

(2020) 02 DEL CK 0553

In the Delhi High Court

Case No : Civil Writ Petition No. 7434 Of 2016

Directorate Of Higher Education & Anr

APPELLANT

Vs

Central Information Commission And Anr

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Right To Information Act, 2005 — Section 2(j), 3, 7(1), 18, 19, 19(1), 19(2), 19(3), 19(4), 19(5), 19(6), 19(7), 19(8), 19(8)(b), 20, 20(1)

Citation : (2020) 02 DEL CK 0553

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Ramesh Singh, Chirayu Jain, Ishan Agarwal

Final Decision : Disposed Of

Judgement

Jayant Nath, J

1. This writ petition is filed by the petitioners seeking to impugn the order dated 04.04.2016 passed by respondent No.1/CIC. Respondent No.2 has been served twice but has not appeared.

2. Respondent No.2 filed an RTI application on 08.05.2014 seeking status of his application for Post Matric Scholarship. A reply was sent to respondent No.2 by CPIO on 11.06.2014 where it was pointed out that on scrutinizing the application of respondent No.2, it was observed that while applying for Post Matric Scholarship, the original fee receipt was not attached, which is an essential requirement for grant of Post Matric Scholarship.

3. CIC by order dated 17.09.2015 passed the following orders:

"6. The Commission also directs that authority of Department of Higher Education has to take responsibility to communicate the educational institutes to give receipt to the applicants with the details of original and photocopy documents so submitted, so that anybody cannot make false claims. Because of

this defect in the system and non-communication for rejection, benefit for scholarship is not reaching to the eligible candidates. Department of Higher Education agreed that applicant is eligible and deserved for scholarship, but because of non-submission of original fee receipt from the Delhi School of Social Work they could not sanction the scholarship.

7. The Commission directs the Principal, Delhi School of Social Work to show cause why compensation should not be granted to the complainant for the loss of scholarship. Because of non-intimation and non-communication of the defect/ shortcomings in the application and its enclosures by the School authority, complainant could not get his scholarship. The explanation should reach to the Commission within 21 days from the date of receipt of this order."

4. A reply was received from the Delhi School of Social Work. Thereafter, respondent No.1/CIC passed the impugned order on 04.04.2016 as follows:

"9. Hearing could not happen on 22.10.2015 due to unavoidable administrative reason and it was posted for hearing on 04.04.2016, after duly sending notices to parties. The Commission finds no explanation or response received since last 6 months though the deadline was 21 days from the date of receipt of order dated 17.09.2015. The Commission believes that PIO Mr. Kuldeep Chand does not have any explanation to furnish. The Commission finds no reason to suspect the claim of appellant that he submitted original receipt but the Directorate of Higher Education refused scholarship on the excuse of non-submission of original fee receipt. PIO did not comply with the Order of the Commission dated 17.09.2015 to provide the status report of question of receipt of original fee receipt submitted by complainant. Because of this kind of attitude the appellant suffered loss of scholarship. Appellant belongs to poorer section of scheduled caste and his request for scholarship should have been considered properly by the respondent authority. Hence, Commission imposes penalty of Rs.25,000/- on Mr. Kuldeep Chand, PIO.

10. For the reasons stated above the Commission also directs Directorate of Higher Education to pay compensation of Rs. 30,000/- to the complainant, and compliance report shall be filed by Directorate of Higher Education by 29.04.2015."

5. It is manifest from a reading of the above order that CIC has chosen to impose a penalty on the PIO and direct payment of compensation by the Directorate of Higher Education of Rs.30,000/- on the ground that the respondent who belongs to poor section of schedule castes, his request for scholarship could not be considered properly by the respondents.

6. Reference may be had to the relevant portions of Sections 19 and 20 of the Right To Information Act, 2005:

19. Appeal -

.....

(8) In its decision, Central Information Commission or State Information Commission, as the case may be, has the power to-

.....

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

.....

20. Penalties.-(1) Where the Central Information Commission or 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 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."

7. The powers of respondent No.1/CIC have been elaborated by the Supreme Court in the case of Union of India vs Namit Sharma, (2013) 10 SCC 359, where the court held as follows:

"24. It will be clear from the plain and simple language of Sections 18, 19 and 20 of the Act that, under Section 18 the Information Commission has the power and function to receive and inquire into a complaint from any person who is not able to secure information from a public authority; under Section 19 it decides appeals against the decisions of the Central Public Information Officer or the State Public Information Officer relating to information sought by a person; and under Section 20 it can impose a penalty only for the purpose of ensuring that the correct information is furnished to a person seeking information from a public authority. Hence, the functions of the Information Commissions are limited to ensuring that a person who has sought information from a public authority in accordance with his right to information conferred under Section 3 of the Act is not denied such information except in accordance with the provisions of the Act.

25. Section 2(j) defines "right to information" conferred on all citizens under Section 3 of the Act to mean the right to information accessible under the Act, "which is held by or under the control of any public authority". 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."

8. In regard to the penalty provisions, reference may be had to the judgment of a Coordinate Bench of this court in the case of Registrar of Companies & Ors. vs. Dharmendra Kumar Garg & Anr., ILR (2012) 6 Del. 499 where the court held as follows:-

"61 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 instil 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 fulfil 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."

9. Reference may also be had to the judgment of the Division Bench of the Allahabad High Court in the case of Kalp Nath Chaubey vs. Information Commissioner, Central Information Commission & Ors., (2010) 79 ALR 359 where the Division Bench held as follows:-

"11. The order in proceeding under Section 20 of the Right to Information Act, 2005 is an order of penalty and the said power can be exercised only when the Central Information Commissioner at the time of deciding any complaint or appeal is satisfied that without any reasonable cause the Central Public Information Officer has refused to receive the application or has not furnished the 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. A perusal of the different grounds, which have been made for invoking the power of penalty indicate that there has to be finding that there was no reasonable cause or knowingly or malafidely incorrect or incomplete information was given. The penalty proceedings are quasi judicial proceedings where the Commission is entrusted with the power to impose penalty....."

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15. Section 20 of the Right to Information Act, 2005 which empowers the Central Information Commissioner to impose penalty has to be more stringently observed. For imposing penalty an opinion has to be formed that the Public Information Officer without any reasonable cause has not furnished the information within the time specified. The formation of the opinion has to be on the basis of objective consideration. The opinion has to be formed on the basis of relevant materials. The formation of the opinion should disclose materials on the basis of which the opinion/conclusions are formulated. We are of the view that the opinion as contemplated under Section 20(1) of the Right to Information Act, 2005 for imposing penalty has not been formulated by the Central Information Commissioner."

Hence, a penalty can be imposed upon the concerned officer where without reasons or cause the PIO etc. refuses the application or knowingly gives incorrect and misleading information etc. In the absence of malafide intent of the officer, a penalty would normally not be imposed.

10. On the issue of compensation, reference may be had to the judgment of a Co-ordinate Bench of this Court in the case of NTPC Ltd. vs. Mohd. Samad Khan 2010 (168) DLT 141 with regard to compensation wherein it is held as follows:-

"17. The ambit of the power under Section 19(8)(b) has to be determined by the scope of the powers of the CIC generally under Section 19, and as an Appellate Authority in terms of Section 19(1) to (8). The compensation payable under Section 19(8)(b) is "for any loss or other detriment suffered", on account of the denial of the information under the RTI Act and not just about any loss or detriment suffered by the applicant. In the context of the present case if the CIC had found that the respondent was unfairly denied by the NTPC, the information sought for by him, the CIC was next to determine the precise loss suffered by the Respondent on account of such denial of information. Thereafter it could pass appropriate orders to compensate the Respondent for the loss or detriment

suffered. In the present case, there is no finding by the CIC that the NTPC had in its records a survey report which it unfairly denied to the Respondent. This factual determination was essential for the CIC to proceed to determine the loss suffered by the Respondent on account of the denial of such information. Thereafter under Section 19(8)(b) RTI Act it was in the discretion of the CIC to award compensation. Even while exercising that power a finding would have to be rendered by the CIC on the extent of loss, even approximately, suffered by the person to whom such information ought to have been furnished. This is because the compensation that has to be awarded under Section 19(8)(b) is for the loss or the detriment suffered "on account of the denial of such information" and not just about any loss or detriment suffered by such person.

....."

11. Reliance in this regard may also be placed upon the judgment of a Co-ordinate Bench of this Court in the case of Public Information Officer Tihar Jail vs. Om Prakash Gandhi and Anr. 2018 (3) AD (Delhi) 137, wherein it is held as follows:-

"12.

The provision of Section 19(8)(b) of the Act duly empowers the CIC or the SIC as an appellate authority to compensate a complainant for any loss or other detriment suffered. However, such loss or detriment suffered must necessarily be connected to or a consequence of denial of complete information as sought for by such complainant. It is obvious that the CIC cannot take recourse to Section 19(8)(b) of the Act to provide compensation in relation to any other dispute that an information seeker may have with the public authority, which is not relatable or connected with the provisions of the Act."

12. Hence, it is only in cases where the CIC finds that respondents had unfairly denied the information sought by the applicant, the court has to determine the precise loss suffered by the respondent on account of such denial of information. The compensation has to be awarded for the loss or detriment suffered.

13. In the present case the CIC has imposed a penalty on the PIO and directed payment of compensation on the ground that the application of respondent No.2 who belongs to poor community was not properly considered by the respondent authority. It was not for the CIC to exercise the powers under section 19 of the RTI Act to award a penalty or compensation under the RTI Act on alleged ground of administration lapses on the part of the respondent or the PIO which have no connection to the supply of information.

14. Accordingly, the impugned order dated 04.04.2016 to the extent that it imposes penalty of Rs.25,000/- on the petitioner and directs to pay compensation to respondent No.2 is set aside.

15. With the above direction the present petition is disposed of. All pending applications, if any, are also disposed of.