

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 7244/2009, C.M. No.2956/2009 (Stay)

VANDANA MITTAL Petitioner
Through: Mr. Sunil Upadhyay, Advocate.

versus

CENTRA INFORMATION COMMISSION and ORS. Respondents
Through: Mr. K.K. Nigam, Advocate for CIC.
Mr. Anjum Javed, Advocate for
Resp-2-4.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

ORDER
02.03.2009

The petitioner claims to be aggrieved by order of the Central Information Commission (CIC) dismissing her appeal.

The petitioner sought information on the following five issues: -

?1. What action has been taken on my complaints dated 18.1.07 and 1.2.07 and who are the officers investigating the matter and provide me the copies of entire proceedings including the copy of report of investigation officer and the copies of the statements of accused or any person recorded, if any, in the aforesaid matter?

2. What is the progress in my aforesaid complaints, whether any action has been taken in this regard and if not, what were the reasons for not taking any action though there has been threat to my life and property?

3. What action has been taken against a police officer who refused to take any action regarding massive encroachment of public land?

4. Why your Department refused to provide access to the public ways that has been stopped by others, that is directly related to my liberty and free movements?

5. Why FIR was not registered on my complaint in spite of the complaint was of the nature of the Violation of section 509 of IPC outraging modesty of a woman, Criminal intimidation under section 503 of IPC and the obstruction in the public way under section 283 of IPC??

The Public Information Officer designated by the Delhi Police apparently did not make any order; accordingly, the petitioner preferred an appeal which was disposed of on 6.3.2007 by the appellate authority. On 25.3.2007, a response was received from the police authorities. Aggrieved, she preferred an appeal on 30.3.2007 complaining that information furnished was neither according

to the application nor correct and satisfactory. She also claims that the information was not exempted under Section 8. The appeal was rejected on 2.4.2007 by the appellate authority affirming the order of the Public Information Officer.

It is contended by the petitioner that the CIC did not consider the appeal in its proper perspective and affirmed the reasoning of the respondents on irrelevant considerations. Learned counsel urged that the inapplicability of the exemption clause under Section 8 was expressly taken in the grounds of appeal but the same have not even been adverted to and reflected in the impugned order.

The relevant part of the impugned order reads as follows: -

?Under the circumstances, we do not see what information is still outstanding that requires to be provided by the DCP (East). Representative of appellant Mr. Mittal has submitted that the information received through the letters of 17.10.07 and 27.7.07 from DCP (East) and JCP New Delhi is contradictory. Whereas the DCP has intimated that the iron gate was to be kept open 24 hours, the JCP has stated that Shri J.K. Mittal too has appeared before him and; had rightly exposed difficulties faced. Even were the stand taken by the DCP and JCP contradictory, resolution cannot be found by resorting to the RTI, since

this does not amount a to request for information, whereas it is open to Ms. And Mr. Mittal to make representation to MCD and DCP to redress what is essentially

a grievance. Recourse to the RTI Act for settling a grievance is entirely misappropriate. Similarly, if MCD and DCP (East) have been remiss in compliance

with the orders of High Court of Delhi, redress lies in approaching that Court and not in seeking a remedy under the RTI Act, 2005.

This appeal, in which the issues are of grievance and redress, is outside the jurisdiction of this Commission and is hereby dismissed,

Reserved in the hearing to enable us to study various orders cited in this regard, this decision is announced in open chamber on this twenty eighth day of November, 2008.

Notice of this decision be given free of cost to the parties.?

The petitioner has no doubt articulated the ground about the inapplicability of Section 8, in the appeal preferred before the Central Information Commission. However, neither in the Writ Petition nor the grounds

has any advertence been made to the fact that such a contention was pressed into

service before the CIC which, despite such position, failed or refused to deal with it. The petitioner also does not dispute the contention recorded with regard to the applicability of the directions in W.P. (C) 152/2007.

No doubt, the Central Information Commission being a quasi judicial appellate authority is expected to deal with the grounds urged before it. However, that situation would arise if the grounds taken in the appeal are in fact urged and pressed at the time of hearing. The Court in these circumstances without necessary pleadings or even advertence on the grounds in the Writ Petition about the matters having been urged during the hearing cannot embark on

what transpired during the course of hearing, before the CIC.

Having regard to the circumstances, the Court is satisfied that no ground for interference in the impugned order is made out.

The Writ Petition and accompanying Application is accordingly rejected.

S. RAVINDRA BHAT, J
MARCH 02, 2009
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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No.7121/2007

DR. MADHU JAIN Petitioner

Through: Ms. Madhu Tewatia and Ms. Sidhi Arora, Advocates.

Versus

CENTRAL INFORMATION COMMISSION and ANR. .Respondents

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

CORAM:

HON BLE MR. JUSTICE S. RAVINDRA BHAT

ORDER

16.04.2009

Heard counsel for the parties.

The petitioner is aggrieved by orders dated 02.02.2007, 19.02.2007 and 21.08.2007, passed by the Central Information Commission (CIC).

The brief facts for the purposes of deciding the case are that one Dr.

Subarto Roy applied for information and inspection of the records relating to his transfer on 30.12.2005. The petitioner who was then functioning as the Public Information Officer marked a photocopy

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of the application to the concerned officer i.e. ADC (Health) and Medical Superintendent, Hindu Rao Hospital. Apparently, reply was received on 10.01.2006 from the Medical Superintendent answering query no. 3 though it was not covered under the RTI Act. The petitioner claims to have sent reminder to ADC (Health) to fix a convenient date and place for inspection of the files. She also answered query no. 1 and 2. The inspection of the files however, was not granted since they were not made available. The petitioner contends that several requests were made by her for this purpose. The complainant/applicant filed an appeal on 14.03.2006, which was forwarded to the Medical Superintendent, who had to give a date and provide inspection on 23.03.2006. The appeal was considered and an order was made on 17.04.2006.

The complainant/applicant feeling aggrieved by what he perceives as lack-lustre response by the agency appealed to the CIC. The CIC in its order dated 02.02.2007 recorded as follows:-

We find, however, that in first two of the above three cases time limits prescribed u/s 7 (1) for providing information have been digressed. In all three cases appellants have pleaded that information has been delayed without reasonable cause. We find that in the third case the information has been supplied on time. In the first two cases, however, the following are the reasons

given for the delay;
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In file No. CIC/WB/A/06/00386 Dr. Madhu Jain, PIO stated that the delay of 8 days occurred because the officials were at that time not well versed with the Act and information was required from eleven departments, which could not be supplied in time as mentioned in the response. In light of this and the case being the first of its kind delay of only 8 days need not be held to be unreasonable.

However, in file No. CIC/WB/A/06/00388 where application was moved on 30.12.2005, only a partial response was sent on 16.02.2006 and intimation of date of inspection was given only on 21.04.2006. There has, therefore, been an overall delay of 111 days. The Medical Supdt. Hindu Rao Hospital who had been requested to intimate the date of inspection will show cause either in writing or by personal appearance before us on 19.02.2007 at 10:30 a.m. as to why a penalty @ 250/- per day subject to maximum of Rs.25,000/- should not be imposed starting from 31st January to 20th April, 2006. The delay of 16 days in providing the initial response has been accounted for by the transfer of the then incumbent Commissioner (Health) before the reply could be supplied thus entailing some extra days in providing the information sought.

Announced in the heard. Notice of this decision be given free of cost to the parties.

In the further proceedings held on 19.02.2007, CIC heard Dr. Madhur Kudesia, Hindu Rao Hospital; and Dr. Surendra Kumar, CMO, Nodal Officer, Hindu Rao Hospital. The CIC recorded the following order:-

1. The application was moved on 30.12.2005 to which partial response was sent on 16.02.2006. The time taken between on 30.12.2005 and 23.03.2006 when the information was actually sought from Hindu Rao Hospital thus remains unaccounted for.

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2. The APIO Hindu Rao Hospital has responded to the request for information by 31.03.2006 and therefore cannot be held accountable for the delay in response.

3. In this case on not having received a response from the PIO, appellant had filed his first appeal on 16.03.2006. It would, therefore, appear that the information was sought from Hindu Rao Hospital by PIO only on moving of the first appeal, and not on the basis of the original application.

4. Dr. Madhu Jain, DHA, MCD who is also PIO and has been heard by us during the hearing on 02.02.2007 has, therefore, rendered herself liable for the delay in responding to the application from 31.01.2006 to 23.03.2006 when the first appeal was heard when the information sought by appellant Dr. Subroto Rao was actually sought to be accessed. At the last hearing she had sought to place the responsibility for the delay on MS Hindu Rao Hospital u/s 5(4). The

documentary evidence that we have received indicates otherwise. Dr. Jain DHA, SPIO will, therefore, pay a penalty of Rs.250/- per day from 31.01.2006 to 23.03.2006. The delay of 52 days @250/- per day amounts to Rs.13,000/-. This amount will be paid by Dr. Madhu Jain DHA, MCD. The Commission further directs the Commissioner, MCD to cause recovery of the amount of penalty either directly or from the salary of Dr. Madhu Jain DHA, MCD made payable in the name of PandPO, DP and AR in New Delhi, and deposited in the appropriate Account Head by March 3, 2007 under intimation to Shri Pankaj Shreyaskar, Assistant Registrar in this Commission by March 3, 2007.

Announced in the hearing. Notice of this decision be given free of cost to the parties

The petitioner contends that a joint reading of the two orders would show a completely inconsistent approach by the CIC. It is
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submitted that on 02.02.2007, the Commission was satisfied that the delay of 8 days attributable to her, did not require further investigation or penalty. Yet in the subsequent order, it recorded that she was heard and had rendered herself liable for delay in responding to the application between the period 31.01.2006 to 23.03.2006. This formed the basis of its direction to her to deposit Rs.13,000/- as penalty.

The Court has considered the submissions. A joint reading of the two orders does indicate that show cause notice was issued to other individuals and not the petitioner for the perceived delay in responding to the queries. The said two individuals and not the petitioner were heard on the next date of hearing, in response to the show cause notice. Yet the commission, ignoring its earlier order, absolving the petitioner of any delay proceed to impose Rs.13,000/- as penalty on her. This was completely in ignorance of the previous order which had clearly exonerated any wrong doing by her.

In these circumstances, the petitioner s grievance is well-founded.

For the above reasons, the writ petition has to succeed. It is accordingly allowed.

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The order dated 19.02.2007 and the subsequent order rejecting the petitioner s review petition dated 21.08.2007 are hereby quashed.

April 16, 2009 S. RAVINDRA BHAT, J.

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