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

+ **W.P.(C) 8315/2017 & CM No. 34196/2017**

KRIPA SHANKER

..... Petitioner

Through: Ms Tripta Kanojia, Advocate.

versus

**LD CENTRAL INFORMATION COMMISSION
AND ORS**

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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18.09.2017

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 19.07.2017 (hereafter 'the impugned order'), whereby the Central Information Commission (CIC) had imposed a penalty of ₹25,000/- on the petitioner for failure to supply the information as sought by respondent no.4 under the Right to Information Act, 2005 (hereafter 'the Act').

2. Ms Kanojia, learned counsel for the petitioner advanced submissions on three fronts. First, she submitted that the CIC was considering a complaint that had been treated as Second Appeal under Section 19(3) of the Act and, therefore, no penalty would be imposed in such proceedings. She referred to the decision of the Supreme Court in *Chief Information Commissioner & Ors v. State of Manipur: 2012 (286) ELT 485 SC* in support of her contention that the procedures under Section 19(3) and under

Section 18 are different. Second, she submitted that there was no finding as to *malafide* or unreasonable conduct and, therefore, no penalty could be levied against the petitioner. She referred to the decision of this Court in ***Registrar of Companies and Ors. v. Dharmender Kumar Garg and Anr.*** **ILR (2012) VI DELHI 499** and drew the attention of this Court to paragraph 60 of the said decision wherein, this Court had held that merely because the CIC eventually finds that the view taken by the Public Information Officer (hereafter 'PIO') was not correct, it cannot automatically lead to issuance of Show Cause Notice under Section 20 of the Act and imposition of penalty. Lastly, she contended that the petitioner had been singled out for imposition of penalty, although the show cause notice was also issued to another CPIO.

3. A bare perusal of the impugned order indicates that respondent no.4 (who was the appellant before the CIC) had filed an application for disclosure of certain information regarding certain appeals filed before the Central Excise and Service Tax Tribunal (CESTAT). The said application was admittedly marked to the petitioner and he in turn marked the same to the Head Clerk. The First Appellate Authority (hereafter 'FAA') had also passed orders directing disclosure of information sought. Concededly, the information sought for was not supplied despite orders passed by the FAA to do so.

4. Respondent no.4 had, thereafter, filed a complaint regarding non supply of information despite orders being passed in his favour by FAA. The said complaint was treated by the CIC as a second appeal under Section 19(3) of the Act and it was directed that the information as sought for, be supplied. During the course of the proceedings, the CIC formed a view that

an inquiry regarding denial of information and for levy of penalty was warranted and, accordingly, issued a Show Cause Notice to the petitioner and another CPIO.

5. The petitioner responded to the said Show Cause Notice; clearly, admitting that the application for information along with the order passed by the FAA was received by the petitioner and had been marked to the Head Clerk, who failed to respond within the stipulated period. It is the petitioner's case that the Head Clerk was custodian of all RTI applications and, therefore, was in a better position to respond to the Show Cause Notice issued by the CIC.

6. The CIC had, thereafter, considered the said response and had concluded that there were grave violations of the provisions of the Act. The CIC concluded that it was not the Head Clerk who could be held responsible, but the PIO as he was charged with the duty to ensure that the information as sought is provided to the information seeker. In the present case, the petitioner had failed to provide any reason which would adequately justify failure to provide the information sought. The CIC after considering the matter found that the petitioner had dealt with the application and the order was passed by the FAA in a callous manner and accordingly, concluded that the petitioner was liable to be penalised under Section 20 of the Act.

7. The petitioner's contention that no penalty could be imposed as the proceedings before the CIC was treated as proceedings under Section 19(3) of the Act, is unmerited.

8. A plain reading of section 20(1) of the Act indicates that if the CIC or the State Information Commission (SIC) at the time of deciding “*any complaint or appeal*” is of the opinion that the information has been withheld without any reasonable cause or incorrect or incomplete information has been given or that the information has been destroyed or the request of the information seeker has been obstructed in any manner, the CIC would be well within its jurisdiction to enquire into the matter and impose the penalty as specified under Section 20(1) of the Act.

9. The proviso to Section 20(1) of the Act, enjoins the CIC to give a reasonable opportunity to the concerned CPIO to be heard. And, admittedly, such opportunity was provided to the petitioner.

10. It is apparent from the plain language of Section 20(1) of the Act that the proceedings for levy of penalty can be undertaken while considering an appeal under Section 19(3) of the Act, and it is not necessary that a separate complaint under Section 18 be filed. The decision of the Supreme Court in the case of ***Chief Information Commissioner & Ors v. State of Manipur*** (*supra*) is not an authority for the proposition that the CIC cannot levy penalty in proceedings instituted under Section 19 (3) of the Act. In that case, the Supreme Court had observed that a complaint under Section 18 could not be treated as an appeal and, therefore, CIC would not have the jurisdiction to direct disclosure of information while examining a complaint under Section 18 of the Act.

11. If a person is aggrieved by denial of information, he would have the right to file a first appeal before the FAA and if aggrieved by the order of

the FAA, he can prefer a second appeal under Section 19(3) of the Act. These are the remedies provided under the Act for seeking information.

12. An information seeker can also file a complaint under Section 18 of the Act, in respect of matters set out in clauses (a) to (f) of section 18(1) of the Act, which includes a case where access to any information has been refused. In terms of Section 18(2) of the Act, if the CIC is satisfied that there is a reasonable ground to enquire into the matter, the CIC may initiate an inquiry with respect thereof. There is no provision in Section 18 of the Act, which enables the CIC to direct disclosure of information. However, the CIC has the power to commence proceedings for imposition of penalty in case of proceedings under Section 19(3) of the Act as is apparent from the plain language of section 20(1) of the Act.

13. The reliance placed by the learned counsel for the petitioner in the case of **Registrar of Companies** (*supra*) is also misplaced. Indisputably, merely because the view taken by a PIO is not correct, it would not lead to an inference that he is liable to penalty. There may be cases where the PIO is of the view that the information sought is exempt from disclosure under Section 8 of the Act. If this view is subsequently found to be incorrect, it would not necessarily mean that he would be subjected to penalty. The question of imposition of penalty depends on whether the conduct of PIO is reasonable and whether there is any *bonafide* justification for denial of information; penalty is levied only if it is found that the information was denied without reasonable cause.

14. In the present case, the FAA had already passed an order for

disclosure of information. Despite the same, the petitioner had not ensured that the information was supplied within the stipulated time. The conduct of the petitioner was examined and the CIC found that there is no reasonable justification for the petitioner's conduct.

15. This Court finds no infirmity with the view expressed by the CIC. The petition is, accordingly, dismissed.

SEPTEMBER 18, 2017
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VIBHU BAKHRU, J

