

19.

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 16.04.2009

+ W.P. (C) 6661/2008

U.O.I

..... Petitioner

Through: Mr. S.K. Dubey with
Mr. Deepak Kumar, Advocates.

versus

CENTRAL INFORMATION COMMISSION &ORS

..... Respondents

Through: Mr. K.K. Nigam, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J.

% Heard counsel for the parties.

2. In the present petition, the Union of India claims to be aggrieved by an order of the Central Information Commission whereby it directed payment of Rs.5,000/- as compensation to the second respondent, who had applied for information.

3. The brief facts of the case are that on 27.7.2007, the second respondent applied to the Passport Officer, designated as Information Officer claiming disclosure of information, relating to a passport application made by him in December, 2006 as well as the application of his wife. The applicant's grievance at that stage was that even though he applied for passport, for more than eight months, and though the Passport Office's website indicated (in March, 2007) that police report was "OK", yet in July, 2007, different information was posted asking for two specimen signatures on blank piece of paper. The applicant further asked for information pertaining to the time limit within which passports were to be issued.

4. The CPIO by order dated 13.8.2007 responded to the application (dated 27.07.2007) stating, inter alia, that so far as the information placed on the website was concerned, it was updated by the National Informatics Centre (NIC) and the reason for delay in issue of passport had been given in column-1 i.e. that it was for want of fresh passport application along with attested copy of all documents and passport application of his wife and son.

5. The second respondent's appeal was disposed by the appellate authority stating that even though no time limit for disposal of passport application existed, yet broadly a thirty day's limit had to be adhered to. In these circumstances, second respondent appealed to the CIC, which after considering the materials recorded as follows: -

“Decision:

6. The Commission heard both the sides and noted the following:

(i) The Appellant had applied for passports for self, wife and son on 12 December 2006;

(ii) He did not get the passports even after a period of seven months;

(iii) In March 2007, when he opened the website of the Respondents, he found the information “Police report is okay, Passport will be sent in the first week of April 2007” pasted on the website;

(iv) The Appellant waited for the time to pass and then since he had still not received the Passport, opened the website again in July 2007;

(v) To his great surprise and dismay, he found that the website asked him to send two specimen signatures on a blank piece of paper attested by a Gazetted Officer. Subsequently, he asked for the details of his application through the RTI-application of 27 July 2007;

(vi) In the PIO’s reply of 13 August 2007, the Commission found that there was an explanation about the delay. The stand taken was that the documents were incomplete and that the Applicant had to apply afresh together with attested copies of the relevant documents;

(vii) There was no explanation in the PIO’s reply about the Passport Office asking for signatures on blank paper.

7. Under the circumstances, the Commission fails to understand:

(i) Why and when once the Applicant has been informed that his Passport would be sent by a particular date, he was asked to apply afresh. In case the Respondents detected some lacunae in his application, they should have informed him much earlier to their making the commitment that the Passport would be sent within a given time;

(ii) The demand for submission of signatures on a blank piece of paper is something which is totally unacceptable. In fact, the Commission is at a total loss to understand how a Government office can ask for signatures of a citizen approaching them for some work to sign on a blank piece of paper. On making enquiries, the Appellant stated that he had not received the passport till date, that is, even after a year and a half of his filing the application.

8. In view of the submissions of the Appellant as well as the Respondents, the Commission decided the following:

(i) The Respondents will ensure that the passports are issued within a week of the Appellant having fulfilled of the requirements of the Passport application;

(ii) The PIO and the RPO will personally conduct an inquiry into the functioning of the website and submit a report about the two different versions about the same case placed on the website. He will report to the Commission with the full details of case by 13 June 2008;

(iii) The Commission awards a compensation of Rs.5,000/- to the Applicant in view of the mental agony that had has gone through over these one and a half years without any fault of his. The Respondent Department will ensure that this payment is made to the Appellant by 30 May 2008. The Respondent, that is, the PIO will fix responsibility as to the person who was responsible for asking for blank signatures and take necessary measures to recover the full amount from him. In the first instance, however, this payment will be paid by the Department or the person on whom the responsibility is fixed for this major error- whichever is earlier.”

6. It is contended by the Union of India that pursuant to the orders; respondent/applicant carried out corrections in the pending applications and was issued the passports. It is contended that the CIC committed an error in granting compensation since the requisite information was furnished within the time period. Learned counsel relied upon Section 19 (8) (b) and submitted that the jurisdiction to direct compensation flows out of an

obligation to ensure compliance with provisions of the Act. It was, submitted that in the absence of a finding that information disclosure was not in terms of the enactment or within the time limit specified, penalty or compensation either under Section 19 or Section 20 could not have been imposed.

7. The Court has carefully considered the submissions. The petitioner here is the Union of India. Today no dispute on the part of the following facts:

1. Passport applications were made in December, 2006;
2. Applicants sought for passport were not intimated about the deficiencies till July, 2007, when information was sought for under the RTI Act;
3. The information posted on the website at different points in time, alluded to by the applicant with reference to March, 2007 and July, 2007 – gave conflicting information;
4. When information was sought for, for the first time, the passport officials indicated that a fresh application had to be made since there were several defects in the applications pending since December, 2007.
5. Though initially the CPIO stated that there was no time limit, the appellate authority stated that a time limit of thirty days had to be broadly adhered to.

6. Even before the CIC, there was no explanation why the petitioners wanted a fresh application to be furnished, eight months after the first one.

8. The Union of India is perhaps technically correct in contending as it does that the jurisdiction to impose penalty and compensation stems out of Section 19 (8) (b) is on the premise that the information application has not been dealt with correctly and was imposed here by CIC that the applicant had to suffer mental agony due to lack of or withholding of information.

9. However, the facts as they have unfolded in this case cannot be overlooked by this Court. The Jurisdiction to direct compensation under the Act, has to be understood as arising in relation to culpability of the organization's inability to respond suitably, in time, or otherwise, to the information applicant. This is necessarily so, because penalty is imposed on the individual responsible for delayed response, or withholding of information without reasonable cause. To that extent, the Union's complaint about lack of jurisdiction of CIC in this case, is justified. Any other construction on the CIC powers under Section 19 and 20 would result in recognizing wide powers to grant compensation, without indicating the process and procedures normally available and expected, in such cases. Further, clothing CIC with such jurisdiction to compensate applicants for general wrongs, without any statutory guidance about the limits, or method of determining such compensation would lead to highly anomalous and unpredictable

consequences which the Act did not intend. A citizen applied for passport and had to wait for more than nine months to be told what were the deficiencies. He had to seek recourse under the Right to Information Act, 2005. The CIC felt constrained to impose a paltry compensation amount of Rs.5000. The Union, which is expected to and is duty bound to disclose information – and not merely under the RTI, being the primary authority to issue passports, about the fate of such application - has now chosen to question such imposition of a meager amount of compensation.

10. It is well settled that the jurisdiction under Article 226 is both discretionary and equitable. The existence of technical question and error of jurisdiction need not persuade the Court to exercise such jurisdiction unless it is satisfied that the ends of justice required it to do so. By filing the present Petition, the Union of India has not only disclosed utter insensitivity to its duty as an authority under the Passport Act but also aggravated the agony to a citizen who sought for a passport and was kept completely in the dark. It suggested unreasonably that a fresh application had to be made without, disclosing the fate of the previous application, or why such fresh application was necessary. It has not questioned, in this proceeding, the direction by CIC to issue passports on the basis of the old applications – this establishes that its requirement to the applicant to move afresh was unjustified. In the circumstances, even while allowing the Writ Petition to the extent that award of compensation of Rs.5000/- is set aside, the Union of

India is hereby directed to pay costs to the second respondent to the extent of Rs.55,000/-. The same shall be paid within four weeks.

Writ Petition is disposed of in terms of above order.

APRIL 16, 2009
/vd/

S. RAVINDRA BHAT, J