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

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Judgment delivered on: 24.01.2017

+ W.P.(C) 624/2017

B.B. DASH

..... Petitioner

versus

CENTRAL INFORMATION COMMISSION & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Aditya Singh with Mr. Raju Dalal, Advocates.

For the Respondents : None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

24.01.2017

SANJEEV SACHDEVA, J. (ORAL)

CM No. 2874/2017 (exemption)

Exemption is allowed subject to all just exceptions.

W.P.(C) 624/2017 & CM No.2873/2017 (stay)

1. The petitioner impugns order dated 22.11.2016, whereby, the CIC has held the petitioner – CPIO liable for not providing the information to the respondents. It has been held that the petitioner has failed to provide information without any cogent reasons. Maximum

penalty, as prescribed, of Rs.25,000/- has been imposed on the petitioner.

2. The respondent No.2 had filed an application under the Right to Information Act, 2005 (hereinafter referred to as the Act) dated 25.08.2015 seeking certain information. The reply to the said information was given on 28.09.2015. The queries and the replies thereto are as under:-

“ICAR-Proiect Directorate on Foot and Mouth Disease
Information sought under Right to Information on Foot and
Mouth Disease
3AB3 DIVA Statement of Cost Sheet for the year 2012-13 by
Dimpal Kaushik

The above referred Right to Information reads as under:

A: Please inform weather the above document and/or its contents are in the knowledge of ICAR Team at Headquarters at Krishi Bhawan, New Delhi (Yes or NO)?

Ans: It is an institute matter

B: When did this document and/or its contents come into knowledge of ICAR Team at Headquarters at Krishi Bhawan, New Delhi (DD/MM/YYYY)?

Ans: How the document from file was obtained?

C: Please provide the copy-of covering letter under which this price of Rs 196.9733333 per unit was disclosed to ICAR Team at Headquarters at Krishi Bhawan, New Delhi or to the appropriate financial body of ICAR?

Ans: It is an institute matter

D: Please provide the copy of the Minutes of Meetings' in which the figure of Rs 196.9733333 per unit was stated and recorded by ICAR and/or its institutes. Please provide all minutes and any observations/noting made?

Ans: NO minutes

E: Please provide the name and designation of the ICAR official(s) who had instructed and/or authorized PDFMD to hold and utilize all the funds of AICRP-FMD with regards to purchase of 3AB3 Indirect ELISA Kits without allocating the funds for purchase of 3AB3 Indirect ELISA Kits to individual FMD centers/network units/any other public institutes engaged in FMD Sero-surveillance?

Ans: It is an institute matter

F: Please provide the particulars and a photocopy of financial directive vide which ICAR has permitted PDFMD to hold and utilized all the funds of AICRP-FMD with regards to the purchase of 3AB3 Indirect ELISA Kits without allocating the funds to the individual FMD centres/network units/any other public institutes engaged in FMD Sero-surveillance for the purchase of 3AB3 Indirect ELISA Kits?

Ans: No purchase of kit for supply to AICRP center

G: Please provide the name and designation of the ICAR official(s) who had instructed and/or authorized PDFMD to issue 3AB3 Indirect ELISA Kits at no charge basis to the individual FMD

centers/network units/any other public institutes engaged in FMD Sero-surveillance?

Ans: It is an institute matter

H: Please provide the particulars and a photocopy of the directive/instruction vide which PDFMD has been authorized to issue 3AB3 Indirect ELISA Kits at no charge basis to the individual FMD centers/network units/any other public institutes engaged in FMD Sero-surveillance?

Ans: It is an institute matter”

3. Since the respondent No.2 was not satisfied with the reply given, a complaint under Section 18 of the Act was filed with the CIC. The said complaint under Section 18 culminated in proceedings under Section 20 of the Act leading to the impugned order dated 22.11.2016.

4. By the impugned order, the CIC has held as under:-

“5. We asked Dr. B. B. Dash, CPIO of Project Directorate on Foot and Mouth Disease to explain his reply dated 28.9.2015 in response to various queries of the RTI application, in which he disposed of most of the queries by stating that it was an institute matter. He explained that by institute, he meant the Project Directorate on Foot and Mouth Disease. Explaining, his reply to point A, he stated that while the price was calculated, it was not implemented and not communicated to the ICAR. He stated that, therefore, the answer to point A was 'no'. However, he failed to explain as to how his reply "It is an institute matter" could be construed as his having said 'no'. He was also

unable to explain the lack of a reply to the specific query at point B. He stated that the Complainant's representative, who represents Arsh Biotech, had worked with the Project Directorate on Foot and Mouth Disease on some technology issues and he (Dr. B. B. Dash) wanted to know as to how some unnamed document was obtained from the file. We see no relevance of the above to the query at-point B; Similarly, the queries at C, E, G and H were also disposed of by saying that these were institute matters. What the CPIO was required to do was to provide such information, as was available on records, in response to these queries. In response to point D, seeking copy of the minutes of the meetings in which the price figure per unit was stated and recorded by ICAR and / or its institutes, the CPIO stated that there were no minutes. The representative of the Complainant submitted that since the price was calculated, there would have been some records in this regard. Similarly, the response to point F did not cover the specific query contained therein.

6. *Dr. B. B. Dash, CPIO stated that the Complainant's company has gone to court in respect of another technology and has issued a legal notice to the Respondents in respect of the technology, which formed the subject matter of the RTI application dated 25.8.2015. On being asked to cite a specific Section of the RTI Act, under which information could be denied, the CPIO referred to Section 8 without mentioning any sub-section of Section 8. In response to our query, he stated that no court of law or tribunal has expressly forbidden disclosure of the information sought by the Appellant. He submitted that the matter is also under investigation in the ICAR, but*

made no submission as to how disclosure of the information sought by the Complainant would impede the process of investigation. Dr. Dash claimed that he did not receive Dr. Prakash's letter dated 30.10.2015 mentioned in paragraph 4 above. We find it difficult to believe that a letter from one office of the public authority did not reach another office.

7. *Taking into account the totality of the facts placed before us, the inescapable conclusion is that Dr. B. B. Dash, CPIO failed to provide the information without any cogent reason. The nature of his replies, to various queries in his letter dated 28.9.2015 shows that these were meant to circumvent the queries raised by the Complainant in her application. All this is a pointer to wilful denial of information. Therefore, in our view, this is a fit case for imposition of the maximum penalty of Rs. 25,000/- on Dr. B. B. Dash, CPIO under Section 20 (1) Of the RTI Act. Therefore, by virtue of the power vested in us in Section 20 (1) of the RTI Act, we impose the maximum penalty of Rs. 25,000/- on Dr. B. B. Dash, CPIO, Project Directorate on Foot and Mouth Disease. The Head of the Project Directorate on Foot and Mouth Disease is directed to ensure that the above amount of penalty is recovered in five equal instalments from the monthly pay of Dr. B. B. Dash, CPIO, beginning with his pay for the month of December 2016. The amounts so deducted should be remitted to the Deputy Registrar, Central Information Commission, Room No. 305, August Kranti Bhawan, Bhikaji Cama Place, New Delhi -110066 by way of Demand Draft drawn in favour of Pay and Accounts Officer, Central Administrative Tribunal, New Delhi.”*

5. Since to most of the queries, the response of the petitioner was “It is an institute matter”, the CIC sought an explanation from the petitioner as to what the response “It is an institute matter” meant. He explained that by institute, he meant the Project Directorate on Foot and Mouth Disease. He failed to render sufficient explanation with regard to his response. Taking into account the totality of the facts placed before the CIC, the CIC came to the conclusion that the petitioner failed to provide the information without any cogent reason. The CIC came to the conclusion that the nature of his replies, to various queries showed that these were meant to circumvent the queries raised by the Complainant in her application, which amounted to wilful denial of information.

6. From the reply dated 28.09.2015, it is apparent that the petitioner has not responded to the queries raised by the respondents. The response given by the petitioner “it is an institute matter” does not convey any meaning to the applicant.

7. In response to an application, seeking information under the Act, the CPIO is to provide the information sought and in case the information is not liable to be provided on account of it being exempt, give sufficient reasons for denying the supply of information. Needless to state that the denial of information can only be in terms of the Act.

8. The response to the various queries “it is an institute matter”, neither answers the queries nor renders an explanation claiming exemption from providing information.

9. Perusal of the impugned order shows that the CIC has not erred in returning a finding that information sought has not been provided to the respondent No.2. No cogent explanation has been rendered for non-supply of the information. Thus, the order of the CIC dated 22.11.2016 cannot be faulted.

10. In view of the above, I find no merit in the petition. The petition is, accordingly, dismissed.

SANJEEV SACHDEVA, J

JANUARY 24, 2017
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