

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: April 08, 2019

Judgment delivered on: April 29, 2019

+ W.P.(C) 11489/2016, CM No. 2470/2018

DR. DEEPAK JUNEJA

..... Petitioner

Through: Mr. Pankaj Singh, Adv. with
petitioner in person.

versus

CENTRAL INFORMATION COMMISSION

AND ORS.

..... Respondents

Through: Mr. Sanjeev Sagar, SC with
Ms. Nazia Parveen, Advs. for DDA

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 2470/2018

This is an application filed by the Delhi Development Authority seeking condonation of 120 days delay in filing the counter affidavit.

For the reasons stated in the application, the delay of 120 days in filing the counter affidavit is condoned and the same is taken on record. Application is disposed of.

W.P.(C) 11489/2016

1. The present petition has been filed by the petitioner

challenging the order dated March 08, 2016 passed by the Central Information Commission (in short 'CIC') whereby two complaints made by the petitioner under Section 18 read with Section 20 of the Right to Information Act, 2015 (in short 'RTI Act') were not entertained on the ground that both are composite petitions.

2. The facts as noted from the petition are that on January 20, 2015, the petitioner filed an RTI application with the CPIO, Ministry of Urban Development seeking information regarding public land in Delhi, where leases have expired and the lessee continues to be in possession of the land. The RTI application was transferred by CPIO, Ministry of Urban Development to Director (RTI), DDA on January 30, 2015. On March 03, 2015, the RTI application was transferred by Senior Research Officer, DDA, RTI to Deputy Director (Coordination) Lands. On March 10, 2015, RTI application transferred by Deputy Director (Coordination) Lands to 10 CPIO's including Group Housing and Commercial Lands. It is the case of the petitioner that on April 10, 2015, he received reply from CPIO (Group Housing), DDA allegedly containing list of 934 Group Housing Societies as enclosures but the enclosures were missing.

3. On May 02, 2015 a letter was sent by the petitioner to CPIO (Group Housing) for supplying the list of Group Housing Societies. On June 03, 2015 first appeal was filed before First Appellate Authority (Group Housing) asking for an order to the CPIO to provide the list of group housing societies. It is the petitioner's case that on June 20, 2015 the First Appellate Authority (Group Housing) instead of deciding the appeal and passing an order, in contravention of the RTI Act, transfers the first appeal to CPIO (Group Housing). On June 25, 2015 CPIO (Group Housing) reiterates that the list of group housing societies was provided and invites the petitioner to inspect the record in person.

4. On July 15, 2015 CPIO (Group Housing) provides the list of 934 Group Housing Societies running into 44 pages. It is the case of the petitioner that on perusal of the same, it is evident that the information supplied is grossly deficient and random from what was actually sought. On August 17, 2015 the petitioner files complaint before CIC against CPIO (Group Housing) and First Appellate Authority (RL) seeking imposition of penalty; recommendation of disciplinary action; compensation among others. On March 02, 2016, in his letter the CPIO (Group

Housing) reiterates that the list of Group Housing Societies was supplied and the petitioner did not attend the office for inspection of record. On March 08, 2016, the impugned order was passed by the CIC dismissing the complaint on the ground of being a composite petition.

5. Similarly, the facts regarding the second complaint of the same date i.e. August 17, 2015 are almost identical, inasmuch as in this case the RTI application was transferred by Senior Research Officer, DDA to Deputy Director (Coordination) Lands who transferred the application to 10 CPIO's including Group Housing and Commercial lands. On June 03, 2015 the first appeal filed before the First Appellate Authority (Commercial Lands) but it was not decided by the First Appellate Authority. On August 17, 2015 the petitioner files complaint before the CIC against CPIO (CL) and First Appellate Authority (CL) seeking imposition of penalty; recommendation of disciplinary action; compensation among others. Reply was received from First Appellate Authority (CL) alleging that the reply has been provided vide letter dated March 25, 2015 and the first appeal hearing was conducted on May 27, 2015 and order passed on May 29, 2015 alleging that the petitioner did not attend the

appeal hearing.

6. On September 22, 2015 petitioner responded to First Appellate Authority (CL) stating that the facts mentioned by him in the letter dated September 03, 2015 pertained to CPIO (Industrial) and that CPIO (CL) has not provided any reply till date and the First Appellate Authority himself did not disposed of the first appeal. On October 21, 2015 reply received from CPIO (CL) denying the information. On March 08, 2016 the order passed by the CIC holding that the complaint is composite petition.

7. It is the submission of the learned counsel for the petitioner that the impugned order passed by the CIC is illegal, inasmuch as the petitions were neither composite nor is the filing of the composite petitions barred under the RTI Act. The reasoning of the CIC that the RTI Act does not expressly provide for filing composite petitions is illegal, untenable, erroneous and arbitrary, inasmuch as the RTI Act encompasses in itself fundamental right enshrined under Article 19 (1)(a) of the Constitution and thus the right to file a complaint / appeal against the denial of information is inviolable part of that right. The right is only restricted to a reasonable extent by an existing law in the

interest of sovereignty, integrity of India, the security of State etc.

8. It was his submission that the petitioner had previously filed similar composite petitions before the CIC and the same were not objected to nor dismissed solely for the reason of being composite petitions. In fact, it is his submission that it is a common practice to register a complaints against the CPIOs and First Appellate Authorities for violation, like not mentioning their name, contact numbers, not transferring or disposing of the applications / appeals in time; demanding unreasonable fee / copying charges etc. He submitted that it is impractical and harassment of information seekers if such violations have to be filed separately as a complaint under Section 18(1) and appeal under Section 19(3) for non-disclosure of information. Such separate petitions would be a time, effort and cost consuming exercise that would only discourage the information seekers; embolden the CPIO and First Appellate Authority and also multiply the work load of the already overloaded CIC, reducing efficiency and performance. He submitted that it is an established principle of law that an aggrieved person must bring all possible grievances to a competent forum, capable of granting relief against all the grievances together rather than in piece meal

manner.

9. He stated that the CIC has erred in interpreting the provisions of RTI Act which makes Section 20(1) RTI Act redundant and meaningless. If penal action is not allowed on composite petitions and further elaborating and explaining in para 5 of the impugned order that relief under Sections 19(8)(b) and 19(8)(a)(v) can be provided in an appeal under Section 19(3) only while penal action under Section 20(1) and 20(2) can be provided only via a complaint under Section 18(1) or by way of an appeal is arbitrary. He submitted that even otherwise, the CIC has grossly erred in interpreting the provisions of the RTI Act in terming the complaints as devoid of merit in para 6 of the impugned order. The complaint against CPIO / First Appellate Authority (Group Housing) was filed for providing incomplete information which is a valid ground for making a complaint under sub Section (e) of section 18(1). The complaint against CPIO / First Appellate Authority (CL) was filed for not giving reply which is a valid ground for making a complaint under sub Sections (b) and (c) of Section 18(1). Thus, the decision of the learned CIC to term the complaints as devoid of merit is grossly erroneous and illegal as the petitions were dismissed on technical

grounds and not on merit. In support of his submissions, the learned counsel for the petitioner has drawn my attention to the provisions of Section 18, 19 and 20 of the RTI Act to contend that the impugned order is unsustainable and liable to be set aside. He prays that the matter be remanded back for decision on merit on the complaints filed by the petitioner.

10. On the other hand, learned counsel appearing for the Delhi Development Authority by drawing my attention to counter affidavit filed by him submitted that the CIC has rightly dismissed the complaints on the ground that the same are composite petitions inasmuch as reliefs sought were for compensation and training in terms of Sections 19 (8)(b) and 19(8)(a)(v) of the RTI Act and penalties under Section 20(1) and 20(2) of the said Act which are impermissible. Despite liberty being granted to institute separate petitions, the same have not been instituted by the petitioner. There is no occasion, for the petitioner to file the present writ petition impugning the order of the CIC.

11. According to him, as per law, each RTI petition has to be treated as separate and distinct petition and there cannot be any clubbing of matters based on different RTI applications.

Response to each RTI application being distinct, separate appeal and complaint is maintainable and therefore, there cannot be a composite petition based on different causes of action particularly where each RTI application is based on different cause of action.

He seeks the dismissal of the writ petition.

12. Having heard the learned counsel for the parties, the only issue which arises for consideration is whether the CIC was justified in rejecting the complaints filed by the petitioner under Section 18(1) read with Section 20 of the RTI Act. In other words, the petitioner has not filed an appeal as contemplated under Section 19(3) of the Act for seeking action under Section 19(8)(b) and under Section 19(8)(a)(v). Before I deal with the issue, it is necessary to reproduce the prayers made by the petitioner in his two complaints, as under:-

1st Complaint (Pages 20-22 of the paper book)

“(1) Imposition of Penalty on CPIO (GH) u/s 20(1) of the RTI Act for supplying incomplete information.

(2) Recommendation Disciplinary action against CPIO (GH) u/s 20(2) of the RTI Act.

(3) Imposition of penalty and recommendation of disciplinary action against FAA / Director (RL) for

not complying with the RTI Act and committing grave error of law by transferring the first appeal to CPIO. It must be further investigated by the commission as to how many more appeal were transferred by the said FAA in clear violation of the RTI Act.

(4) Provide compensation to the complainant by DDA u/s 19(8)(b) for the acts of its official to the tune of Rupees Fifty Thousand for the delay in supplying the information, supplying incomplete information and thus violating his fundamental right and also the mental agony and anguish caused to him.

(5) Order DDA to provide training to all its officials on the RTI Act u/s 19(8)(a)(v).”

2nd Complaint (Pages 23-24 of the paper book)

(1) Imposition of Penalty on CPIO (CL) u/s 20(1) of the RTI Act for not responding to the RTI application in violation of section 7(1) of the said Act.

(2) Recommend Disciplinary action against CPIO (CL) u/s 20(2) of the RTI Act.

(3) Imposition of penalty and recommendation of disciplinary action against FAA / Director (CL) for not complying with the RTI Act by not responding and adjudicating the first appeal.

(4) Provide compensation to the complainant by DDA u/s 19 (8) (b) for the acts of its official to the tune of Rupees Fifty Thousand for the delay in supplying the information and thus violating his fundamental rights and also the mental agony and anguish caused to him.

(5) Order DDA to provide training to all its officials on the RTI Act u/s 19(8)(a)(v).

13. From the perusal of the prayers made in the complaints by the petitioner it is clear that the petitioner had sought imposition of penalty under Section 20(1) of the RTI Act; recommendation of disciplinary action against the CPIO under Section 20 (2) of the RTI Act; recommendation of disciplinary action against First Appellate Authority / Director; for providing compensation by the DDA under Section 19(8)(b) and for providing training under Section 19(8)(a)(v) of the RTI Act.

14. In other words, it is noted that the petitioner apart from seeking action under Section 20(1) and (2) of the RTI Act has also prayed for grant of compensation in his favour under Section 19(8)(b) and providing training to officials under Section 19(8)(a)(v). On perusal of Section 20 of the RTI Act, it is clear that the penalty under Section 20 can be sought in a complaint as

well as in an appeal. But when a prayer for action under Section 19(8)(b) or 19(8)(a)(v) is made it can be sought only in an appeal, as the said provisions are part of section 19 which relates to appeal. The Supreme Court has in its judgment in the case of *Chief Information Commissioner and Ors. v. State of Manipur and Ors.*, MANU/SC/1484/2011 culled out the difference between Sections 18 and 19 of the Act. It was concerned with facts where appellant No.2 filed an application dated February 09, 2007 under Section 6 of the Right to Information Act for obtaining information from the State Information Officer relating to magisterial enquiries initiated by the Government of Manipur from 1980-2006. As the application under Section 6 received no response, appellant No. 2 filed a complaint under Section 18 of the Act before the State Chief Information Commissioner, who by an order dated May 30, 2007 directed respondent No. 2 to furnish the information within 15 days. The said direction was challenged by the State by filing a writ petition. The second complaint dated May 19, 2007 was filed by the appellant No. 2 for obtaining similar information for the period between 1980 - March 2007. As no response was received this time also, appellant No. 2 again filed a complaint under Section 18 and the

same was disposed of by an order dated August 14, 2007 directing disclosure of the information sought for within 15 days. That order was also challenged by way of a writ petition by the respondent State of Manipur. Both the writ petitions were heard together and were dismissed by a common order dated November 16, 2007 by learned Single Judge of the High Court by *inter alia* upholding the order of the Commissioner. The writ appeal was disposed of by the order dated July 29, 2010 wherein the Division Bench has held that under Section 18 of the Act the Commissioner has no power to direct the respondent to furnish the information and further held that such a power has already been conferred under Section 19(8) of the Act on the basis of an exercise under Section 19 only. The Division Bench further held that the direction to furnish information is without jurisdiction and directed the Commissioner to dispose of the complaints in accordance with law. The Supreme Court in an appeal by the Chief Information Commissioner, by referring to Sections 18 and 19 of the Act has in paras 37, 41, 42 and 44 held as under:

“37. We are of the view that Sections 18 and 19 of the Act serve two different purposes and lay down

two different procedures and they provide two different remedies. One cannot be a substitute for the other.

41. It is well-known that the legislature does not waste words or say anything in vain or for no purpose. Thus a construction which leads to redundancy of a portion of the statute cannot be accepted in the absence of compelling reasons. In the instant case there is no compelling reason to accept the construction put forward by the respondents.

42. Apart from that the procedure under Section 19 of the Act, when compared to Section 18, has several safeguards for protecting the interest of the person who has been refused the information he has sought. Section 19(5), in this connection, may be referred to. Section 19(5) puts the onus to justify the denial of request on the information officer. Therefore, it is for the officer to justify the denial. There is no such safeguard in Section 18. Apart from that the procedure under Section 19 is a time bound one but no limit is prescribed under Section 18. So out of the two procedures, between Section 18 and Section 19, the one under Section 19 is more beneficial to a person who has been denied access to information.

44. This Court, therefore, directs the appellants to

file appeals under Section 19 of the Act in respect of two requests by them for obtaining information vide applications dated 9.2.2007 and 19.5.2007 within a period of four weeks from today. If such an appeal is filed following the statutory procedure by the appellants, the same should be considered on merits by the appellate authority without insisting on the period of limitation.”

15. Having noted the position of law as laid down by the Supreme Court, it is clear that Sections 18 and 19 serve two different purposes; lays down two different procedures; and provide two different remedies.

16. So, in the case in hand, it must be held the prayer of the petitioner relating to grant of compensation (19 (8)(b)) / providing training (19 (8)(a)(v)) to the officials of the DDA, could have been prayed for only in an appeal under Section 19 of the RTI Act.

17. Insofar as the prayer for penalties under Section 20(1) and 20 (2) of the Act are concerned, the same could have been claimed in a complaint under Section 18 provided the case is made out on the grounds stipulated.

18. The aforesaid being the legal position, the petitioner could not have sought a prayer for compensation / for providing training stipulated in Section 19 by making a complaint under Section 18 read with Section 20 of the Act. To that extent surely the CIC was justified in holding that the petitions are composite. The CIC having dismissed the composite petitions being without merit, suffice it to state the petitioner is required to file an appeal under Section 19 with a prayer for grant of compensation under Section 19 (8)(b) and for a direction to provide training to the officials of the DDA under Section 19(8)(a)(v). So, it is for the petitioner to file a complaint under Section 18 and appeal under Section 19 incorporating the prayers as referred to above separately and distinctly. If such a complaint and appeal are filed the same shall be considered by the CIC in accordance with law. This position has also been held by the Coordinate Bench of this court in the case of *Kripa Shanker v. LD Central Information Commission and Ors. W.P(C) 8315/2017*, Para 12 whereof reads as under:

“12. An information seeker can also file a complaint under Section 18 of the Act, in respect of matters set out in clauses (a) to (f) of section 18 (1) of the Act, which includes a case where access to any information has been refused. In terms of Section 18(2) of the Act,

if the CIC is satisfied that there is a reasonable ground to enquire into the matter, the CIC may initiate an inquiry with respect thereof. There is no provision in Section 18 of the Act, which enables the CIC to direct disclosure of information. However, the CIC has the power to commence proceedings for imposition of penalty in case of proceedings under Section 19(3) of the Act as is apparent from the plain language of Section 20(1) of the Act.”

19. It is clarified here, wherever the limitation is prescribed, the same shall be condoned, provided the complaint / appeal are filed within four weeks from the receipt of copy of this order.
20. The writ petition is disposed of.

V. KAMESWAR RAO, J

APRIL 29, 2019/aky/jg