

\$~13

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

+ **W.P.(C) 981/2017 & CM No. 4497/2017**

HIGH COURT OF DELHI THROUGH
REGISTRAR GENERAL

..... Petitioner

Through Mr Jayant K. Mehta, Ms Suveni Bhagat,
Mr Rahul Kukreti, Advocates.

versus

RK JAIN AND ANR

..... Respondents

Through Mr Rajveer Singh, Mr Sameer Gupta,
Advocates for R1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **16.08.2018**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 16.08.2016 passed by the Central Information Commission (hereafter 'CIC'), whereby the CIC has directed the petitioner to make available all orders passed by the First Appellate Authorities under Section 19 (1) of the Right to Information Act, 2005 (hereafter 'the RTI Act') as well as all replies furnished under the Right to Information Act in response to applications under the said Act, on its website within a defined time frame.

2. This Court has reservations as to whether such information was liable for disclosure under the RTI Act. However, without going into the said issue, it is apparent that the impugned order is not sustainable as there was no appeal pending before the CIC with respect to which any direction for disclosure of information could be granted.

3. Respondent no.1 had filed an application dated 04.03.2015 with the petitioner seeking the following information :-

“(A) Please provide copies of all First Appellate Authority's orders of Delhi H.C. under RTI passed from 1-10-2014 till date of providing the information in digital form on GD, for which applicant i.s. ready to pay prescribed fee of Rs.: per CD.”

4. The petitioner has responded to the aforesaid request on 27.03.2015 by stating as under :

“the orders passed by the First Appellate Authority are not available in hard copy and presently not available in digitized form, nor uploaded on the website of this Court. If you want hard copies of the same for the desired period, the same can be furnished or you may inspect the same on any working day after taking prior appointment from the Registrar (Establishment)/First Appellate Authority, Room No. 101, First Floor, Administrative Block, Delhi High Court, New Delhi.”

5. Respondent no.1 did not prefer any appeal against the said order; he filed a complaint under Section 18 of the RTI Act before the CIC instead. The CIC is the Authority constituted under Section 12 of the RTI Act and is required to perform the functions as specified under the RTI Act. In terms of Section 19 (3) of the RTI Act, the CIC has the jurisdiction to entertain a second appeal against an order passed by the First Appellate Authority. A plain reading of Section 19 of the RTI Act indicates that the CIC has no jurisdiction to entertain any appeal directly from the order passed by the CPIO/PIO. It is also well settled that while examining the complaint under Section 18 of the RTI Act, the CIC has no jurisdiction to direct disclosure of any information. This has been authoritatively settled by the Supreme Court

in *Chief Information Commissioner And Another v. State of Manipur and Anr.* : (2011) 15 SCC 1. The relevant extract of the said decision is set down below:-

“27. The question which falls for decision in this case is the jurisdiction, if any, of the Information Commissioner under Section 18 in directing disclosure of information.

28. In the impugned judgment of the Division Bench, the High Court held that the Chief Information Commissioner acted beyond his jurisdiction by passing the impugned decision dated 30th May, 2007 and 14th August, 2007. The Division Bench also held that under Section 18 of the Act the State Information Commissioner is not empowered to pass a direction to the State Information Officer for furnishing the information sought for by the complainant.

29. If we look at Section 18 of the Act it appears that the powers under Section 18 have been categorized under clauses (a) to (f) of Section 18(1). Under clauses (a) to (f) of Section 18(1) of the Act the Central Information Commission or the State Information Commission, as the case may be, may receive and inquire into complaint of any person who has been refused access to any information requested under this Act [Section 18(1)(b)] or has been given incomplete, misleading or false information under the Act [Section 18(1)(e)] or has not been given a response to a request for information or access to information within time limits specified under the Act [Section 18(1)(c)]. We are not concerned with provision of Section 18(1)(a) or 18(1)(d) of the Act. Here we are concerned with the residuary provision under Section 18(1)(f) of the Act.

30. Under Section 18(3) of the Act the Central Information Commission or State Information Commission, as the case may be, while inquiring into any matter in this Section has the same powers as are vested in a civil court while trying a suit in respect of certain matters specified in Section 18(3)(a) to (f). Under Section 18(4) which is a non-obstante clause, the Central Information Commission or the State Information Commission, as the case may be, may examine any record to

which the Act applies and which is under the control of the public authority and such records cannot be withheld from it on any ground.

31. It has been contended before us by the Respondent that under Section 18 of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under Section 18 is an order of penalty provided under Section 20. However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bona fide.

32. We uphold the said contention and do not find any error in the impugned judgment of the High court whereby it has been held that the Commissioner while entertaining a complaint under Section 18 of the said Act has no jurisdiction to pass an order providing for access to the information.”

6. In view of the above, the impugned order is set aside. It is clarified that this would not preclude respondent no.1 from availing of such remedies as available in law.

7. The petition and the pending application are disposed of in the above terms.

VIBHU BAKHRU, J

AUGUST 16, 2018

pkv