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

\+ W.P.(C) 5994/2017

SUNIL JASUJA ..... Petitioner

Through: Mr Abhimanyu Garg and Ms Preety Makkar, Advocates.

versus

CENTRAL INFORMATION COMMISSION ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **19.07.2017**

<u>CM No.24880/2017</u>

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>W.P.(C) 5994/2017</u>

3. The petitioner has filed the present petition, *inter alia,* praying that the respondent (CIC) be directed to dispose of the petitioner's Second Appeal filed under section 19 of the Right to information Act 2005 (hereafter 'the Act') in a time bound manner.

4. The petitioner, is essentially aggrieved as the petitioner's Second Appeal filed under the Act is pending for a period of 111 days and has not been disposed of. According to the petitioner, his appeal ought to have been considered and disposed of within a period of 45 days of filing the said appeal.

5. Although, the scope of the present petition is limited, nonetheless the Court has also examined the application dated 03.11.2016 (RTI application) filed by the petitioner as well as the CPIO's response thereto.

6. The petitioner has filed the RTI application posing several queries - seventeen in number - seeking information as to whether a banking company is permitted to own a web-based market place or retail portal; whether a banking company is permitted to authorize a third party to launch a website/mobile app and other similar enquiries in similar vein.

7. In addition, the petitioner had also sought information whether a banking company is required to sign any contract of non-disclosure with a non-affiliated third party for protection of data of its customers and whether a banking company can disclose the customer information to third parties.

8. The CPIO had submitted a reply to the said query clearly indicating that insofar as the queries relating to whether the permission were accorded to a banking companies to own a web based market place or retail portal etc. were concerned, no instructions had been issued in this regard. This clearly indicates that there were no documents which embodied any general instructions for granting permission or denying permission to banking companies. Insofar as the disclosure of customer information to third parties is concerned, the CPIO had answered the questions in some detail. The CPIO's response was by way of tabular statement, which and indicates the information sought and the CPIO's response thereto, is set out below for ready reference:

Query	Our Reply
a) Is a banking company permitted	We have not issued any instructions

to own a web-based market place or retail portal, in its own name, for allowing its customers to buy goods/services online? If yes, kindly provide the copy of the relevant Notification/Circular/Document.	in this regard.
b) Is a banking company permitted to authorise or commission a non-affiliated third party to launch a website/mobile app for creating a web-based market place (retail portal), on its behalf? Considering that the website/mobile app incorporates the banks name and logo. If yes, kindly provide the copy of the relevant Notification/Circular/Document.	We have not issued any instructions in this regard.
c) Is a banking company permitted to authorise or commission a non affiliated third party to launch a website/mobile app for creating a web-based market place (retail portal), on its behalf, and specifically for the banks customers? Also considering, that the owner of such mobile app/market place would be the non-affiliated third party. If yes, kindly provide the copy of the relevant Notification/Circular/Document.	We have not issued any instructions in this regard.
d) Is a banking company permitted to divert its customers, or advertise for the purpose of diverting its customers, to a	We have not issued any instructions in this regard.

	Market Place (retail portal) which is owned by a non-affiliated third party? Also considering when such a Market Place (retail portal) is created under the directions of the Banking Company. If yes, kindly provide the copy of the relevant Notification/Circular/Document.	
e)	Is a banking company permitted to give a non-affiliated third party the right to use its brand name and/or logo for creating a market place? Also considering that such a market place (retail portal) is owned by the non-affiliated third party. If yes, kindly provide the copy of the relevant Notification/Circular/ Document.	We have not issued any instructions in this regard.
f)	Does the creation of a web-based market place by a banking company (Mobile Apps) come under the scope of permissible Banking Business? i.e. Is a Bank allowed to own or direct the creation of a Market Place? If yes, kindly provide the copy of the relevant Notification/ Circular/Document.	We have not issued any instructions in this regard.
g)	Is a banking company permitted to tie-tip with web-based market places (owned by a non-affiliated third party vendors and merchants) for earning revenues and/or profits on a sharing basis? If yes, kindly provide the copy of	We have not issued any instructions in this regard.

the relevant Notification/Circular /Document.	
h) Is a banking company permitted to earn revenues/profits from online, web-based market places (retail portal) owned by non-affiliated third parties, by directing its own customers to such a website/app? If yes, kindly provide the copy of the relevant Notification/Circular /Document.	We have not issued any instructions in this regard.
i) Is a banking company permitted to earn revenues/profits from online, web-based, market places (retail portal) owned by non-affiliated third parties, but which have been exclusively commissioned or created at the request of the banking company? If yes, kindly provide the copy of the relevant Notification/Circular /Document.	We have not issued any instructions in this regard.
j) Is a Banking Companies permitted to enter into revenue-sharing Contracts with non-affiliated third parties for creating a web-based market place or retail portal, exclusively for the Banks customers considering that the said market place is owned by a non-affiliated third party? If yes, kindly provide the copy of the relevant Notification/Circular /Document.	We have not issued any instructions in this regard.
k) Are the Banking Companies permitted to share Personal Information such as name, email,	We have not issued any instructions in this regard. However, in terms of Section 16 of

	date of birth, phone number etc. of its customers to non-affiliated third parties? If yes, kindly provide the copy of the relevant Notification/Circular/Document.	our Master Direction on Know Your Customer (KYC), dated February 25, 2016, information collected from customers for the purpose of opening of account shall be treated as confidential and details thereof shall not be divulged for the purpose of cross selling, or for any other purpose without the express permission of the customer. Further, in terms of Section 56 of aforementioned Master Direction, a) Banks shall maintain secrecy regarding the customer information which arises out of the contractual relationship between the banker and customer. b)While considering the requests for date/information from Government and other agencies, banks shall satisfy themselves that the information being sought is not of such a nature as will violate the provisions of the laws relating to secrecy in the banking transactions. c) The exceptions to the said rule shall be as under: i. Where disclosure is under compulsion of law, ii. Where there is a duty to the public to disclose, iii. the interest of bank requires disclosure and iv. Where the disclosure is made with the express or implied consent of the customer. The aforementioned Master Direction is available on our website

	www.rbi.org.in under the link 'Notifications'.
l) What are the terms and conditions in which a banking company can share the personal information of its customers with non-affiliated third parties? If yes, kindly provide the copy of the relevant Notification/Circular/ Document/ Document.	Please refer to our reply to query no. k. Further, please find enclosed the exact of the copy of aforementioned Master Direction.
m) Is a banking company permitted to incorporate a payment gateway, not owned by the said banking company, for transactions to be made by its own customers? Considering that the website /app where the transaction is to take place incorporates the said banking company's name and logo. If yes, kindly provide the copy of the relevant Notification/Circular /Document.	We have not issued any instructions in this regard.
n) Is a banking company permitted to launch a website/mobile application or software, wherein it does not specify data policies/data security/ privacy policies and terms & conditions for the benefit of the users? Considering that the said website/mobile application is owned by a non-affiliated third party? If yes, kindly provide the copy of the relevant Notification/Circular /Document.	We have not issued any instructions in this regard.
o) Is a banking company permitted to launch a website/ mobile app,	We have not issued any instructions in this regard.

which is owned by a non-affiliated third party, but is for the sole use of the banking company's customers, and register users without incorporating any privacy policy and terms and conditions in such a website/app? If yes, kindly provide the copy of the relevant Notification/Circular/Document.	
p) Is a banking company required to disclose to its customers that a website/ app, carrying the brand name and logo of the banking company is owned by a non-affiliated third party? Considering that any/ all data captured in the website/ mobile app would make their data available to the non-affiliated third party. If yes, kindly provide the copy of the relevant Notification/Circular/Document/ Document.	We have not issued any instructions in this regard.
q) Is a banking company required to sign any contract or disclosure agreement with a non-affiliated third party, which is developing a web-based marketplace/website/mobile app for a bank, regarding the protection of data of the banking company's customers? Considering that only the banking company's customer will use the said marketplace/website /mobile app, and that the marketplace/website/ mobile app	We have not issued any instructions in this regard.

would be owned and operated by the non-affiliated third party. If yes, kindly provide the copy of the relevant Notification/ Circular/ Document/ Document.	

9. Apparently, the petitioner was dissatisfied with the response and preferred a First Appeal before the First Appellate Authority (FAA), *inter alia,* on the following grounds:-

> " a. No proper information has been provided.
> b. The information provided is ambiguous and evasive.
> c. No reference to any provision of the Banking Regulation Act, 1949, or any circular or notification of RBI has been provided.
> d. No relevant documents as sought have been provided."

10. The said appeal was considered by the FAA and was rejected. The FAA noticed that the Act does not envisage the role of an FAA as an alternate supplier of information and is limited to considering whether the CPIO's response is in accordance with the Act.

11. It is apparent that the information sought by the petitioner had been answered by the CPIO in conformity with the Act. In the circumstances, the FAA found no reason to interfere with the order of the CPIO.

12. Clearly, the endeavour of the petitioner is to seek further details regarding the stand of the Reserve Bank of India with regard to the points as indicated in the RTI application. However, the CPIO can only give information (as defined under section 2(f) of the Act) as available with the Reserve Bank of India.

13. In the present case, the CPIO has unequivocally stated that no instructions have been issued by the RBI in regard to inquiries raised by the petitioner and thus there is no further information that could be provided by the CPIO in response to the petitioner's queries. The CPIO was not required to give any opinion or to issue any clarifications. It was also not necessary for the CPIO to refer to any provision of the concerned statutes/laws.

14. This court is conscious that it is not called upon to comment on the decision of the FAA or on the petitioner's grievance with regard to the information provided by the CPIO in these proceedings; however, since the petitioner has approached this Court and this Court has heard the counsel and examined the petitioner's grievance, this Court is constrained to observe that the petitioner's appeal before the FAA and CIC is wholly bereft of any merit. The relief as prayed for - that is to direct the CICI to dispose of the petitioner's appeal expeditiously - also cannot be grated; first of all for the reason that the appeal is unmerited and secondly, because this court is unaware as to the pendency of matters before the CIC and it would not be apposite to give any such directions except in cases where any ground for urgency is established.

15. No further orders are required to be passed in this petition. The petition is disposed of with the aforesaid observations.

VIBHU BAKHRU, J

JULY 19, 2017
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