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

Date of Decision: 15th February, 2023

\+ **W.P.(C) 5074/2022 and CM APPL. 15068/2022**

UNION OF INDIA ..... Petitioner
Through: Mr. Ravi Prakash (CGSC), Mr. Varun Aggarwal & Mr Farman Ali, Advocates. (M:9469448888)

versus

R K BATRA & ORS. ..... Respondents
Through: Mr. R. Vasudevan, Advocate for R-1.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The Petitioner/Union of India through the Ministry of Finance is aggrieved by the order of the Central Information Commission (*'CIC'*) dated 11th August, 2021 by which the CIC has imposed a penalty and has also directed the Petitioner to give the information sought by the RTI applicant.

3. The RTI applicant sought the following information:

> *"(i) Indian Banks Association Report (2004),*
> *(ii) Whether the Indian Bank Association was directed by the Government of India to submit any report? If yes, kindly provide,*
> *a) A certified copy of the relevant order vide which Indian Bank Association was directed.*
> *b) Certified copy of the terms of reference on which the Indian Bank Association was directed to submit its report.*
> *c) The details of officials who had conducted the study and submitted the above report.*
> *(iii) Certified copies of the recommendations made in the Indian Banks Association Report (2004) and have*

> *been accepted by the Government of India.*
> *(iv) Whether the information pertaining to para 1 to 3 above available on website, in terms of Section 4(1)(b) of the RTI Act?*
> *a) if yes, kindly provide the URL link.*
> *b) If no, reasons available on record."*

4. The said information was not provided to the RTI applicant. The stand taken was that the certified photocopy of the Indian Banks Association (*'IBA'*) Report, 2004 relates to a third party viz., IBA. The publication, which is a priced publication would not fall within the definition of 'information' under Section 2(f) of the Right to Information Act, 2005 (hereinafter *'RTI Act'*). The remaining queries were also rejected. However, the URL link for IBA www.iba.org.in was provided. This was challenged by the RTI applicant and resulted finally, in the order of the CIC. The operative portion of the said order reads as under:

> *"6. The Commission after adverting to the facts and circumstances of the case, hearing both the parties and perusal of records, observed that information sought was not provided by the respondent. The respondent in defiance of the order of the Commission dated* ***20.1.2021*** *gave evasive and misleading reply and defied the unambiguous directions. The respondent during the course of hearing inter alia submitted that information sought on point no. 1 of the RTI application pertained to third party (IBA) and was a priced publication not falling within the definition of information as defined under section 2 (f) of the RTI Act. However, the representative of the appellant contended that IBA's Report 2004 was not priced publication as claimed by the respondent and if the same was available in public domain he was ready to pay the price for such document/information. The respondent was not sure as to whether IBA report was*

published or not. Thus, contention of the respondent was not sustainable in the eyes of law. Moreover, the case referred by the respondent is distinguishable to the facts of this case. Perusal of the records further reveals that the appellant has sought specific information and the same was not available in the market. The information sought was in the custody of the public authority, it was the duty of the public authority to provide the same under the RTI Act. Fee if any could have been realized from the appellant. Besides, the respondent also claimed that information pertained to IBA which is a private body. The definition of "information" as per section 2 (f) of the RTI Act inter alia includes the information relating to any private body which can be accessed by a public authority under any other law for the time being in force. It was evident that the said report was procured by the public authority i.e., Ministry of Finance, Department of Financial Service, in connection with reply given by the Hon'ble Mister in the Parliament. Any record which is available in the records of the public authority becomes, information which is in the custody of that public authority. Thus, the reply given by the respondent was not sustainable in the eyes of law. Hence, the respondent is directed to provide the information/reply to the appellant, within three weeks from the date of receipt of this order.

6.1. Further, written explanations given by Shri A.K. Ghosh, the then CPIO, Department of Financial Services, Ministry of Finance, New Delhi was not satisfactory. Shri A.K. Ghosh, the then CPIO, failed to discharge his responsibility under the RTI Act. The prompt transfer of the whole application to RBI, without application of mind was casual approach. This shows his bad intention to harass the citizens and finally delay & deny the information. But for the tenacity of some RTI applicants, officialdom of officers like in this case creates a blind wall in the way of *transparency in the affairs of the state. Such approach defeats the very object of the RTI Act. In view of this,Shri A.K. Ghosh, the then CPIO, Department of Financial Services, Ministry of Finance, New Delhi is found liable as per section 20 (1) of RTI Act and hence, a penalty of Rs.10,000/-(Rupees Ten Thousand Only) may be imposed on him. The penalty amount of Rs. 10,000/- shall be deducted from salary of Shri A.K. Ghosh, the then CPIO, by the Public Authority in two equal installments and paid by way of demand draft drawn in favour of "PAO, CAT", New Delhi and forward the demand drafts addressed to the Deputy Registrar (CR-II), email: dyreger2-cic@gov.in Room No. 106, First Floor, Central Information Commission, Baba Gangnath Marg, Munirka, New Delhi 110067. The first installment of penalty amount should reach the Commission by 15.10.2021 and the final installment should reach the Commission by 15.11.2021.With the aforementioned directions and observations, the appeal is disposed of*

Copy of the decision be provided free of cost to the parties"

5. The submission of Mr. Ravi Prakash, ld. Counsel is that IBA is a private body which has published its report. The same was neither commissioned nor sponsored by the Government. He relies upon the list of publications which are openly available on the IBA's website to submit that for a sum of Rs.75/- the said report can be obtained from the IBA. He further submits that the report was not sponsored by the Government and thus, none of the other queries could have been answered in any other manner than as stated in the reply of the CPIO. He prays that since the IBA is a private body and the information sought was duly answered, the imposition of penalty is not sustainable.

6. On behalf of the Respondent, ld. Counsel relies upon the statement

made by the Minister of State for Finance dated 5th January, 2018 to argue that, in the answer given to an unstarred question in Parliament, the Minister relied upon the discussions of various committees and their reports including the Narasimhan Committee Report (1998), Indian Banks' Association Report (2004), Planning Commission Report (2008), Leeladhar Committee (2008) and the Nayak Committee (2014), to answer certain queries. This in itself would show that the Government had sponsored this document.

7. From the list of publications placed on record or as available on the IBA website, it is clear that the report titled ***Consolidation in Indian Banking System, 2004*** is available for a sum of Rs.75/-.

8. The CPIO had clearly replied to the RTI applicant that, the information sought seeking relevant orders, terms of reference, officials who conducted the study etc., are not available with the Government. This is obvious considering that it is the stand of the Government that the IBAs report was a private report which was published on its own volition and the Government has not sponsored it or in any manner directed the publication of the said report. This has also been clearly pleaded in the writ petition in paragraph 9 and 10, the relevant portions of which reads as under:

> *"It is most respectfully submitted that IBA report asked for in the RTI application is a priced publication and available in the open market on paying a price of Rs. 75/- and a list of publications with their respective prices is available on the official website of IBA in regard to the same……."*
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> *10. However, vide the Impugned Order dated 11.08.2021, the CIC erroneously held that the CPIO, Dept. of Financial Services, in defiance of its Order dated 20.1.2021 has given an evasive and misleading reply. It is respectfully submitted that the said findings*

given by the CIC is based on assumption that the Petitioner is in custody of the IBA Report which is incorrect."

9. Ld. counsel submits that the report being openly available on the website, he has passed across a copy of the same to the Court. The report itself states that the IBA on its own decided to list out the issues that may arise while undertaking mergers and also suggested solutions to the problems. The said extract from the report is set out below:

> *"It can hence be seen from the recommendations of the Narasimham Committee that mergers of the public sector banks were expected to emanate from the managements of the banks with the Government as common shareholder playing a supportive role. Although there may not have been any specific directive from the Government or the Reserve Bank of India to the banks to explore the possibility of such mergers, the banks could have initiated a dialogue for such merger and sought Government's nod for the same. Be that as it may, to facilitate the process of consolidation, Indian Banks' Association decided to list out the issues that may arise while undertaking actual mergers and also suggest solutions to any problems that may be encountered."*

10. Since the report itself is publicly available and it states clearly that the IBA has published it on its own volition, the information sought would not constitute information under Section 2(f) of the RTI, Act as the same is not in the exclusive custody of any public authority. In view of the above, the impugned order of the CIC is not sustainable.

11. The copy of the report which has been shown by ld. Counsel, to the Court, has been made available to the RTI applicant. If the RTI applicant wishes to pursue any other remedies, if available in accordance with law.

The petition is allowed in the above terms. The penalty imposed is also set aside.

12. With these observations, the present petition, and all pending applications, are disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 15, 2023
dj/rp