith. It appears that one of the reason may be due to lack of proper due-diligence by the concerned HFCs,

while approving the captioned project/sanctioning the loan to the individual borrowers.

2. You are hereby requested to look into the matter and also furnish us the following information, at the earliest-

respondent no. 2 *inter alia* seeking the information as under:-

i. The attributable reasons for multiple financing in each case;

ii. Action taken by the HFC against the concerned officials;

iii. Action taken to tone-up the process in your HFC, to avoid recurrence of such frauds in future;

iv. Detailed report on the present stage of investigation of the case by out-side agencies; and

v. The efforts made to mitigate hardship faced by the borrowers/purchasers.

3. You are also advised to place the status report of the case at regular intervals to your Board till the satisfactory resolution of the case, and also keep us posted with the developments in the matter."

4. A bare perusal of the said letter indicates that the petitioner's response to respondent no. 1's queries was inapposite. Clearly petitioner was fully aware that an enquiry was made regarding multiple financing of the flats in Housing Project in question. A plain reading of the petitioner's request for information also indicates that he was seeking information regarding irregularities in the project in question. It was petitioner's case that although enquiries had been made and respondent no. 2 had also called upon the housing finance companies to give a status report, no formal investigation was conducted and therefore, the question of providing any investigation

report to respondent no. 1 did not arise.

5. The aforesaid contention did not find favour with the CIC.

6. This Court is also of the view that the least that the petitioner should have done was to inform respondent no. 1 that only inquiries had been made and no formal investigation had been conducted; this is assuming that the petitioner felt compelled to deny respondent no.1 the relevant information regarding the enquiries being made. However, the petitioner's response to respondent no. 1's queries was that he had no information in that regard. The statement that the petitioner had no information to furnish - even though not technically incorrect considering that the queries were with regard to a investigation report - was not an apposite response. This is so because it did not indicate the correct position that no investigation was conducted and only inquiries were made.

7. The petitioner, however, states that no penalty can be levied on the petitioner since the request made by respondent no.1 for information related to an investigation report and there was no investigation and, therefore, no such report could be furnished.

8. Although this Court is of the view that the petitioner's response was not an apposite one, nonetheless, this Court is also of the view that no penalty could be imposed on the petitioner. The provision of Section 20(1) of the Right to Information Act, 2005, (hereafter 'the Act') being a penal provisions must be construed strictly. In terms of Section 20(1) such penalty can be levied only in cases where (i) the Central Information Public Information Officer or State Public Information Officer has without any reasonable cause refused to receive an application for information; or (ii) has not furnished information within the time specified under Section 7(1) of the

Act; or (iii) malafidely denied the request for information; or (iv) knowingly given incorrect, incomplete or misleading information; or (v) destroyed information which was the subject of the request; or (vi) obstructed in any manner in furnishing of the information. In the present case, the only question that arises is whether the petitioner can be held guilty of providing incomplete or misleading information. Although, the petitioner's response to respondent no. 1's request for information may not be apposite, the same does not attract the penal persons of Section 20(1) of the Act. The queries were specifically regarding furnishing the investigation report and other matters relating thereto; since there was no investigation report on record, *stricto sensu*, the petitioner cannot be said to have fallen foul of the provisions of Section 20(1) of the Act.

9. Insofar as the direction to respondent no.2 to provide compensation is concerned, the learned counsel for respondent no.2 states that the same has already been paid by respondent no.2. Further respondent no.2 has also not appealed against the direction to pay compensation. In this view, no further interference with the said direction to pay compensation is called for.

10. In view of the above, the impugned order to the extent that it imposes a penalty on the petitioner, is set aside. The parties are left to bear their own costs.

11. The petition is disposed of.

VIBHU BAKHRU, J

NOVEMBER 02, 2017
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