

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 12.09.2014

+ **W.P.(C) 6088/2014 & CM Nos.14799/2014, 14800/2014
& 14801/2014**

**MINISTRY OF RAILWAYS THROUGH
SECRETARY & ANR**

..... Petitioners

versus

GIRISH MITTAL

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr L.K. Passi, Advocate with Mr B.N. Kaithal.
For the Respondent : None.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

CM No.14800/2014 & 14801/2014

Exemption is allowed subject to all just exceptions. The applications stand disposed of.

W.P.(C) No.6088/2014 & CM No.14799/2014 (Stay)

1. The petitioners have filed the present petition impugning orders dated 11.03.2013 and 04.04.2014 (hereinafter referred to as the 'impugned orders') passed by the Central Information Commissioner (CIC). By the impugned order dated 11.03.2013, the CIC held that information sought by the respondent had not been provided and earlier orders of the CIC had also not been complied with. The petitioners sought a review of the order dated

11.03.2013, which was rejected by the CIC by the impugned order dated 04.04.2014, on the ground that the CIC did not have any power to review its decisions.

2. The petitioners have assailed the impugned order dated 11.03.2013 contending that the CIC erred in imposing penalty pursuant to proceedings that had been filed by the respondent directly before the CIC without approaching the First Appellate Authority (FAA). It was submitted that a direct appeal against denial of information by Central Public Information Officer (CPIO) or a grievance with regard to non-supply of information could not be agitated before the CIC without first exhausting the remedies of appeal before the FAA. It was contended that, in these circumstances, the penalty imposed by CIC was without jurisdiction.

3. It was further contended that in the given facts and circumstances of the case, the CPIO could not be held liable or responsible for not providing information since the CPIO had forwarded the request of the respondent to the concerned departments. The learned counsel for the petitioners relied upon Section 6(3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') to contend that a CPIO is required to transfer an application for information to the concerned authority and cannot be expected to pursue the matter thereafter. It was, thus, submitted that the CIC had erred in imposing of penalty on petitioner no.2.

4. I have heard the learned counsel for the petitioners.

5. Section 20 of the Act provides for imposing penalty on a Central Public Information Officer or a State Public Information Officer. The

opening sentence of Section 20(1) of the Act clearly indicates that in given cases penalty may be imposed where the CIC “*at the time of deciding any complaint or an appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer*” has without reasonable cause refused to receive an application or failed to furnish the information within the specified time. Section 20(1) of the Act is quoted below:-

“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.”

6. It is apparent from the language of Section 20(1) of the Act that the CIC can impose a penalty at the time of deciding any appeal or complaint. The functions of the CIC and/or the State Information Commission are specified under Section 18 of the Act. Section 18(1) of the Act is relevant and is quoted below for ready reference:-

“18. Powers and functions of Information Commission.—(1) *Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission as the case may be to receive and inquire into a complaint from any person,—*

- a) *who has been unable to submit a request to a Central Public Information Officer, or State Public Information Officer as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or Senior Officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;*
- b) *who has been refused access to any information requested under this Act;*
- c) *who has not been given a response to a request for information or access to information within the time limits specified under this Act;”*

7. Plainly, Section 18 of the Act enjoins the CIC to *inter alia* inquire into a complaint from any person who has been refused access to any information requested under the Act. In view of the unambiguous language

of the provisions of the Act, the contention that CIC lacks the jurisdiction to impose a penalty on a complaint is *ex facie* without merit. The plain language of Section 20(1) of the Act indicates that it is not necessary that the penalty be imposed by the CIC only while considering an appeal; penalty can also be imposed by the CIC if on inquiry made pursuant to a complaint, it is found that a CPIO has not furnished the information in time or has knowingly given incorrect or incomplete information. Therefore, in my view, the jurisdiction exercised by CIC cannot be faulted.

8. The next question that needs to be addressed is whether petitioner no.2 could escape the penalty by contending that it had forwarded the request to various departments. The facts relevant to consider this contention are that the respondent filed an RTI Application dated 17.01.2011 with the CPIO of Railway Board seeking information on fifteen points including information relating to Garib Rath trains in all zones of the Railways. As no information was received, the respondent on 02.03.2011 filed a complaint (being No. F.No.CIC/AD/C/2011/000621) with the CIC under Section 18 of the Act. Thereafter, on 23.03.2011, the CPIO transferred the RTI Application to RDSO, Lucknow. The respondent filed an appeal before the FAA on 18.04.2011 alleging that Railway Board itself was the custodian of information sought by him with respect of 10 points - listed as points (e) to (o) in his application - and CPIO had transferred his application with a *mala fide* intention. The respondent did not receive any response from the FAA and filed an appeal (being No.CIC/AD/A/2011/001870) before the CIC on 25.07.2011.

9. Subsequently, by an order dated 30.09.2011, the CIC disposed of the complaint of the respondent dated 02.03.2011. The relevant extract of the said order is as below:-

“2. In order to avoid multiple proceedings under section 18 and 19 of the RTI Act, viz., appeals and complaints, it is directed as follows:

*i) **Directions to CPIO** Railway Board New Delhi is directed as follows:*

- a) In case no reply has been given by CPIO to the complainant to his RTI request dated 17.1.1.1 CPIO should furnish a reply to the complainant **within 1 week** of receipt of this order.*
- b) In case CPIO has already given a reply to the complainant in the matter, he should furnish a copy of his reply to the complainant **within 1 week** of receipt of this order.*
- c) CPIO should invariably indicate to the complainant the name and the address of the 1st Appellate Authority, before whom the appellant can file first appeal, if any.*

*ii) **Directions to Petitioner:***

- a) If the complainant is aggrieved with the reply received from CPIO, he, under section 19(1) of the RTI Act, may within the time prescribed file his first appeal before the 1st AA, who would dispose of the appeal under the relevant provisions of RTI Act.*
- b) If the complainant is still aggrieved with the decision of AA, he may approach the Commission in 2nd appeal under section 19(3) along with the complaint u/s 18, if any, within the prescribed time limit.*

*iii) **Directions to AA** : On receipt of the 1st appeal from the petitioner as per the above directions, AA should dispose of the appeal within the period stipulated in the RTI Act.”*

10. The appeal filed by the respondent on 25.07.2011 was heard by the CIC, subsequently, on 20.10.2011. During the course of hearing, the officials from the RDSO, Lucknow, produced a copy of the reply dated 01.04.2011 which indicated that information relating to point 3 had been furnished. It was also submitted that the other queries pertained to the Railway Board. Therefore, by an order dated 20.10.2011, the CIC disposed of the appeal and directed petitioner no.2 to provide information to the respondent on the remaining queries.

11. Thereafter, the respondent again filed a complaint (being No.CIC/AD/C/2012/000379) with the CIC on 01.12.2011 alleging that the order of CIC dated 20.10.2011 had not been complied with. The CIC disposed of the said complaint, by an order dated 29.03.2012, directing petitioner no.2 to obtain information from the concerned departments and provide the same to the respondent.

12. On 13.06.2012, the respondent filed another complaint with the CIC and followed it up with a reminder dated 20.08.2012, alleging that the orders of CIC had not been complied with by petitioner no.2. It is in context of the aforesaid facts, that the CIC passed the impugned order dated 11.03.2013, once again directing petitioner no.2 to provide the information sought for by the respondent and also imposed a penalty of ₹25,000/-. By an order dated 04.04.2014, the petition seeking review of the order dated

11.03.2013 was rejected by the CIC holding that the CIC does not have any power to review its decision.

13. In the given facts, it is apparent that the CIC's finding that petitioner no.2 had failed to provide the necessary information and comply with the earlier orders is clearly warranted.

14. It is also not contended by the petitioner that the information sought for by the respondent was provided to him within the prescribed time. The contention that petitioner no. 2 had forwarded the queries of the respondent to other officials and by virtue of Section 6(3) of the Act was required to do no more, has to be considered by referring to Section 6(3) of the Act. The same is reproduced below:-

“6. Request for obtaining information.—

xxxx xxxx xxxx xxxx xxxx

(3) Where an application is made to a public authority requesting for an information,—

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”

15. The plain language of Section 6(3) of the Act indicates that the public authority would transfer the application or such part of it to another

public authority where the information sought is more closely connected with the functions of the other authority. The reliance placed by the learned counsel for the petitioner on the provisions of Section 6(3) of the Act is clearly misplaced in the facts and circumstances of the case. This is not a case where penalty has been imposed with respect to queries which have been referred to another public authority, but with respect to queries that were to be addressed by the public authority of which petitioner no. 2 is a Public Information Officer. Section 6(3) of the Act cannot be read to mean that the responsibility of a CPIO is only limited to forwarding the applications to different departments/offices. Forwarding an application by a public authority to another public authority is not the same as a Public Information Officer of a public authority arranging or sourcing information from within its own organisation. In the present case, undisputedly, certain information which was not provided to respondent would be available with the Railway Board and the CPIO was required to furnish the same. He cannot escape his responsibility to provide the information by simply stating that the queries were forwarded to other officials. Undeniably, the directions of CIC were not complied with.

16. In the given circumstances, the petition is without merit and is dismissed. CM No.14799/2014 is also dismissed. There shall be no order as to costs.

VIBHU BAKHRU, J

SEPTEMBER 12, 2014
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