

\$~54

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

+ W.P.(C) 6383/2017 & CM No. 26406/2017

COMMODORE S K GUPTA Petitioner
Through: Mr Ankur Chhibber, Advocate.

versus

PAWAN KUMAR Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **20.09.2018**

1. The petitioner has filed the present petition impugning an order dated 25.11.2016 passed by the Central Information Commissioner (hereafter 'CIC'), imposing a penalty of ₹25,000/- on the petitioner. The said decision is premised on the CIC's findings that the CPIO's action amounts to obstruction of information attracting penal action under Section 20 of the Right to Information Act, 2005 (hereafter 'the RTI Act').
2. On 07.04.2012, the respondent had filed an application under the RTI Act seeking certain information. The said application was addressed to the CPIO, Deputy CAO (P & Legal), CAO (hereafter 'the first CPIO'). On 17.04.2012, the first CPIO forwarded the application to the office of Directorate of Administration (Civil) (hereafter 'DOA (Civ)'). On 18.04.2012, the said officer –DOA (Civ) –forwarded the same to the PIO (Navy), the petitioner herein.

3. On 25.04.2012, the petitioner sent a letter to the respondent stating that the information sought by him did not pertain to IHQ MoD (Navy).

4. Mr Chhibber, learned counsel appearing for the petitioner submitted that the petitioner had been called upon to respond to the respondent directly and, since the information did not concern the petitioner's department, he had informed the respondent that the information did not pertain to the MoD (Navy). He contended that the petitioner could not be penalised for not providing the information, as the same was not available in the concerned department. According to him, the information was pertained to the COA (Civil) and the other department referred to as 'NTRO'.

5. He further contended that the respondent's complaint was specifically against the first CPIO to whom the application was initially made and, therefore, no penalty could be levied on the petitioner.

6. This Court is not persuaded to accept the contention advanced on behalf of the petitioner. This is so for the reason that the petitioner had terminated the request made by the respondent by simply stating that the information was not available with the concerned department. Section 6(3) of the RTI Act enjoins the public authority to forward an application under the RTI Act to the appropriate public authority in case the information is not available with the said authority. Section 6(3) of the RTI Act is set out below:-

“6. Request for obtaining information –

XXXX

XXXX

XXXX

(3) Where an application is made to a public authority requesting for an information,-

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”

7. It is apparent from the facts as noticed above that what has happened in this case is that the respondent's application has been transferred from one department to another and finally terminated by the petitioner by simply stating that the information does not concern his department. Clearly, this is not a procedure that is envisaged under the RTI Act.

8. There is no dispute that the petitioner's application for information could not have been terminated in the manner it was done. Mr Chhibber also contended that the same was required to be forwarded by the First CPIO (to whom the application was initially made) to the appropriate department. This may be correct. However, this Court is not examining the action of other PIO's. The limited scope of enquiry in this petition is whether the

order passed by the CIC holding that the petitioner had obstructed the information and frustrated the respondent's application under the RTI Act warrants any interference. Clearly, the petitioner must bear the responsibility for its decision not to forward the application to the concerned department or even to return it to the First CPIO, to whom it was initially addressed but terminating the same. Indisputably, the effect of the petitioner's response to the respondent was that his application for information was disposed of. The request of citizen for information under the RTI Act cannot be treated in the manner that have been done.

9. The contended that respondent's complaint was specifically against the First CPIO and, therefore, no penalty could be levied on the petitioner, is unmerited. The language of Section 20(1) of the RTI Act is clear that if the CIC is of the view that the CPIO or the State Public Information Officer has refused to receive an application for information or has not furnished the information within the specified time or has malafidely denied or knowingly given incomplete or misleading information, which was subject matter of the request or has obstructed in any manner in furnishing of information, it shall impose a penalty. In the present case, the CIC while deciding the complaint had come to the, *prima facie*, view that the petitioner had obstructed furnishing of information. The petitioner was, accordingly, given a show cause notice as required under Section 20 of the RTI Act and had full opportunity to meet the allegations made against the petitioner. Merely, because the complaint was made referring to the First CPIO does not preclude the CIC to conducting an enquiry as required under Section 20 (1) of the RTI Act in respect of another PIO and come to an independent

conclusion.

10. Having stated the above, this Court is also of the view that imposition of the maximum penalty is not apposite. The penalty is accordingly reduced to ₹5000/- and the impugned order is modified to this extent.

11. The petition is, accordingly, disposed of. The pending application is also disposed of.

SEPTEMBER 20, 2018
MK

VIBHU BAKHRU, J