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

\+ **W.P.(C) 8289/2016 & CM 34297/2016**

SHOBHA VIJENDER ..... Petitioner

Through: Mr Sanjeev Sahay, Mr Aditya Sharma, Mr Himangi Kapoor, Advocates.

versus

CHIEF INFORMATION COMMISSIONER & ORS ..... Respondents

Through: Mr Sanjeev Narula, Ms Kaanan Gupta, Advocate for R-1.
Mr Vikram Jetly, CGSC for R-2/ UOI.
Ms Neelam Singh, Advocate for R-3.
Mr Vikas Chopra Advocate for R-4/NDMC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **29.11.2017**

VIBHU BAKHRU, J

1. The petitioner – who was at the material time a Councillor of Municipal Corporation of Delhi – has filed the present petition impugning an order dated 13.05.2016 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'CIC'). The petitioner's grievance is that although she was not a party to the proceedings before the CIC, directions have been issued by the CIC against Area Counselors and their political parties, without affording them an opportunity to be heard. The petitioner also claims that the directions issued by the CIC in the

impugned order are without jurisdiction.

2. The principal controversy involved in the present petition is whether the directions issued by the CIC in the impugned order are beyond its jurisdiction and without authority of law.

3. Briefly stated, the relevant facts are that the North Delhi Municipal Corporation (hereafter 'NDMC') granted senior citizenship pension to the wife of respondent no.5 (who was the appellant before the CIC) for a period of three months, that is, from April, 2014 to June, 2014. Thereafter, the NDMC discontinued disbursal of pension to respondent no.5's wife.

4. In the aforesaid context, respondent no.5 filed an application dated 15.05.2015 under the Right to Information Act, 2005 (hereafter 'the Act') seeking information regarding the non-payment of pension to his wife. This application was made in the office of Chief Minister of NCT of Delhi. Apparently, respondent no.5's application was transferred to several departments but the information sought by respondent no.5 was not disclosed to him.

5. Aggrieved by the denial of information, respondent no.5 filed an appeal under Section 19 of the Act before the First Appellate Authority (FAA) on 20.07.2015, which was rejected. This led respondent no. 5 to file a second appeal under Section 19(3) of the Act before the CIC on 20.10.2015.

6. The CIC considered respondent no. 5's appeal and on 25.01.2016 passed an order, *inter alia*, directing as under:-

> ''6. The Commission holds that the CMO has not applied its

> mind to this serious issue raised by the appellant and acted like just a post office by simply forwarding the appellant's RTI application to other departments, who in turn, went on transferring to others. Surprisingly, the appellant is receiving number of papers from different departments, intimating that his application is transferred to other departments. But he did not receive information he required, as to why his wife did not receive the pension. The Commission, therefore, directs the CMO to furnish a "**White Paper**" on the status of payment/position all kinds of pensions in Delhi Government, reasons for non-payment, time of resumption of payment, time of payment of arrears, etc within 20 days from the date of receipt of this order.
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> 7. The Commission further directs the CMO to change the practice of routine transferring of RTI applications to the subordinate offices when the RTI application IS demanding action from the CMO. The Commission directs the CMO to pay a compensation of Rs.1,00,000/- to the appellant and initiate action against all the PIOs who unnecessarily transferred the RTI application to others and recover Rs.100/- from each of these PIOs and the same may be credited to the CM welfare fund. The Commission also directs the PIO/CMO to show cause why maximum penalty should not be imposed against him and why disciplinary action should not be recommended against him for causing huge wastage of money and time by unnecessarily transferring the RTI application and delaying the process of communication of relevant information.''

7. It is apparent from the aforesaid order that the only issue that remained outstanding before the CIC was whether initiation of disciplinary action against the concerned Public Information Officers ought to be recommended in terms of Section 20 (2) of the Act. Notwithstanding the limited scope of proceedings before the CIC, the Chief Minister's Office moved an application dated 10.02.2016 seeking modification of the order

dated 25.01.2016 to the extent that the penalty imposed on CMO is bad in law and they are unable to give the desired information to respondent no.5 as the concerned issue is *sub-judice*. There is some controversy whether the said application ought to have been termed as an application for review rather than modification; but, it is not necessary to examine that controversy since the CIC itself had termed the said application as an application for review in his subsequent order dated 05.04.2016. The operative part of the said order is set out below:-

> ‘‘5. Apart from the fund crunch, there appears to be a serious governance crisis as the appellant and the citizens similarly placed, are not getting any information under the RTI Act. The appellant in this case questioned how the government could permit its 38 departments to spend money in transferring his RTI application and build up a huge file of papers. If there no financial crunch for such activity? He also questioned that the Govt. representative attending the hearings in 1st/2nd appeals, are using the Govt. vehicles or private taxes paid by offices, for which funds are available. When the government does not release the fund for payment of pension, how can the civic bodies and the departments can give any information on non-payment of pension? The CMO should have replied the appellant that they are not in a position to release the funds and that they cannot pay pension. Instead they have transferred it to various departments without relinquishing to disclosure of any information.
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> 6. The appellant questioned why there was such a change after the new Government had taken over in 2014 and 2015? The commission finds huge public interest in this RTI request. It is a major human rights problem for lakhs of pensioners who are found eligible to receive pension according to the Govt. schemes but not getting the pension. The CMO and other officers appear to be not ready to inform the appellant why they are not paying the pension or when they can start payment? The commission observes that it is the duty of the

CMO to explain the status of pension dues and answers the question of violation of right to pension, which is also a human right. It is the mandatory obligation of the CMO under the "Right of Citizen (Time-Bound Delivery of the Services) Act 2011, which covers 371 services. As per another news clipping in Hindustan Times dt. 15-11-2015, shown by the appellant, the CM stated that due to the wrong design of this Act 2011, no claim for compensation has been filed so far for the last 3 years. According to this law, if a delivery of certificate was not received within 15 days, the compensation time will start from the 16th day, automatically the compensation clause will click in automatically and the appellant should received the compensation from the due date to the date of delivery of the certificate. The appellant asked what kind of remedy will be provided to him by CMO? The Commission finds it pathetic that such a high office like the CMO evolves an unhealthy practice of forwarding RTI applications for an unlimited number of officers, thereby causing the denial of information to the appellant regarding the noon-payment of pension.

7. The commission holds that the CMO has not applied its mind to this serious issue raised by the appellant and acted like just a post office by simply forwarding the appellant's RTI application to other departments, who in turn, went on transferring to others. Surprisingly, the appellant is receiving number of papers from different departments intimating that his application is transferred to other departments. But he did not receive information he required, as to why his wife did not receive the pension. The commission, therefore, directs the CMO to furnish a "White Paper" on the status of payment/position all kinds of pensions in Delhi Government, reasons for non-payment, time of resumption of payment, time of payment of arrears etc. within 20 days from the date of receipt of this order.

8. The commission further directs the CMO to change the practice of routine transferring of RTI applications to the subordinate offices when the RTI application INS demanding action from the CMO. The Commission directs the CMO to pay compensation of Rs.1,00,000/- to the appellant and initiate

action against all the PIOs who unnecessarily transferred the RTI application to others and recover Rs.100/- form each of these PIOs and the same may be credited to the CM welfare fund. The commission also directs the PIO/CMO to show cause why maximum penalty should not be imposed against him and why disciplinary action should not be recommended against him, for causing huge wastage of money and time unnecessarily transferring the RTI application and delaying the process of communication of relevant information.

9. The commission orders accordingly.''

8. It is seen from the above that the scope of proceedings was somewhat expanded. As stated hereinabove, the scope of the proceedings before the CIC was limited to making a recommendation under Section 20(2) of the Act; however, notwithstanding the same, the CIC issued further directions such as directing the Chief Minister's Office to provide information about his initiatives pursuant to the directions issued by this Court in its order dated 03.03.2016 and to take over all the pension schemes from Municipal Corporations. The said directions were clearly outside the scope of the appeal preferred by respondent no.5.

9. Thereafter, the CIC passed the impugned order directing as under:-

``17. Exercising its powers under Section 19(8) the Commission requires various public authorities to initiate necessary steps as follows:

a) As the three MCDs are autonomous bodies governed by democratically elected representatives, the Commission requires, the office of Lieutenant Governor of Delhi to take necessary remedial measures to ensure strict compliance of eligibility norms in sanctioning pensions.

b) The Commission require, the office of Honourable

Lieutenant Governor to obtain a comprehensive note on payment of pensions by three MCDs, after thorough verification and elimination of ineligible pensions and initiate necessary action.

c) The Commission directs three Municipal Corporations in Delhi to put the note on pensions as mentioned above on their official websites.

d) Area Municipal Counselors, their political parties and the Honourable Mayors should be accountable and responsible to follow the norms prescribed for pensions. The Counselors also should be individually answerable as to why they have recommended ineligible candidates for pension.

e) The Commission requires the honourable Mayor of North Delhi Municipal Corporation to find out how many pensions were granted on recommendations of Area Municipal Counselors in violation of eligibility norms of income and initiate necessary steps to stop this drainage of funds, and to recover the money from ineligible candidates like appellant's wife, or from the Area Municipal Counselor, if found guilty of wrongful recommendation. Three MCDs should consult legal experts as to why this should not be considered as misappropriation of public money and why all those guilty including abettors through endorsement should not be prosecuted.

f) It is necessary for the Government of Delhi to strictly instruct the officers not to blindly pay pensions simply on recommendation of Arrea Municipal Councelor alone, but to follow all the norms prescribed.

g) The Commission requires, the honourable Area Municipal Councelor Mrs. Shobha Vijender to explain her political party, the Mayor, and her voters in general along with a copy of such explanation to this Commission, why an ineligible applicant was recommended for the pension in glaring violation of income norms and to assure the people that ineligible candidates would not be recommended in future. Such incidents should lead to introduce systems to make Representatives of People including Area Municipal

> Councelors or legislators to be brought under the ambit of transparency law to make them accountable and answerable to the people.''

10. It is at once clear from the aforesaid directions that the same are wholly without jurisdiction and plainly outside the scope of the CIC's powers under the Act. The CIC is a statutory body constituted under Section 12 of the Act and has to perform its function and exercise its powers strictly in accordance with the Act. Its functions and powers are circumscribed by the provisions of the Act. Section 19 (8) - which is referred to by the CIC is limited to issuing directions for (a) requiring the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act; (b) requiring the public authority to compensate the complainant for any loss or other detriment suffered; (c) to impose any of the penalties provided under this Act; and (d) to reject the application made before it. Section 19(8) of the Act does not empower the CIC to issue any other directions except as specified therein. Clearly, the directions given by the CIC - to the Lieutenant Governor to take remedial measures to ensure strict compliance of eligibility norms in pension schemes and to obtain a comprehensive note on payment of pensions by three MCDs, and the order holding Area Municipal Counselors, their political parties and the Honorable Mayors to be accountable and responsible for following the norms prescribed for pensions - are outside the ambit of Section 19(8) of the Act.

11. In view of the above, the impugned order is not sustainable and is, accordingly, set aside. This Court is refraining from expressing any opinion as to the interim orders passed by the CIC, as the same are not the subject

matter of challenge in this petition.

12. The petition and the pending application are disposed of. No orders as to costs.

VIBHU BAKHRU, J

NOVEMBER 29, 2017
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