

**(2009) 08 DEL CK 0231**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 19122 of 2006**

Vivek Mittal

APPELLANT

Vs

B.P. Srivastava and Others

RESPONDENT

---

**Date of Decision :** 24-08-2009

**Acts Referred:**

Right to Information Act, 2005 — Section 5(5)

**Citation :** (2009) 08 DEL CK 0231

**Hon'ble Judges :** Sanjiv Khanna, J

**Bench :** Single Bench

**Advocate :** Manoj Aggarwal, for the Appellant; Gaurang Kanth, for MCD, for the Respondent

---

## Judgement

Sanjiv Khanna, J.—There is no appearance on behalf of the respondent No. 1, who had filed an application under the Right to Information Act, 2005 (Act for short), in spite of service. The writ petition is accordingly taken up for hearing and final disposal.

2. The present writ petition has been filed by Mr. Vivek Mittal for setting aside order dated 28th November, 2006 passed by the Chief Information Commissioner imposing penalty of Rs. 5,250/- for delay in supplying information to respondent No. 1.

3. The impugned order reveals that the learned Chief Information Commissioner had rightly expressed displeasure at the note dated 13th January, 2006 of Deputy Commissioner, Central Zone appointing two class-IV officials as CPIO u/s 5(5) of the Act. The learned Chief Information Commissioner was justified in observing a peon and a chowkidar, who were at best messengers, cannot be appointed as CPIOs.

4. The respondent Nos. 2 and 3 in their counter affidavit have submitted that the Administrative Officer (Central Zone) was the Nodal Officer at the project building, Lajpat Nagar and the CPIO. The two class IV employees mentioned in

the order passed by the Chief Information Commissioner were entrusted with the work to collect documents from the concerned officers and handover the same to the CPIO/Administrative Officer (Central Zone). Thus, the two class-IV officials were working under and assisting the CPIO i.e. the Administrative Officer (Central Zone).

5. There is merit in the finding of learned Chief Information Commissioner that a CPIO cannot escape his obligations and duties by stating that persons appointed under him had failed to collect documents and information. The Act as framed, casts obligation upon the CPIOs and fixes responsibility in case there is failure or delay in supply of information. It is the duty of the CPIOs to ensure that the provisions of the Act are fully complied with and in case of default, necessary consequences follow.

6. The Chief Information Commissioner could have proceeded and examined whether penalty should be imposed on the CPIO i.e. the Administrative Officer (Central Zone). However, by the impugned order, penalty has been imposed on the petitioner, who was working as an Administrative Officer (IT). The impugned order imposing penalty on the petitioner, who was never designated, appointed or worked as a CPIO, cannot be sustained. The petitioner had conducted an inquiry as per the directions of the Deputy Commissioner (Central Zone). He was not responsible for the delay in furnishing the information sought by the respondent No. 1. The impugned order, therefore, is based upon a wrong assumption that the petitioner was the CPIO, who was responsible for the delay in furnishing the information. It may also be noted that no opportunity or notice was issued to the petitioner before penalty was imposed. Accordingly, the impugned order dated 26th November, 2006 imposing penalty of Rs. 5,250/- on the petitioner on the ground that he was the CPIO, who had committed the fault, is set aside.

7. The matter is remanded back to the Central Information Commission for re-examination. Central Information Commissioner will issue notice to the concerned CPIO and if required, impose penalty in accordance with law.

8. The respondent MCD will appear before the Central Information Commission on 23rd September, 2009, when further date will be fixed. It is clarified that this Court has not expressed any opinion whether or not penalty should be imposed. It is also clarified that in case the petitioner is found to be responsible for the delay or violating any of the provisions of the Act, the Central Information Commission will be competent to pass an appropriate order. Rs. 5,250/- deposited by the petitioner in this Court will be released to the petitioner.

The writ petition is disposed of.

Dasti to the counsel for the parties.