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

+ **W.P.(C) 621/2017& CM No. 2830/2017**

**PUBLIC INFORMATION OFFICER TIHAR
JAIL**

..... Petitioner

Through: Mr Satyakam, Addl. Standing
Counsel, GNCTD.

versus

OM PRAKASH GANDHI AND ANR

..... Respondents

Through: Mr O. P. Gandhi, Respondent no.1 in
person.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.02.2018

VIBHU BAKHRU, J

1. The petitioner impugns an order dated 29.09.2016 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC') in an appeal preferred by respondent no.1 under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act').

2. By the impugned order, the CIC has directed the jail authorities (Tihar Jail) to pay compensation to respondent no.1 at the rate of ₹2,500/- per day for the period of four days that he had been detained in custody despite being granted bail by the concerned Court. The jail authorities have also been directed to pay a cost of ₹1000/- to respondent no.1 for attending cases.

3. Mr Satyakam, the learned counsel appearing for the petitioner

contends that the impugned order is without jurisdiction and the CIC has no authority to award compensation for any unjustified incarceration alleged to have been suffered by respondent no.1.

4. Respondent no.1 was convicted of an offence under Section 138 of the Negotiable Instrument Act, 1881 for dishonour of cheque on the grounds of insufficiency of funds. On 26.11.2013, he was sentenced to undergo simple imprisonment for a period of one year and also a fine along with a fine of ₹5000/-.

5. Respondent no.1 was released from the Central Jail on 19.08.2014. According to the petitioner, respondent no.1 had completed his sentence on 15.08.2014 after accounting for the period remitted. However, respondent no.1 was also being tried by a trial court at Faridabad in another case and had been admitted to bail in that case.

6. According to the petitioner, respondent no.1 was required to be produced on various dates before the trial Court at Faridabad. However, the jail authorities had no communication as to the facts of that case. The petitioner claims that after respondent no.1 had completed the sentence, the jail authorities requested for obtaining an order from the Judicial Magistrate, First Class, Faridabad for release of respondent no.1 on 16.08.2014. Since, 17.08.2014 was a Sunday and 18.08.2014 was a gazetted holiday, the Jail Authorities were provided the necessary orders only on 19.08.2014 and respondent no.1 was released on the very same day.

7. Respondent no.1 disputes the same; according to him, he had completed serving his sentence on 02.08.2014 and was kept in detention for

a further period till 19.08.2014 without any authority of law.

8. This Court is not called upon to examine the merits of the above dispute. The only question that falls for consideration of this Court is whether the CIC had the jurisdiction to award compensation under Section 19(8) of the Act for unjustified incarceration.

9. The CIC had proceeded on the basis that in terms of Section 19(8) (b) of the Act, it had the authority to require any public authority to compensate a complainant for any loss or detriment suffered, notwithstanding, that the same is not attributable to denial of any information.

10. At this stage, it is relevant to refer to Section 19 (8) of the Act, which is set out below:-

“19. Appeal.-(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,-

- (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including-
 - (i) by providing access to information, if so requested, in a particular form;
 - (ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
 - (iii) by publishing certain information or categories of information;
 - (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
 - (v) by enhancing the provision of training on the right to

information for its officials;

- (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;
- (b) require the public authority to compensate the complainant for any loss or other detriment suffered;
- (c) impose any of the penalties provided under this Act;
- (d) reject the application.”

11. This Court is of the view that the aforesaid provision must be read in the context of Section 19 of the Act. Section 19 (1) of the Act provides for an appeal to the First Appellate Authority (FAA) against any order of any Central Public Information Officer or any State Public Information Officer. Section 19(3) of the Act provides for a second appeal before the CIC or the State Information Commission (SIC) against an order of the FAA. Section 19(8) of the Act expressly provides that the CIC or the SIC would, *inter alia*, have the power to require the public authority to take necessary steps for securing the provisions of the Act and also require a public authority to compensate the complainant for any loss or detriment suffered.

12. It is at once clear from the scheme of Section 19 of the Act that the provisions of section 19(8) of the Act are an adjunct to the power of the CIC or the SIC to consider the appeal against the decision of the FAA. Such power is relatable to the question of furnishing the information (or denial thereof) in accordance with the provisions of the Act. The provision of Section 19(8)(b) of the Act duly empowers the CIC or the SIC as an appellate authority to compensate a complainant for any loss or other detriment suffered. However, such loss or detriment suffered must necessarily be connected to or a consequence of denial of complete

information as sought for by such complainant. It is obvious that the CIC cannot take recourse to Section 19(8)(b) of the Act to provide compensation in relation to any other dispute that an information seeker may have with the public authority, which is not relatable or connected with the provisions of the Act.

13. In the present case, respondent no.1 had filed an application dated 13.10.2014 seeking certain information under the Act after he was released from custody. He filed another application dated 18.11.2014 seeking further information under the Act. The petitioner claims that the information as sought for by respondent no.1 under the aforementioned two applications (application dated 13.10.2014 and 08.11.2014) were provided to him. This is disputed by respondent no.1.

14. Respondent no.1 filed an appeal before the First Appellate Authority (FAA) under Section 19(1) of the Act which was disposed of on 24.11.2014. Respondent no.1 filed another appeal with regard to the same application (application dated 13.10.2014) and that too was disposed of on 12.12.2014. Respondent no.1 also filed an appeal in respect of his second application under the Act (application dated 08.11.2014), which was disposed of by an order dated 16.12.2014.

15. Respondent no.1 filed second appeals (two in number) under Section 19(3) of the Act before the CIC against the orders of the FAA relating to the aforesaid applications. These appeals were clubbed together and were disposed of by the impugned order.

16. Concededly, the award of compensation as made by the CIC is not

related to denial of any information as sought for by respondent no.1 by way of the said applications under the Act. As noticed above, these applications were made after the petitioner had been released from custody on 19.08.2014.

17. The CIC had awarded compensation to respondent no.1 for the alleged detriment suffered by him on account of his detention for a period of four days from 15.08.2014 to 19.08.2014 which, according to the CIC, was not justified. Clearly, the CIC has no jurisdiction to enter into the controversy whether respondent no.1's detention for the extended period was justified or not. This controversy is completely alien to and outside the purview of the Act.

18. In *N.T.P.C. Ltd. v. Mohd. Samad Khan* (2010) ILR 6 Delhi 55, this Court considered the power of CIC to require a public authority to compensate the complainant for any loss or detriment suffered and held as under:

“17. The ambit of the power under Section 19 (8)(b) has to be determined by the scope of the powers of the CIC generally under Section 19, and as an Appellate Authority in terms of Section 19 (1) to (8). The compensation payable under Section 19 (8)(b) is “for any loss or other detriment suffered”, on account of the denial of the information under the RTI Act and not just about any loss or detriment suffered by the applicant. In the context of the present case if the CIC had found that the Respondent was unfairly denied by the NTPC, the information sought for by him, the CIC was next to determine the precise loss suffered by the Respondent on account of such denial of information. Thereafter it could pass appropriate orders to compensate the Respondent for the loss or detriment suffered. In the present case, there is no finding by the CIC that the

NTPC had in its records a survey report which it unfairly denied to the Respondent. This factual determination was essential for the CIC to proceed to determine the loss suffered by the Respondent on account of the denial of such information. Thereafter under Section 19(8)(b) RTI Act it was in the discretion of the CIC to award compensation. Even while exercising that power a finding would have to be rendered by the CIC on the extent of loss, even approximately, suffered by the person to whom such information ought to have been furnished. This is because the compensation that has to be awarded under Section 19 (8)(b) is for the loss or the detriment suffered “on account of the denial of such information” and not just about any loss or detriment suffered by such person. There is no such determination by the CIC in the present case.”

19. In view of the above, the impugned order cannot be sustained and is, accordingly, set aside. However, it is clarified that this would not preclude respondent no.1 from making any claim for compensation in accordance with law.

20. The petition and the pending application are disposed of.

FEBRUARY 19, 2018

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VIBHU BAKHRU, J