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

+ **W.P.(C) 5432/2011 & CM APPL. 11070/2011**

SANJAY YADAV

..... Petitioner

Through: Mr. Vivek Kumar Tandon, Ms.
Perna Tandon, Mr. Darshnik Narang
and Ms. Mamta Tandon, Advocates.

versus

SACHIN SAPRA

..... Respondent

Through: Mr. Rohan Thawani and Mr. Pratul
Pratap Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

15.03.2024

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1. The Petitioner, who is a CPIO of MCD, has approached this Court challenging the Order dated 17.06.2011 passed by the Ld. Central Information Commission (CIC) imposing a penalty of Rs.250 per day i.e., Rs.25,000 which is the maximum penalty under Section 20(1) of the RTI Act for delay in supplying the information sought by the Respondent.
2. The Respondent herein had filed an application under RTI seeking the following information:

“1) What demolition action has been taken by the MCD against the unauthorized property no. C-1, D-10 and C-10 Rajouri Garden?

2) MCD's Demolition action on the properties is based on which of the following plan/document:-

- a) Original sanctioned Building plan of the property or*
- b) Regularized Building plan of the property,*
- 3) Point out/enumerate for which property are the basis/yardsticks for taking action?*



4) For properties, which have no plans on what basis/yardsticks MCD is taking action/intends to take action?

5) Provide date of sealing orders of property no. A-2/39, also provide the file no, sealing order, points sealed?

6) provide the building plan on the basis of which owners of property no.A-2/39 are carrying out fresh construction?

Is MCD aware of it if yes then what action is taken on such construction?

Also provide the information about whether the fresh construction can be allowed in the building u/s 345-A which is already sealed?

7) Property No. H-2

a) provide the copy of deviation booking file of above property. Whether deviation booking was done at the ongoing stage?

b) provide the detail of sealing demolition action taken by the MCD against the same Property?

c) provide the copy of the undertaking if any filed by owner of the said property to carry out self-demolition?

d) provide the location of the set backs in the property with their length from plot boundaries?

e) whether non-compoundable deviations still exist in the building at Plot No. H 2. provide the details of the same.

8) are restaurants and tyre repair shop allowed on mixed land use streets under MPD-2021? If yes, point out the MPD-2021 clause. If no, then why 2 restaurants at property no.'s A-2/132(Deez biryani) and J-I2/38(Pizza hut) and 2 wheel



alignment/balancing shops at J-19(BJS TYRE SPECIALIST) and J-9/18C(KIRAT CAR) are operating.

What steps MCD has taken for the closure of such shops?

9) provide the sanctioned building plan for the following properties on whose basis the construction is going on:-

- a) H-2 Rajouri Garden*
- b) F-13 Rajouri Garden*
- c) C-7 Rajouri Garden*
- d) C-4 Rajouri Garden”*

3. The information sought at serial Nos.1 to 8 was provided to the Respondent, however, there was a delay in supplying information sought at serial No.9. Reasoning given by the Ld. CIC for imposing the penalty of Rs.250 per day, subject to a maximum ceiling limit of Rs.25,000/- reads as under:

Relevant facts emerging during the showcause hearing on 17/06/2011:

Appellant: Mr. Sachin Sapra;

Respondent: Mr. Sanjay Yadav, EE-B(HQ) & Deemed PIO, Mr. R.K. Sharma, PIO & SE(B)(HQ); Mr. Kamleshwar Dayal, AE-B(HQ);

The Appellant at query-9 had sought copies of plans based on which construction was going on in four properties. The first 08 queries of the Appellant were to be answered by PIO/SE-I West Zone. As far as query-9 was concerned the plans were with Building Head Quarters and the PIO had demanded an additional fee of Rs.560/- to give the four plans based on which the construction was being carried out. The respondent states that the copies of the plans are also with the respective zones and they should also be willing to give the plans. Effectively the deemed PIO is stating that various officers in MCD are unwilling to part with authorized building plans for reasons which can be surmised.

The RTI application was made on 19/10/2010 and the demand for additional fee was sent on 15/11/2010. The appellant paid the additional fee of Rs.560/- on 30/11/2010 and the plans three plans were given to him on 31/03/2011. The PIO admits that he is aware that construction of a building has to be done within five years of sanctioning of a plan. The appellant was given three plans which had been sanctioned in 1999, 2001 and 1973 and the plan for one property was not provided. It clearly appears that there was a conscious to delay the information and after ensuring that some delay had occurred wrong information was provided. The Appellant had filed the second appeal before the Commission 10/02/2011 since by then he had not received any plan

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despite making the payment. Three plans which were not sought by him were provided to him after filing the second appeal. Only after the order of the Commission the four plans based on which the construction was ongoing were provided to the Appellant. One plan was given to him on 28/04/2011 and other three were given to him on 26/05/2011. From the facts of the case it appears clear that there was a conscious effort to delay providing the information to the Appellant. Section 20 (1) of the RTI Act states, "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." A plain reading of Section 20 reveals that there are three circumstances where the Commission must impose penalty:

- 1) Refusal to receive an application for information.
- 2) Not furnishing information within the time specified under sub-section (1) of section 7 – 30 days.
- 3) Malafidely denying the request for information or knowingly giving incorrect, incomplete or misleading information or destroying information which was the subject of the request
- 4) Obstructing in any manner in furnishing the information.

All the above are prefaced by the infraction, 'without reasonable cause'.

Section 19 (5) of the RTI Act has also stated that "In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request."

Thus if without reasonable cause, information is not furnished within the time specified under sub-section (1) of section 7, the Commission is dutybound to levy a penalty at the rate of rupees two hundred and fifty each day till the information is furnished. Once the Commission decides that there was no reasonable cause for delay, it has to impose the penalty at the rate specified in Section 20 (1) of the RTI Act and the law gives no discretion in the matter. The burden of proving that denial of information by the PIO was justified and reasonable is clearly on the PIO as per Section 19(5) of the RTI Act.

The correct plans should have been given to the appellant in December 2010 instead they were given to him in April-May 2011 as described earlier. There can be no reasonable cause for this. Since the delay in providing the information has been far over 100 days the Commission is imposing the maximum penalty of ₹25000/- under Section 20(1) of the RTI Act on Mr. Sanjay Yadav, EE-B(HQ) & Deemed PIO.

4. A perusal of the above, indicates that the maximum penalty has been



imposed only because of the delay for which probably there was no justification. Section 20 of the RTI Act, 2005 which deals with power of CIC to impose penalties reads as under:

“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.”

5. A reading of Section 20 of the RTI Act shows that it is not necessary for the CIC to impose the maximum penalty of Rs.250 for each day's delay. The delay should be attributed to malafides or the fact that there is no just cause at all or there is a complete absence of cause for delay.

6. This Court in Mujibur Rehman v. Central Information Commission, 2009 SCC OnLine Del 1149, has observed as under:

“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 fidely 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.”

7. The facts of the case reveal that the information to query No.9 had to be sought from another Department which has resulted in delay in providing the information and, therefore, it cannot be said that the Petitioner was personally interested in delaying the matter. In any event, more than 11 years have passed and the Petitioner has suffered enough by the pendency of the present writ petition for the last 11 years.

8. In the interest of justice, this Court is of the opinion that the penalty imposed by the Ld. CIC on the Petitioner, is to be set aside. Resultantly, the Impugned Order dated 17.06.2011 is set aside.

9. In view of the above, the writ petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 15, 2024

S. Zakir