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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 27.01.2020

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Date of Decision: 14.05.2020

+ W.P.(C) 5638/2016 and CM APPL. Nos. 23385/2016, 24950/2017

+ W.P.(C) 1695/2018 and CM APPL. No. 10506/2019

MEENA SHARMA

..... Petitioner

Through Ms.Kruttika Vijay and Ms.Kaveri
Jain, Advs.

Versus

NAND LAL AND ANR

..... Respondents

Through Mrs.Girija Krishan Varma, Adv. for
R-1
Mr.Jasmeet Singh, CGSC for UOI.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (JUDGMENT)

W.P.(C) 5638/2016

1. This writ petition is filed by the petitioner seeking to impugn the orders dated 03.05.2016 and 11.03.2016 passed by the CIC.
2. The case of the petitioner is that the petitioner is a practicing lawyer in Delhi for the last 28 years. She has also been performing the duties as a Notary Public for the last 18 years. The petitioner has been furnishing annual returns to respondent No. 2 under the Notaries Act, 1952. It is further stated that the role of a Notary Public is of a confidential nature and the information in respect of notarization cannot be revealed to a third party.

Reliance is placed on Section 8(1) (d), 8 (1) (e) and Section 11 of the RTI Act, 2005 and Section 126 of the Indian Evidence Act, 1872.

3. It is stated that Sh. Nand Lal respondent No.1 alleged that his immovable property was transferred by an advocate and the concerned document was attested and authenticated by the petitioner. It is further alleged by the respondent Sh.Nand Lal that the petitioner in 2015 refused to provide any information pertaining to the transaction claiming it to be a third party information.

4. It is pleaded that on 08.05.2015, the petitioner received a communication from respondent No. 2, Ministry of Law and Justice forwarding an RTI Application. The said letter reads as follows:-

“An application under RTI Act, 2005 has been submitted in the Department seeking therein.

a) The serial number of first and last act performed by you for each of the years 2008, 2009, 2010, 2011, 2012 and 2013.

b) Copies of your Notary Register for the years 2008, 2009, 2010, 2011, 2012 and 2013.

The aforesaid information please be furnished to this Department at the earliest for providing the same to Shri Nand Lal in accordance with the provisions of the RTI Act, 2005.

Further, with reference to your letter dated 26.03.2015 forwarding therein the annual returns for the year 2008 to 2012, it is informed that Shri Nand Lal has claimed copy of the letter is enclosed, that the annual return for the year 2008 has not been provided by you. The Annual Report for the year 2008-2009, as submitted by you, is actually pertains to the year 2009 only and the Return for the year 2008 has not been provided at all. In this regard you are also requested to kindly furnish the annual report for the year 2008 for necessary compliance with

the order dated 20.2.2015 passed by the Information Commissioner in appeal no. CIC/SA/A/2014/00070 FILED BY Shri Nand Lal."

5. The petitioner in a reply dated 21.05.2015 however stated that the functions of a notary are confidential in nature. Reliance was placed on the statutory provisions of the RTI Act and the Evidence Act. It was urged that a third party has no locus to enquire about confidential information of hundreds of entries noted by a notary public in his register which are third party transactions.

6. It is further stated that as Sh. Nand Lal the respondent No.1 was enquiring about the old records, the petitioner started looking into the old records which were kept along with the disposed off matters. On searching, the petitioner found some of the records and documents were eaten by termites. Only the record for the year 2013 (half eaten by termites) could be cleaned and recovered. The petitioner lodged an FIR regarding the damage done to the records in PS Tilak Marg on 25.05.2015. Information to this effect was also sent to the respondent vide letter dated 04.08.2015.

7. On 07.04.2016, respondent No. 2 again sought the following information:-

"i. To furnish

- a) List of Notary Register damaged by termite,
- b) list of those survived termite attack.
- c) partially damaged register,
- d) Report of inquiry and action taken report on loss of registers due to termite along with the names of notaries and officers responsible for this serious negligence, whether the notary, the custodian of their registers, if reported to the CPIO about termite attack, alongwith the relevant papers, what action was taken.

ii. To produce remains of registers damaged by termite before the commission.

iii. To furnish the certified copies of the extracts from the notary registers as sought under points 3 and 4 of the RTI application.”

8. On 11.04.2016, the petitioner appeared before the CIC and made her submissions.

9. Vide order dated 11.4.2016 CIC observed that the Notary has a legal duty to protect and preserve records/Registers. If records are eaten by termites, the Notary owes an explanation to the people why she failed to prevent it. The CIC further held the petitioner to be a deemed PIO and issued a show cause as to why maximum penalty should not be imposed against her. The CIC by its order dated 03.05.2016 concluded that it was a glaring example of poor record maintenance leading to ‘inaccess’. It was noted by the Commission that this is a serious negligence, lethargy in complacency and preservation of the public records. It is also stated that the petitioner being a public authority could not show any system to protect the registers. It is also noted that neither the PIO nor the Notary showed any sign of regret or remorse about termite destruction. It was noted that the ground of ‘file missing’ or ‘not traceable’ or ‘eaten away by termites’ is a ground which has no legal base and amounts to breach of the Public Records Act, 1993. The impugned order concludes that the negligence is writ large and *res ipsa loquitor* applies. The public authority has a duty to initiate action. Based on the above, a penalty of Rs.25,000/- was imposed on the petitioner. The appellate authority was directed to recover the said amount from the salary of the petitioner-Ms.Meena Sharma. A direction was again

issued to the petitioner to provide annual returns of 2008 along with the attached documents. The petitioner was also directed to pay compensation of Rs.1,000/- to respondent No.1.

10. Respondent No. 1 has filed a counter-affidavit. In the counter affidavit, respondent No.1 states that an RTI application was filed with respondent No.2 in July, 2013 to obtain copies of the annual return submitted by the petitioner for the years 2008 to 2012. It is stated that after follow up, a response was received on 31.03.2015 from respondent No.2 PIO providing the returns obtained from the petitioner for five years i.e. from 2008-2012 but the returns of 2008 were deliberately missing. Thereafter, respondent No.1 on 08.04.2015 filed, a second RTI request seeking serial numbers of the first and the last act performed by the petitioner during 2008-2013 etc. It is pleaded that the petitioner and respondent No.2 should have ensured that the information is provided in compliance with the order of the CIC. It is pleaded that the petitioner is not only guilty of non-compliance of the order of the CIC but has deliberately denied the information and has blatantly concocted a false story of termites having eaten the government's key records.

Respondent No.2 has also filed its reply. It has been pleaded that the impugned order has failed to note that information sought was neither in the control or custody of the public authority. It is further pleaded that respondent No.2 had made all sincere efforts to provide necessary information to respondent No.1.

11. I have heard the learned counsel for the parties.

12. Learned counsel for respondent No.1 has vehemently argued that the petitioner is deliberately withholding the documents which are vital for the

case of respondent No.1.

13. It was put to the learned counsel for respondent No.1 as to how the documents are vital for the case of respondent No.1. It is pleaded that a civil litigation has been initiated by respondent No.1 against the person who happens to be a practicing lawyer and notary who had illegally tried to dispossess respondent No.1 from the property. Some documents termed as agreement to sell were created and got notarized from the petitioner in 2008. It is pleaded that to prove that these documents are fabricated, respondent No.1 seeks a copy of the said notorial register of the petitioner.

14. On 27.11.2019, this court passed the following orders:-

“The matter has been heard in part. Learned counsel for the respondent states that without prejudice to the rights and contentions, in case she is given the Registers and Returns for the years 2005-2007 and 2015-16 she has no objections if adverse directions passed against the petitioners by the CIC are quashed.

List on 9.12.2020.”

15. On 09.12.2019, thereafter this court passed the following orders:

“Learned counsel for the petitioner states that the records for the years 2005-2007 are not available as they are very old and are not traceable. Regarding the records for the years 2015-2016, she further submits that the petitioner has brought the said records in court. However, she further submits that the said records of the years 2015-2016 contain details such as names and other confidential information. Let copy of the record be handed over to the learned counsel for the respondents for the years 2015-2016 after redacting the necessary information.

List for further arguments on 17.12.2019.”

16. Learned counsel for respondent No.1 has vehemently argued that the

main records pertain to the years 2005-2007 which the petitioner is deliberately withholding the same.

17. Learned counsel for the petitioner however states that despite her best efforts, records for the years 2005-2007 are not available. The petitioner was asked to file a personal affidavit stating the non-traceability of the said records. The said affidavit has now been filed.

18. In terms of the Order dated 27.11.2019 the respondent No.1 had stated that he was agreeable to allowing of the Writ Petition/striking adverse comments against the petitioner provided he receives the Registers/Returns for 2005-07 and 2015-16. The respondent No.1 has received the records for 2015-16. The petitioner has filed an affidavit that the record for 2005-07 being more than fifteen years old is not traceable. In my opinion, in view of the order of this court dated 27.11.2019 nothing further survives in this matter. However, learned counsel for the respondent No.1 has vehemently argued that the writ cannot be disposed off as the petitioner is not giving correct facts regarding the record for the years 2005-07. In my opinion, in view of the affidavit filed by the petitioner this argument of respondent No.1 is baseless. It is not surprising that the petitioner is unable to locate her record which are 15 years old. The order dated 27.11.2019 stands complied with in substance and the impugned order to the extent it records a finding against the petitioner is liable to be quashed. However, in the interest of justice, I have examined the matter on merits also.

19. The order of the CIC dated 03.05.2016 has imposed a cost of Rs.25,000/- on the petitioner on the purported ground that it is a glaring example of poor record maintenance leading to 'inaccess'. Compensation of Rs.1000/- has also been awarded to respondent No.1.

20. Section 19(8) of the RTI Act reads as follows:-

(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.

21. Section 20 of the RTI Act reads as follows:-

“20. Penalties.—

(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading

information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.”

22. Hence, under section 20 of the RTI Act where the PIO has without any reasonable cause refused to furnish information within the specified time or malafidely denied the request for information or destroyed the information which was the subject of the request, a penalty of maximum of Rs.25,000/- can be imposed.

23. I may look at the settled legal position regarding imposition of penalty. A co-ordinate Bench of this court in *Majibur Rehman vs. CIC*, 2009 SCC Online 1149 held as follows:-

“10. A close and textual reading of Section 20 itself reveals that there are three circumstances, whereby a penalty can be imposed i.e.

- (a) Refusal to receive an application for information;
- (b) Not furnishing information within the time specified; and

- (c) Denying mala fide the request for information or knowingly given incorrect, incomplete or misleading information for destroying information that was the subject matter of the request.

Each of the conditions is prefaced by the infraction “without reasonable cause”. The CIC in its second impugned order dated 29.5.2006 clearly recorded that the 6th respondent did not furnish any reasonable cause for the delay and that this fact stood “established”. It desisted from imposing the penalty which it was undoubtedly competent to under Section 20(1). It, however, recommended that action should be taken against the concerned Public Information Officer i.e. the sixth respondent under Section 20(2). That part of the order is not in dispute.”

24. Reference may also be had to the judgment of a Co-ordinate Bench of this Court in the case of ***Registrar of Companies vs. Dharmendra Kumar Garg, ILR (2012) 6 Del 499*** where the Court held as follows:-

“61. Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a show-cause notice under Section 20 of the RTI Act and the imposition of penalty. The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a

sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”

25. Hence, it is only where the concerned functionary has not provided information without reasonable cause or for malafide reasons that penalty could be imposed.

26. In the present case, the CIC has imposed a penalty of Rs.25000/- on the petitioner noting as follows:-

“5. A notary who collects huge money through attestations cannot so negligently leave registers as food to termites. Notaries and Regulatory should understand that it amounts to irresponsibility towards records and inaction after the negligence is detrimental to 'governance'. Appointment of Advocate as Notary means that he/she is an agent of Government, to attest documentation on its behalf. The Department of Legal Affairs is 'the concerned authority' in appointing, regulating activities of notary, renewing and removing for misconduct. Preservation of records is the primary responsibility of the notary and this public authority, under Notary Act, Public Records Act and RTI Act.

20. Ms. Meena Sharma, the Notary and advocate cannot take advantage of termite attack, claim innocence and escape liability to disclose information as per RTI Act. Her written and oral representation reflected her negligent record management and carelessness towards access to Information also. Basic human foresight and prudence could reasonably anticipate the possibility of termites, and lack of It Is certainly a 'serious

negligence'. Her explanation In response to CIC show cause notice Is not satisfactory. She has also exhibited same attitude of negligence and RTI attitude during her presentation before the Commission.

21. This being a glaring example of poor record maintenance leading to "Inaccess", It Is difficult for Commission to Ignore this serious negligence, lethargy and complacence. The Commission, hence, takes serious note of negligence on part of Ms. Meena Sharma, the Notary and advocate In preservation of public record, not providing Information to the appellant and not complying with order of Commission. The Commission Imposes penalty of Rs. 25,000/against Ms.Meena Sharma.”

27. In my opinion, the above conclusions are misplaced. The contention that Notary collects huge money through attestation appears to be a misplaced conclusion. Most Notaries function under difficult conditions and the fees received cannot be termed to be 'huge money'. That apart, the record in question is of the year 2008. The RTI application was filed in 2015 or thereabout. Given the difficult conditions that Notaries work and given that no specific procedure was brought to the notice of the court prescribed for storing records, it is quite possible that termites may have damaged the relevant record. This explanation cannot be brushed aside as being a negligent act.

28. The petitioner has clearly stated that the relevant record has been eaten by termites. This has been stated on affidavit. The petitioner is a practicing advocate with 23 years experience. I do not see any reason to disbelieve the statement made on oath. Respondent No.1 except making bald allegation against the petitioner has also not been able to show any fact which would lead to the conclusion that the version of the petitioner is

wrong. The relevant records had been destroyed/bitten by termites. Hence, it cannot be said that the petitioner is guilty under section 20 of the RTI Act of having either destroyed information or has malafidely denied the request for information. The penalty has been wrongly imposed.

29. Regarding the direction imposing compensation of Rs.1000/- in view of the findings recorded above there are no grounds to direct payment of damage.

30. Accordingly, in my opinion, the impugned order suffers from material irregularity. The impugned orders to the extent it records findings against the petitioner and imposes a penalty and liability of compensation on the petitioner is quashed.

31. I may only add that some sketchy submissions were made by learned counsel for the parties as to whether a Notary Public is a Public Authority. I have not gone into the said issue in view of my above conclusions.

32. The petition is allowed with the above directions. All pending applications, if any, also stand disposed of.

W.P.(C)1695/2018 & CM APPL.NO.10506/2019

1. This Writ Petition is filed by the petitioner seeking an appropriate Writ to set aside the impugned order dated 5.1.2018 passed by the CIC. A direction is also sought for quashing the impugned order dated 29.1.2018 sent by respondent No.2 to the petitioner for compliance of the order of the CIC dated 5.1.2018.

2. This case pertains to an RTI application filed by respondent No.1 on 21.10.2016 whereby information was sought for the years 2005-2006, 2007, 2014, 2015 and 2016 till 30.09.2016. The petitioner apart from others sought certified copies of the Notarial Registers from the petitioners for the said

period.

3. By the impugned order dated 5.1.2018 CIC has directed respondent to call the petitioner Ms.Meena Sharma alongwith her Notary Registers for the said period in her office and offer inspection of the documents to respondent No.1. Pursuant to the said order of CIC dated 5.1.2018 the respondent No.2 has written to the petitioner on 29.1.2018 seeking compliance of the orders of CIC by the petitioner.

4. In view of my above judgment passed in W.P.(C)5638/2016 nothing further survives in this matter. As noted above, this court had on 27.11.2019 passed an order and noted the submission of learned counsel for the respondent that in case the Registers and Returns for the year 2005-07 and 2015-16 are given she has no objections if adverse directions passed against the petitioner by the CIC are quashed.

5. I have already recorded above the fact that the aforesaid order dated 27.11.2019 has been substantially complied with. The necessary information for the period 2015-16 after redirecting have been provided to respondent No.1. Regarding record for 2005-07, same is not available with the petitioner being very old and she has filed an affidavit to the said effect.

6. In view of the above, nothing further survives in this writ petition. The petition is accordingly disposed of setting aside the impugned order dated 5.1.2018 and consequential communications.

7. Petition and pending applications stand disposed of.

JAYANT NATH, J

MAY 14, 2020

rb/v/n