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

+ W.P.(C) 4785/2017

R K JAIN

..... Petitioner

Through: Mr Ajay Garg, Advocate.

versus

V P PANDEY CPIO CESTAT NEW DELHI Respondent

Through: Mr Vivek Kohli and Ms Yeshi
Rinchhen, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **10.10.2017**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 17.04.2017 (hereafter 'the impugned order'), passed by the Central Information Commission (hereafter 'CIC'), whereby the respondent was cautioned to exercise due care in future and to ensure that correct and complete information is furnished to the RTI applicants.

2. The grievance of the petitioner is that although the CIC had accepted that there was a delay in providing the necessary information to the petitioner, the CIC had not imposed the penalty as required under Section 20(1) of the Right to Information Act, 2005. It is well settled that imposing of the penalty is a discretionary measure. In **Anand Bhushan v. R.A. Haritash: ILR (2012) 4 Delhi 657** a division bench of this Court had considered the question whether the levy of penalty was discretionary and held as under:-

"15. We may at the outset notice that a Division Bench of this Court in judgment dated 6th January, 2011 in LPA 782/2010 titled *Central Information Commission v. Department of Posts*, in spite of the argument raised that that Single Judge ought not to have reduced the penalty imposed by the CIC but finding sufficient explanation for the delay in supplying information, upheld the order of the Single Judge, reducing the penalty. Though Section 20(1) uses the word 'shall', before the words 'impose a penalty of Rs. two hundred and fifty rupees' but in juxtaposition with the words 'without reasonable cause, malafidely or knowingly or obstructed'. The second proviso thereto further uses the words, 'reasonably and diligently'. The question which arises is when the imposition of penalty is dependent on such variables, can it be said to be mandatory or possible of calculation with mathematical precision. All the expressions used are relative in nature and there may be degrees of, without reasonable cause, malafide, knowing or reasonableness, diligence etc. We are unable to bring ourselves to hold that the aforesaid provision intends punishment on the same scale for all degrees of neglect in action, diligence etc. The very fact that imposition of penalty is made dependent on such variables is indicative of the discretion vested in the authority imposing the punishment. The Supreme Court in *Carpenter Classic Exim P. Ltd. v. Commr. of Customs (Imports)*, (2009) 11 SCC 293 was concerned with Section 114 A, Customs Act, 1962 which also used the word 'shall' in conjunction with expression 'willful misstatement or suppression of facts'; it was held that provision of penalty was not mandatory since discretion had been vested in the penalty imposing authority. Similarly in *Superintendent and Remembrancer of Legal Affairs to Government of West Bengal v. Abani Maity*, (1979) 4 SCC 85, the words 'shall be liable for confiscation' in section 63(1) of Bengal Excise Act, 1909, were held to be not conveying an absolute imperative but merely a possibility of attracting such penalty in spite of use of the word 'shall'. It was held that discretion is vested in the court in that case, to

impose or not to impose the penalty.

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."

3. In this case it is apparent that the CIC had in its discretion considered that a order cautioning the CPIO would be sufficient. This Court is not inclined to interfere with such exercise of discretion.

4. The petition is, accordingly, dismissed.

OCTOBER 10, 2017
RK

VIBHU BAKHRU, J