



2025:DHC:3663



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment pronounced on: 13.05.2025

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W.P.(C) 17969/2024 & CM APPL. 76482/2024**NILADRI BHATTACHARYA**

.....Petitioner

Through: Mr. Saurabh Kansal, Mr. Suraj Kr.
Jha and Mr. Raghav Vij, Advocates.

versus

CPIO NATIONAL MEDICAL COMMISSION & ORS.

.....Respondents

Through: Mr. T. Singhdev, Ms. Anum Hussain
and Ms. Yamini Singh, Mr. Sourabh
Kumar, Advocates for R1 & R2.

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W.P.(C) 17999/2024 & CM APPL. 76575/2024**NILADRI BHATTACHARYA**

.....Petitioner

Through: Mr. Saurabh Kansal, Mr. Suraj Kr.
Jha and Mr. Raghav Vij, Advocates.

versus

CPIO NATIONAL MEDICAL COMMISSION & ORS.

.....Respondents

Through: Mr. T. Singhdev, Ms. Anum Hussain
and Ms. Yamini Singh, Mr. Sourabh
Kumar, Advocates for R1 & R2.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

1. The present petitions raise a common grievance viz. that the respondent no.1/Central Public Information Officer, Undergraduate Medical



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Examination Board, National Medical Commission (hereinafter referred as '*the CPIO*') should be directed under Section 20 of the Right to Information Act, 2005 (hereinafter referred as '*the RTI Act*') to compensate the petitioner for wilful non-compliance of its legal obligation and that the order dated 03.10.2024 (hereinafter '*the impugned orders*') passed by the Central Information Commission (CIC) be set aside.

2. The impugned orders have been passed in the conspectus of two applications dated 08.07.2023 and 19.09.2023 filed under the Right to Information Act, 2005. The said applications sought information pertaining to the action/steps taken by the National Medical Commission (hereinafter referred as '*NMC*') pursuant to complaint filed by the petitioner against the alleged failure of the North Bengal Medical College, West Bengal (hereinafter referred as '*NBMC*') to comply with the Anti Ragging Regulations.

3. The petitioner *vide* RTI application dated 08.07.2023 sought the following information:

"1. What steps were taken by the NMC till date regarding this particular complaint

2. Please provide all the letters/notices that were sent to the North Bengal Medical College regarding this particular complaint till date.

3. Please provide all the replies that were received from the North Bengal Medical College regarding this particular complaint till date.

4. Did NMC send any letter/notice regarding this complaint to the concerned university to which the concerned medical college is affiliated? If yes, Please provide the letters/notices that were sent and the replies thereof.



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5. Did NMC send any letter/notice regarding this complaint to the concerned State Health Ministry under which the concerned medical college come? If yes, Please provide the letters/notices that were sent and the replies thereof.”

4. Vide RTI application dated 19.09.2023, the petitioner sought the following information which reads as under:

“1) Please provide all the letters/documents/notices/emails that were sent to the concerned college till date.

2) Please provide all the replies that NMC received from the concerned college authority till date.

3) What actions up to now NMC has taken against the concerned college for not giving any reply to NMC letters?

4) Has NMC taken any action under section 7.5 of the Draft Regulations for the Prevention and Prohibition of Ragging in Medical Colleges/Institutions, 2021 in this matter?

5) Please mention the Regulation or Rule or instruction which restricted NMC to take any action against the concerned college, even after continuously not replying to NMC letters since 19.04.2023?

6) After sending how many letters, NMC may proceed with proper action against the medical college, in case they give no answers? Please also mention the Regulation or Rule or instruction regarding the same.

7) Please mention the Regulation or Rule or instruction which allows NMC to send more than 2 communications to a medical college if they are not furnishing any answer to NMC letters?

8) How many complaints were received in [https:// www.nmc.org.in/ActivitiWebClient/open/initiate](https://www.nmc.org.in/ActivitiWebClient/open/initiate) Anti Ragging Home, from the students North Bengal Medical College, West Bengal since 2019?

9) How many compliance reports did NMC receive from the concerned college regarding those complaints in the same time period as mentioned in question no. 08?

10) Please provide the information that since 2021, total how many times NMC has taken action under section 7.5 of the Draft Regulations for the



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Prevention and Prohibition of Ragging in Medical Colleges/Institutions, 2021 against any medical college in our country? Also mention the names of those medical colleges.

11) Please provide the name and designation of the officer who is handling my complaint since 18.03.2023?"

5. The office of the CPIO *vide* letters dated 08.08.2023 and 18.10.2023 informed the petitioner that the information sought by him has been forwarded to the concerned authorities at NBMC for further comments.

6. On the premise that the aforesaid replies were grossly inadequate, irrelevant and non-responsive, the petitioner filed first appeals before the First Appellate Authority, National Medical Commission (hereinafter referred as "the FAA")/respondent no.2. The said appeals came to be dismissed by the FAA *vide* orders dated 14.09.2023 and 08.11.2023.

7. *Vide* order dated 14.09.2023, while dismissing the appeal filed against order dated 08.08.2023 passed by the CPIO, the FAA held as under:

"2. I have gone through the documents file pertaining to disposal of your RTI application dated 08.07.2023. On perusal of the record, it has been observed that the RTI application was replied by CPIO, UGMEB, through online mode on 08.08.2023. A copy of the same is enclosed herewith for your ready reference.

In this regard, it is also stated that due to non-receipt of comments from the Medical College, a mail dated 13.09.2023 was also sent to the Principal, North Bengal Medical College for furnish their comments w.r.t Commission's letter dated 19.04.2023 & 04.08.2023.

3. The first Appeal stands disposed off accordingly. If you are not satisfied with the above decision, you can prefer second Appeal u/s 19 of RTI Act, 2005 before Central information Commission, CIC Bhawan, Baba Gang Nath Marg, Staff Quarters, Old JNU Campus, Munirka, New Delhi -110067 within a period of 90 days from the receipt of this order"

8. Similarly, the appeal filed against the response of CPIO dated



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18.10.2023 was dismissed by the FAA on 08.11.2023 while observing as under:

“I have gone through the documents/file pertaining to disposal of your RTI application dated 19.09.2023. On perusal of the record, as desired in RTI Appeal the point-wise information is as under:- ”

S. No.	Query	Reply
1.	Please provide all the letters/documents/notices/emails that were sent to the concerned college till date.	The requisite information has already been provided to the applicant.
2.	Please provide all the replies that NMC received from the concerned college authority till date.	In this regard, Under Graduate Medical Education Board has received a mail dated 05.06.2023, a copy of the same is enclosed herewith for your ready reference.
3.	What action upto now NMC has taken against the concerned college for not giving any reply to NMC letter?	The information sought in respect of point no. 4 to 7 is in form of queries, which do not form information within the provisions of RTI Act, 2005. As per RTI Act, CPIO is required to provide information as available with him in the form of O.M., notifications, rules, regulations, orders, letters and circulars, etc. Queries/ clarifications or interpretation of information is outside the purview of the Right to Information Act, 2005. The CPIO is not supposed to create information or to interpret information. For any grievance in the matter, you may write to concerned administrative ministry/department, which is a separate Public Authority.
4.	Has NMC taken any action under Section 7.5 of the Draft Regulation for the Prevention and Prohibition of Ragging in Medical Colleges/Institutions, 2021 in this matter?	
5.	Please mention the Regulation or Rule or instruction which restricted NMC to take action against the concerned college, even after continuously not replying to NMC letter since 19.04.2023?	
6.	After sending how many letters NMC may proceed with proper action against the medical college, in case they give no answer? Please also mention the Regulation or Rule or Instruction regarding the same.	
7.	Please mention the Regulation or Rule or instruction which allow NMC to send more than 2 communications to a medical college if they are not furnishing any answer to NMC letters?	

Signature Not Verified

Digitally Signed
By: ABHISHEK THAKUR
Signing Date: 16.05.2025
15:17:11

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8.	<i>How many complaints were received in http://www.nmc.org.in/Activit/WebClient/open/initiativeAnitRaggingHome, from the student North Bengal Medical College, West Bengal since 2019?</i>	No such data is maintained in UGMEB
9.	<i>How many compliances reports did NMC received from the concerned college regarding those complaints in the same time period as mentioned in question no. 08?</i>	
10	<i>Please provide the information that since 2021, total how many times NMC has taken action under section 7.5 of the Draft Regulations for the Prevention and Prohibition of Ragging in Medical College/ Institutions, 2021 against any medical college in our country? Also mention the names of those medical colleges.</i>	<i>The information sought in respect of point no. 10 &11 is in form of queries, which do not form information within the provisions of RTI Act 2005. As per RTI Act, CPIO is required to provide information as available with him in the form of O.M., notifications, rules, regulations, orders, letters and circulars etc. Queries/clarifications or interpretation of information is outside the purview of the Right to Information Act, 2005. The CPIO is not supposed to create information or to interpret information</i>
11.	<i>Please provide the name and designation of the officer who is handling my complaint since 18.03.2023?</i>	

9. Consequently, the petitioner filed second appeals before the CIC. The application filed by the petitioner under Section 18 of the RTI Act was dismissed *vide* order dated 03.10.2024 observing that there was no wilful concealment of information by the CPIO. The said impugned order reads as under:

“Decision:

Upon examining the facts of the case, it is noted that queries raised by the Complainant had been appropriately responded by the Respondent on the basis of available records, in terms of the RTI Act. Since the Complainant has chosen to file this Complaint under Section 18 of the RTI Act, the only question which requires adjudication is whether there was any willful concealment of information. From the records of the case at hand and averments of the Respondent, it appears that the Respondent has sent information available on records thereby negating any attempt



at deliberate suppression of information.

It is worthwhile to refer to the judgment of the Hon'ble Supreme Court of India in the case of Chief Information Commissioner and Another v. State of Manipur and Anr. in Civil Appeal Nos. 10787-10788 of 2011 dated 12.12.2011, relevant extract whereof is as under:

"...30. ...The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under Section 18 is an order of penalty provided under Section 20. However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bona fide."

31. We uphold the said contention and do not find any error in the impugned judgment of the High court whereby it has been held that the Commissioner while entertaining a complaint under Section 18 of the said Act has no jurisdiction to pass an order providing for access to the information."

In the given circumstances, the Commission finds that in the absence of any wilful or malafide denial or concealment of information by the Respondent, no further action under Section 18 of the RTI Act is warranted in this case.

The case is disposed off as such."

10. Similarly, the appeal filed by the petitioner under Section 19(3) of the RTI came to be dismissed by the CIC *vide* order dated 03.10.2024 on the ground that the response furnished by CPIO was appropriate and in consonance with the provisions of RTI Act. The said impugned order reads as under:

"Decision:

Perusal of records of the case reveals that the information available on record with the public authority in question and defined as information under Section 2(f) of the RTI Act, has been duly provided to the Appellant. Considering the fact that the written submission filed by the Respondent is self explanatory as such, the Respondent is directed to



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send a copy of the written submissions dated 20.09.2024 and 26.09.2024, to the Appellant, within two weeks of receipt of this order and submit a compliance report in this regard before the Commission within one week thereafter. Since the response sent by the PIO is appropriate and well within the precincts of the RTI Act, hence no intervention is warranted in this case, under the RTI Act.

The appeal is disposed off accordingly.”

11. It is the case of the petitioner that the CPIO deliberately sought to mislead and obstruct the timely supply of accurate information to the petitioner.

12. The learned counsel on behalf of the respondents submits that the information sought by the petitioner was duly provided to him by the CPIO. It is further stated that the petitioner has failed to establish as to how the CPIO's conduct/intentions were wilful or malafide.

13. The learned counsel for the respondent places reliance upon ***Sanoj V.K vs Bharat Petroleum Corporation Ltd. (BPCL), represented through by its Chairman & MD, Bharath Bavan and Others***, 2023 SCC OnLine Ker 8077 to contend that in the fact of the present case, the jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked for imposing penalty under Section 20 of the RTI Act since the competent authority for invoking the said provision is either CIC or State Information Commission ('SIC').

14. In the context of the factual matrix involved in the present case, I find merit in the contentions raised on behalf of the respondents.

15. It is evident from the record that all questions raised by the petitioner in the RTI applications, presently, in accordance with the provisions of the Act, stands answered and concluded. Moreover, the queries raised by the



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petitioner has also been separately replied by the NBMC *vide* letter dated 09.06.2023. Furthermore, the question as to whether the said answers were deliberately concealed/not provided by the CPIO was thoroughly examined and dealt with by the CIC before dismissal of the said appeals.

16. I find no infirmity in the impugned orders passed by the CIC. While imposing a penalty under Section 20 of the RTI Act, power vested with the CIC is to exercise judiciously and not mechanically even where it is established that the information is either delayed or withheld on a bonafide belief by the CPIO/PIO. The aforesaid view was reiterated by this Court in ***Registrar of Companies and Ors vs Dharmendra Kumar Garg and Anr***, 2012: DHC:3833. The same reads as under:

“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 showcause 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.”

17. Section 20 of the RTI Act 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.”



18. Under Section 20 of the RTI Act, it is incumbent upon the CIC or SIC to form an opinion as to whether the conduct of a CPIO/PIO is such that it will make him/her liable to imposition of penalty. Unless, there are exceptional circumstances, this Court would be loathe to interfere with the discretion exercised by the CIC or SIC in refusing to impose penalty.

19. This Court in **Anand Bhushan vs R.A Haritash**, 2012 SCC OnLine Del 1900 has held as under:

5. We have however recently vide our judgment dated 9th January, 2012 in LPA 764/2011 titled Ankur Mutreja v. Delhi University held that;

- a) the Act does not provide for the CIC to, in the penalty proceedings, hear the information seeker, though there is no bar also there against if the CIC so desires;*
- b) that the information seeker cannot as a matter of right claim audience in the penalty proceedings which are between the CIC and the erring information officer;*
- c) there is no provision in the Act for payment of penalty or any part thereof imposed/recovered from the erring information officer to the information seeker;*
- d) the penalty proceedings are akin to contempt proceedings, the settled position wherein is that after bringing the facts to the notice of the Court, it becomes a matter between the Court and the contemnor and the informant or the relator does not become a complainant or petitioner in contempt proceedings.*

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8. We have in Ankur Mutreja (supra) given detailed reasons for the conclusions aforesaid reached therein and which cover contentions 6(ii) to (viii) & (x) aforesaid of the counsel for the appellant herein and we do not feel the need to reiterate the same. We may only add that the role of the CIC, under the Act, is not confined to that of an Adjudicator. The CIC under the RTI Act enjoys a dual position. The CIC, established under Section 12 of the Act, has been, a) under Section 18 vested with the duty to receive and enquire into complaints of non-performance and non-compliance of provisions of the Act and relating to access to records under the Act; b) empowered under Section 19(3) to hear second appeals against decision of Information Officer and the First Appellate Authority;



c) empowered, under Section 19(8) to, while deciding such appeals, to require any public authority to take such steps as may be necessary for compliance of provisions of the Act; and, d) and is to, under Section 25 of the Act prepare annual report on the implementation of the provisions of the Act. The CIC thus, besides the adjudicatory role also has a supervisory role in the implementation of the Act.

9. The power of the CIC, under Section 20, of imposing penalty is to be seen in this light and context. A reading of Section 20 shows (as also held by us in Ankur Mutreja) that while the opinion, as to a default having been committed by the Information Officer, is to be formed 'at the time of deciding any complaint or appeal', the hearing to be given to such Information Officer, is to be held after the decision on the complaint or the appeal. The proceedings before the CIC, of hearing the Information Officer qua whom opinion of having committed a default has been formed and of imposition of penalty, are in our opinion, in the exercise of supervisory powers of CIC and not in the exercise of adjudicatory powers. As already held by us in Ankur Mutreja, there is no provision, for payment of penalty or any part thereof, to the information seeker. The information seeker has no locus in the penalty proceedings, beyond the decision of the complaint/appeal and while taking which decision opinion of default having been committed is to be formed, and at which stage the complainant/information seeker is heard.

10. The Supreme Court in Competition Commission of India v. Steel Authority of India Ltd., (2010) 10 SCC 744 held that the Competition Commission constituted under the Competition Act, 2002 discharges different functions under different provisions of the Act and the procedure to be followed in its inquisitorial and regulatory powers/functions is not to be influenced by the procedure prescribed to be followed in exercise of its adjudicatory powers. In the context of the RTI Act also, merely because the CIC, while deciding the complaints/appeals is required to hear the complainant/information seeker, would not require the CIC to hear them while punishing the erring Information Officer, in exercise of its supervisory powers.

11. We may reiterate that the complainant/information seeker has the remedy of seeking costs and compensation and thus the argument of 'being left remediless' is misconceived. However, 'penalty' is not to be mixed with costs and compensation.

12. We are also of the view that the participation of the information seeker in the penalty proceeding has nothing to do with the principle of



accountability.

13. Needless to say that if the information seeker has no right of participation in penalty proceedings, as held by us, the question of right of being heard in opposition to writ petition challenging imposition of penalty does not arise. We therefore hold that no error was committed by the learned Single Judge in reducing the penalty without hearing the appellant.

14. That brings us to the question, whether the penalty prescribed in Section 20 of the Act is mandatory and the scope of interference with such penalty in exercise of powers of judicial review under Article 226 of Constitution of India.

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*, in spite 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. Commr. 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



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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.

20. Further, this Court ***in Sunny Sachdeva vs ACP North RTI Cell and Another***, 2024 SCC OnLine Del 4961 while placing reliance upon ***Anand Bhushan vs R.A Haritash*** (supra) observed as under:

"6. In the opinion of this Court, the formation of opinion under Section 20(2) of the RTI Act is in the exercise of supervisory powers of CIC and not in the exercise of the adjudicatory powers. This Court is also of the view that the information seeker has no locus standi in penalty proceedings under Section 20 of the RTI Act. This Court is further of the view that the law laid down in Anand Bhushan v. R.A. Haritash, LPA No. 777/2010, decided on 29th March, 2012 is applicable to proceedings under both Section 20(1) and Section 20(2) of the RTI Act. Consequently, this Court is of the opinion that the CIC was well entitled in its discretion not to direct imposition of monetary penalty under Section 20(1) of the RTI Act, especially, when the information sought by the Appellant had been directed to be provided to him."

21. In the above circumstances, this Court finds no merit in the present petitions. The same are accordingly dismissed.

SACHIN DATTA, J

MAY 13, 2025/sl