CENTRAL INFORMATION COMMISSION

Room No. 305, 3rd Floor, CIC Bhavan, Baba Gangnath Marg, Munirka,
New Delhi-110067, website:cic.gov.in

Appeal No.:-CIC/CCITM/A/2017/125804-BJ+
CIC/DITIN/A/2017/193921-BJ

Appellant : Mr. S.P. Goyal,

Respondent : 1. CPIO & ITO 17 (3) (2),
O/o. The ITO 17 (3) (2),
Aayakar Bhawan, Mumbai

2. CPIO,
O/o. The Chief Commissioner of
Income Tax-VII, Mumbai

Date of Hearing : 19.12.2017
Date of Decision : 19.12.2017

Date of filing of RTI application	16.12.2016	29.07.2016
CPIO's response	13.01.2017	26.08.2016
Date of filing the First Appeal	10.02.2017	24.09.2016
First Appellate Authority's response	14.03.2017	24.10.2016
Date of diarised receipt of Appeal by the Commission	19.04.2017	24.12.2016

O R D E R

FACTS:

RTI-I:

The Appellant vide his RTI application dated 16.12.2016 sought information on 02 points regarding the detailed list of total records of files/books etc seized during the raid on 14.10.1993 by the IT Department, the certified copies of the note sheet under which reasons noted to keep the seized records from time to time by the concerned officer till the date of filing the RTI application and issues related thereto.

The CPIO vide its letter dated 13.01.2017 informed that similar nature of information was sought by the Appellant vide application dated 29.07.2016 which had been disposed vide letter dated 26.08.2016 and therefore the there was no need to dispose off the application pertaining to same information. Dissatisfied by the reply of the CPIO, the Appellant approached the FAA. The FAA vide its order dated 14.03.2017 rejected the Appeal and upheld the response of the CPIO. An opportunity of personal hearing was provided to the Appellant vide letter dated 21.02.2017 which was fixed for hearing on 27.02.2017.

RTI-II:

The Appellant vide another RTI application dated 29.07.2016 sought information on 02 points regarding the details of total records of files/ books, etc seized during raid on 14.10.1993 lying with Income Tax Department, certified copies of note sheets under which the reasons noted to keep the seized records from time to time by the concerned officer till date.

The CPIO /Income Tax Officer 17 (3) (2), Mumbai vide its letter dated 26.08.2016, denied disclosure of information on the ground that the information sought by him had already been provided earlier in some other RTI application. It was also stated that the Appellant was filing frivolous and vexatious petitions and the resources of the Public Authority were disproportionally diverted to respond to such applications and that the information was not sought in public interest. Dissatisfied with the response of the CPIO, the Appellant filed First Appeal. The First Appellate Authority vide its order dated 24.10.2016, upheld the response of the CPIO and rejected the First Appeal.

HEARING:

Facts emerging during the hearing:

The following were present:

Appellant: Ms. Aruna Rathi Appellant's representative through VC;

Respondent: Mr. Ritesh Kumar, ITO Ward 17(3)(2); Mrs. Pramila Choudhary, TRO Ward (17), Mumbai; Mr. Anil Gupta, DC (HQ) O/o the CC through VC;

The Appellant's representative reiterated the contents of RTI application and stated that the CPIO did not provide point-wise information as desired in the RTI application. While referring to Section 2(j) of the RTI Act, 2005, the Appellant's representative submitted that the Public Authority was obliged to provide all records/documents available and held by them. It was therefore, prayed to take action under Section 18 of the RTI Act, 2005 against the CPIO and impose a penalty of Rs.250/- per day under Section 20 of the RTI Act, 2005 for not providing the information within the time frame stipulated under the Act. The Appellant's representative also prayed for a compensation of Rs.60,000/- under Section 19(8)(b) of the RTI Act, 2005. In its reply, the Respondent explained that as per the extant guidelines on the subject there was a search procedure which they had complied with and a copy of the *Panchnama* was handed over to the Appellant in 1993. At the First Appeal stage also the representative of the Appellant was present and a detailed order was passed by the FAA. While acknowledging the receipt of the details mentioned by the Respondent, it was submitted that being an old case, they were not able to trace the relevant documents and therefore they were willing to pay the fee for seeking a fresh set of documents. The Respondent contested and submitted that a recovery of Rs.3.77 Crs. was outstanding against the Appellant and the matter is subjudice. It was conveyed that multiple RTI applications were being filed by the Appellant for meeting his personal ends.

The Commission observed that the framework of the RTI Act, 2005 restricts the jurisdiction of the Commission to provide a ruling on the issues pertaining to access/ right to information and to venture into the merits of a case or redressal of grievance. The Commission in a plethora of decisions including Shri Vikram Singh v. Delhi Police, North East District, CIC/SS/A/2011/001615 dated 17.02.2012, Sh. Triveni Prasad Bahuguna vs. LIC of India, Lucknow CIC/DS/A/2012/000906 dated 06.09.2012, Mr. H. K. Bansal vs. CPIO & GM (OP), MTNL CIC/LS/A/2011/000982/BS/1786 dated 29.01.2013 had held that RTI Act was not the proper law for redressal of grievances/disputes.

The Hon'ble Supreme Court of India in the matter of Union of India v. Namit Sharma in REVIEW PETITION [C] No.2309 OF 2012 IN Writ Petition [C] No.210 OF 2012 with State of Rajasthan and Anr. v. Namit Sharma Review Petition [C] No.2675 OF 2012 In Writ Petition [C] No.210 OF 2012 had held as under:

> *"While deciding whether a citizen should or should not get a particular information "which is held by or under the control of any public authority", the Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get information in possession of a public authority. This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions."*

Furthermore, the High Court of Delhi in the matter of Hansi Rawat and Anr. v. Punjab National Bank and Ors. LPA No.785/2012 dated 11.01.2013 held as under:

> "6. *The proceedings under the RTI Act do not entail detailed adjudication of the said aspects. The dispute relating to dismissal of the appellant No.2 LPA No.785/2012 from the employment of the respondent Bank is admittedly pending consideration before the appropriate fora. The purport of the RTI Act is to enable the appellants to effectively pursue the said dispute. The question, as to what inference if any is to be drawn from the response of the PIO of the respondent Bank to the RTI application of the appellants,* ***is to be drawn in the said proceedings and as aforesaid the proceedings under the RTI Act cannot be converted into proceedings for adjudication of disputes as to the correctness of the information furnished."***

The Commission referred to the decision of the Hon'ble Supreme Court of India in Central Board of Secondary Education and Anr. Vs. Aditya Bandopadhyay and Ors, SLP(C) NO. 7526/2009 wherein it was held as under:

> *"Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of*

corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of public authorities prioritising 'information furnishing' at the cost of their normal and regular duties."

It was observed that under the provisions of the RTI Act, 2005, only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to create information that is not a part of the record. He is also not required to interpret information or furnish replies to hypothetical questions. Similarly, redressal of grievance, reasons for non compliance of rules/contesting the actions of the respondent public authority are outside the purview of the Act.

With regard to the imposition of penalty on the CPIO/PIO under Section 20 of the RTI Act, 2005, the Commission took note of the ruling of Hon'ble Delhi High Court in W.P.(C) 11271/2009 Registrar of Companies & Ors v. Dharmendra Kumar Garg & Anr. (delivered on: 01.06.2012) wherein it was held:

" 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 ful fill 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."

Similarly, the following observation of the Hon'ble Delhi High Court in *Bhagat Singh v. CIC & Ors.* WP(C) 3114/2007 are pertinent in this matter:

"17. This Court takes a serious note of the two year delay in releasing information, the lack of adequate reasoning in the orders of the Public Information Officer and the Appellate Authority and the lack of application of mind in relation to the nature of information sought. The materials on record clearly show the lackadaisical approach of the second and third respondent in releasing the information sought. However, the Petitioner has not been able to demonstrate that they malafidely denied the information sought. Therefore, a direction to the Central Information Commission to initiate action under Section 20 of the Act, cannot be issued."

Furthermore, the High Court of Delhi in the decision of Col. Rajendra Singh v. Central Information Commission and Anr. WP (C) 5469 of 2008 dated 20.03.2009 had held as under:

"Section 20, no doubt empowers the CIC to take penal action and direct payment of such compensation or penalty as is warranted. Yet the Commission has to be satisfied that the delay occurred was without reasonable cause or the request was denied malafidely.

……The preceding discussion shows that at least in the opinion of this Court, there are no allegations to establish that the information was withheld malafide or unduly delayed so as to lead to an inference that petitioner was responsible for unreasonably withholding it."

The Appellant's representative was unable to contest the submission of the respondent or to substantiate their claims further regarding malafide denial of information by the Respondent or for withholding it without any reasonable cause. It was acknowledged by the Complainant's representative that the matter was subjudice and that they were also a party to the court proceedings.

DECISION

Keeping in view the facts of the case and the submissions made by both the parties, no further intervention of the Commission is required in the matter. For redressal of his grievance, the Appellant is advised to approach an appropriate forum.

The Appeal stands disposed accordingly.

(Bimal Julka)
Information Commissioner

Authenticated True Copy:

(K.L.Das)
Deputy Registrar