



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

Date of decision: 03rd NOVEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 2398/2021**

POOJA V . SHAH

..... Petitioner

Through: Mr. Arpit Bhargava, Ms. Hina Bhargava, Ms. Amrita Dhawan and Mr. Pankaj, Advocates.

versus

BANK OF INDIA

..... Respondent

Through: Mr. Rahul Dubey, Mr. Srikanth Varma, Advocates.

+ **W.P.(C) 12912/2021**

POOJA V SHAH

..... Petitioner

Through: Mr. Arpit Bhargava, Ms. Hina Bhargava, Ms. Amrita Dhawan and Mr. Pankaj, Advocates.

versus

BANK OF INDIA

..... Respondent

Through: Mr. Rahul Dubey, Mr. Srikanth Varma, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. W.P.(C) 2398/2021 has been filed with the following prayers:

"a) Issue a writ of certiorari or any other appropriate writ thereby directing to set aside the order dated 15.06.2020 passed by CIC,

b) Issue a writ of certiorari or any other appropriate writ thereby directing to enhance/impose penalty on Respondent Bank CPIOs as per Section 20 (1) of RTI Act,



c) *Issue a writ of certiorari or any other appropriate writ thereby directing to pass order on Disciplinary action against Respondent Bank CPIOs as per Section 20 (2) of RTI Act,*

d) *Issue a writ of certiorari or any other appropriate writ thereby directing to take on record written submissions tiled by Petitioner to ensure justice is not only done but should also appear to be done and to prevent miscarriage of justice,*

e) *Issue a writ of certiorari or any other appropriate writ thereby directing to grant compensation to Petitioner for loss & detriment suffered as per Section 19 (8) of RTI Act,*

f) *Issue a writ of certiorari or any other appropriate writ thereby directing CIC to dispose of Second Appeals within a maximum period of 45 days as per law of precedence,*

g) *Issue a writ of mandamus or any other appropriate writ thereby directing Respondent to provide information under RTI Act 2005 as per the application dated 28.07.2017 filed by Petitioner,*

h) *Any other or further relief which this Hon'ble Court deems fit in favour of Petitioner and in the interest of justice."*

2. W.P.(C) 12912/2021 has been filed with the following prayers:

"a. *Issue a writ of certiorari or any other appropriate writ thereby directing to set aside the common order dated 14.01.2021 passed by CIC,*

b. *Issue a writ of certiorari or any other appropriate writ thereby directing to enhance/impose penalty against CPIO of Respondent Bank CPIOs in*



each of the 6 cases individually as per Section 20 (1) of RTI Act,

c. Issue a writ of certiorari or any other appropriate writ thereby directing to pass order on Disciplinary action against CPIO of Respondent Bank in each of the 6 cases individually as per Section 20 (2) of RTI Act,

d. Issue a writ of certiorari or any other appropriate writ thereby directing to take on record written submissions filed by Petitioner, to ensure justice is not only done but should also appear to be done and to prevent miscarriage of justice,

e. Issue a writ of certiorari or any other appropriate writ thereby directing to grant compensation to Petitioner for loss & detriment suffered as per Section 19 (8) of RTI Act,

f. Any other or further relief which this Hon'ble Court deems fit in favour of Petitioner and in interest of justice."

3. The short question which arises for consideration in both the Writ Petitions is regarding the interpretation of Section 20 of the Right to Information Act, 2005 (*hereinafter referred to as 'the RTI Act'*).

4. Facts of the cases reveals that the Central Information Commission (*hereinafter referred to as 'the CIC'*) by the Orders impugned herein has come to a conclusion that there was inaction on the part of the CPIOs of the Respondent Bank in furnishing information to the RTI applications filed by the Petitioner herein. Resultantly, the CIC has imposed a penalty of Rs.20,000/- on Mr. K. K. Gurnani (Rs.15,000/- *vide* order dated 14.01.2021 which is under challenge in W.P.(C) 12912/2021 and Rs.5,000/- *vide* order



dated 15.06.2020 which is under challenge in W.P.(C) 2398/2021) and of Rs.10,000/- on Mr. Makhan Gopal Agrawal (Rs.5,000 *vide* order dated 14.01.2021 which is under challenge in W.P.(C) 12912/2021 and Rs.5,000/- *vide* order dated 15.06.2020 which is under challenge in W.P.(C) 2398/2021).

5. It is the contention of the Petitioner herein that a reading of Section 20 of the RTI Act mandates a penalty of Rs.250/- for each day till the information is furnished subject to the condition that the total amount of such penalty shall not exceed twenty-five thousand rupees. According to the Petitioner since the delay in the present cases exceeds 100 days, maximum penalty of Rs.25,000/- ought to have been imposed on each of the CPIOs. It is stated that there is no power with the CIC to reduce the amount of penalty which is fixed by the Statute.

6. It is stated that the Petitioner herein booked two flats, being Flat no.C-2205 and C-2206, RNA, Royale Park from RNA Corp. Pvt. Ltd. Mumbai, Maharashtra. It is stated that when the RNA Corp. Pvt. Ltd. failed to hand-over the possession of the said flats to the Petitioner herein, the Petitioner approached the Maharashtra State Consumer Dispute Redressal Commission (*hereinafter referred to as 'the State Commission'*). It is stated that vide Order dated 30.03.2012 the State Commission directed the Builder to allot the said flats to the Petitioner herein. It is stated that an appeal was filed by the Builder against the Order dated 30.03.2012 before the NCDRC. NCDRC vide order dated 04.02.2013 directed the Builder not to create any third party interest on the abovementioned flats. It is stated that in violation of the order of the NCDRC, the Builder mortgaged the said flats with the Respondent herein. It is stated that on 16.02.2016 the Respondent herein took possession



of the abovementioned flats as the Builder was unable to pay back the loan. It is stated that the Respondent Bank initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and sold the abovementioned flats. It is stated that various RTI Applications were filed by the Petitioner with the Respondent Bank seeking information as to whether the Debt Recovery Tribunal had been informed about the stay order passed by the NCDRC or not. Since the information, as sought for by the Petitioner, was not provided by the CPIOs of the Respondent/Bank, the CIC passed the impugned orders imposing penalty on the CPIOs.

7. Petitioner has filed the present Writ Petitions contending that since the delay in providing information is of more than 100 days, the CIC ought to have imposed the maximum penalty of Rs.25,000/- , as mandated under Section 20 of the RTI Act, on each of the CPIO and that the CIC has no power to reduce the amount of penalty.

8. Section 20 of the RTI Act reads as under:

"Section 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.

(2) 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 and persistently, failed 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 recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him."

(emphasis supplied)

9. A perusal of Section 20 of the RTI Act shows that penalties can be imposed on the Public Information Officer if it is found that he/she has refused to receive an application for information or has not furnished information within the specified time or has 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. Section 20 of the RTI Act stipulates a maximum penalty of Rs.250 per day on the Public Information Officer. However, it does not mean that the maximum penalty has to be imposed on the Public Information Officer. The amount can vary depending upon the malice and the degree of inaction on the part of the Public Information Officer in not providing the information. What is mandatory is the imposition of penalty and not the quantum of penalty. The RTI Act only specifies the maximum limit of the penalty and not the minimum limit. It is nowhere mentioned that delay of each day will incur a penalty of Rs.250/-. The Petitioner is trying to construe that it is mandatory on the part of the Public Information Officers to pay Rs.250/- each day regardless of the degree of malice or inaction. Such an interpretation cannot be sustained. Since the degree of the penalty will depend and differ upon the knowledge of the Public Information Officer and the reasons as to why the Public Information Officer could not furnish the relevant information the submission of the Petitioner that it is mandatory to impose a penalty of Rs.250/- per day on the Public Information Officers for not furnishing the relevant information cannot be accepted.

10. The issue raised by the Petitioner herein is no longer res integra. The Division Bench of this Court in Anand Bhushan v. R.A. Haritash, **2012 SCC OnLine Del 1900**, has held as under:

"15. We may at the outset notice that a Division Bench of this Court in judgment dated 6th January. 2011 in LPA 782/2010 titled Central Information Commission v. Department of Posts, inspite of the argument raised



*that that Single Judge ought not to have reduced the penalty imposed by the CIC but finding sufficient explanation for the delay in supplying information, upheld the order of the Single Judge, reducing the penalty. Though Section 20(1) uses the word 'shall', before the words 'impose a penalty of Rs. two hundred and fifty rupees' but in juxtaposition with the words 'without reasonable cause, malafidely or knowingly or obstructed'. The second proviso thereto further uses the words, 'reasonably and diligently'. **The question which arises is when the imposition of penalty is dependent on such variables, can it be said to be mandatory or possible of calculation with mathematical precision. All the expressions used are relative in nature and there may be degrees of, without reasonable cause, malafide, knowing or reasonableness, diligence etc. We are unable to bring ourselves to hold that the aforesaid provision intends punishment on the same scale for all degrees of neglect in action, diligence etc. The very fact that imposition of penalty is made dependent on such variables is indicative of the discretion vested in the authority imposing the punishment. The Supreme Court in Carpenter Classic Exim P. Ltd. v. Commnr. of Customs (Imports), (2009) 11 SCC 293 was concerned with Section 114 A, Customs Act, 1962 which also used the word 'shall' in conjunction with expression 'willful misstatement or suppression of facts'; it was held that provision of penalty was not mandatory since discretion had been vested in the penalty imposing authority. Similarly in Superintendent and Remembrancer of Legal Affairs to Government of West Bengal v. Abani Maity, (1979) 4 SCC 85, the words 'shall be liable for confiscation' in section 63(1) of Bengal Excise Act, 1909, were held to be not conveying an absolute imperative but merely a possibility of attracting such penalty inspite of use of the word 'shall.. It was held that discretion is vested in the court in that case, to impose or not to impose the penalty.***



16. Once it is held that the quantum of fine is discretionary, there can be no challenge to the judicial review under Article 226 of the Constitution, of exercise of such discretion, of course within the well recognized limits. If this Court finds discretion to have been not appropriately exercised by the CIC, this Court can in exercise of its powers vary the penalty. In the facts of the present case, we find the learned Single Judge to have for valid reasons with which we have no reason to differ, reduced the penalty. We, therefore do not find any merits in this appeal and dismiss the same. No order as to costs."

(emphasis supplied)

11. Since the issue is fully covered, this Court is not inclined to decide on the quantum of the penalty imposed on the Public Information Officers. This Court is also of the opinion that adequate punishment has been given to the CPIOs who have now been made to pay the amount of penalty from their salary.

12. Accordingly, the Writ Petitions are dismissed. Pending applications, if any, also stands dismissed.

SUBRAMONIUM PRASAD, J

NOVEMBER 03, 2023

Rahul