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

Pronounced on : 28.04.2009

\+ W.P. (C) 3845/2007

MUJIBUR REHMAN ..... Petitioner
Through: Ms. Girija Krishan Verma, Advocate.

versus

CENTRAL INFORMATION COMMISSION ..... Respondent
Through: Ms. Yogmaya Agnihotri,
Advocate for Resp-3&6.

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

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Hon'ble Mr. Justice S. Ravindra Bhat (Open Court)

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1. Issue Rule. With consent of counsel for parties, heard counsel for the parties.

2. The petitioner is aggrieved by an order dated 29.5.2006 by which the Central Information Commission (CIC) dropped penalty proceedings under Section 20 of the Right to Information Act, 2005.

3. The facts, briefly, are that the petitioner sought information through an application dated 29.11.2005, in respect of service rules of the South Eastern Coalfields Limited (SECL). It is undisputed that despite the application, he did not receive any response; he was constrained to

prefer an appeal which was of no avail. He, therefore, approached the CIC on 16.3.2006, by way of a second appeal. On 27.3.2006, the CIC made the following order: -

> *"At the very start we must adversely observe the manner in which this case has been handled by the public authority. The information asked for should be common knowledge and is suitable for suo moto disclosure u/s 4 (1) of the Act. Had an effort been made to conform to this provision, the public authority, the appellant and this Commission would have been saved much time and expense.*
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> *We have examined the file and heard both parties. We find that the applicant has not been given the information that he has sought, not even the promotion rules, except a copy of the seniority list, which was attested and certified by the PIO during the hearing. The Appellate Authority has failed to apply his mind to the appeal and dismissed it having been told that the information and been supplied, without caring to confirm this with the appellant or indeed giving him a chance to be heard which together with there being no evidence of the AA's decision having been received by the appellant arouses the suspicion that this decision was only an afterthought in the apprehension that the applicant might go in appeal.*
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> *The South Eastern Coalfields Ltd is directed to provide all the information asked for by the appellant to him within fifteen working days from the date of issue of this Decision Notice. We accept the plea of PIO Mitra that because he was not the principal supplier of the information, the officer whose assistance he has sought under Sec 5 (4) namely GM (P&A) is liable to bear responsibility for the delay and therefore deemed refusal to provide the information sought. He will therefore show cause by April 20, 2005 as to why a penalty of Rs 25,000 should not be imposed upon him.*
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> *This appears an egregious case of neglect of responsibility. A copy of this Decision may therefore be sent to the Secretary Coal in the Government of India, and to the Department of Personnel & Training for their record and initiation of remedial action.*
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> *Notice of this decision be given free of cost to the parties."*

3. It is an undisputed fact that on 10.4.2006, the third respondent company caused a letter to be issued (a copy of which has been produced in these proceedings), revealing the nature of

information sought. It was specifically stated that no seniority list had been issued in the year 2004-2005. Apparently, a copy of this letter was furnished during the course of proceedings, before the CIC. On the next date of hearing, i.e., 29.5.2006, the CIC considered the explanation of the "deemed PIO", i.e. the sixth respondent –(since the designated CPIO had required another officer i.e. Shri S.P. Chaubey, GM (Personnel and Administration) to collect and furnish the information, for convenience, a step which is permissible under the Act) – for appropriate response to the queries. The notice was specifically in terms of Section 19 (8), calling upon the sixth respondent to show cause why penalty ought not to be imposed. During the course of hearing, the CIC noted that there was indeed a late response to the query made on 29.11.2005 which was eventually answered after the petitioner had approached it (the CIC) and in fact during the course of the proceedings. It also held sixth respondent culpable and directed departmental proceedings against him. However, it discharged the notice and did not impose any penalty under Section 20. The relevant part of the CIC's findings are as follows: -

> *"The appellant's case is that the information said to have been provided to him was not actually attached with the letter stating that the information was attached. The PIO was asked to hand over the attachments on the spot which he did. GM (P&A) SP Chaubey, treated as CPIO u/s 5(5) has stated that the SECL has no clues governing this procedure but only established practice, termed "Niyam" in Hindi, the language used in the response to the appellant's application. Regarding this the full information has been provided and there are no seniority rules to provide. Appellant has every right to agitate the SECL have such rules, but this Commission is not the competent authority to take a decision on such a matter. However, under Sec 19(3) we direct SECL to publish for the information of all its employees, the established current practice for considering promotion, preferably on the internet in keeping with Sec 4(1) of the Act.*
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> *Respondents denied that the public authority had taken any vindictive action against the appellant, and had issued no order of suspension but only served a charge sheet not related to the appeal. We have examined the charge sheet, a copy of which has been received only recently. There is indeed no specific mention of information supplied to the Commission, but the Charge Sheet charges the appellant*

with not having taken recourse to remedies available within the public authority and instead sought to depend on 'outside sources'. Given the timing of the charge sheet i.e. shortly after the Decision of the Commission on 27/3/'06, and that the appellant, as stated in the hearing and not contested, never had to face disciplinary procedures throughout his service in SECL, the suspicion is aroused that, although denied by the GM(P&A) in his counter to the allegations vide letter No. SECL/BSP/GM(P&A)/'2006/1/716 of 19.5.'06, the action taken is indeed related with the CIC being identified as an 'outside source'. Although no penal action is proposed on this ground therefore, the public authority will take note of this and ensure that the appellant is not victimized for his action in seeking what is his right under law. This may also be brought to the notice of the Ministry of Personnel, Public Grievances & Pensions, which will ensure that safeguards are provided in every public authority under its jurisdiction to protect bonafide interests of applicants under the Act at all levels.

In our Decision of 27/3/'06 we had asked Chaubey treated as PIO, to show cause by April 20, 2005 as to why a penalty of Rs.25,000 should not be imposed upon him. In response deemed CPIO SP Choubey has replied vide his No.SECL/BSP/GM(P&A)/2006/PIO/447 of 12/4/'06 that the information sought has been provided and penal proceedings be dropped. Under Proviso to Sec 20(1), the burden of proving that he acted reasonably and diligently shall be on the CPIO. In this case, the information available with the public authority has been provided now, it must be noted that no reasonable cause for delay stands established as to why it was not supplied as per the law in the first instance, although the appellate authority has pleaded ill health which we accept in his case. Because this is the first case of its kind from the public authority, we do not propose a financial penalty. However, disciplinary action against GM(P&A) SP Choubey is recommended u/s 20 (2), SECL will initiate such action under the Service Rules applicable to him, which could include but need not remain restricted to issue of a warning for dereliction of duty.

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

5. The petitioner contends that after having noted about the burden of proving that the concerned individual or public officer had acted diligently, being on the individual, and further holding that there was no reasonable cause for the delay, the CIC fell into error in not imposing the penalty and in merely recommending disciplinary action. In addition to attacking the order as arbitrary and unjustified, the petitioner contends that he had to shockingly face a charge-sheet, and even though he has now been promoted, the third respondent has not indicated that the charge-sheet has been dropped. The petitioner contends that the allegation in the

charge sheet was his (the petitioner's) dereliction in filing an application, under the Act, and eliciting information outside of the organization's channels. It is submitted that this allegation, besides being unfounded, undermines the purpose of the Act, which does not require any individual or applicant to demonstrate *locus standi.* So long as information is in the form mandated, and is not exempted from disclosure, everyone has the right to access it, whether he is related to the organization holding the information or not.

6. The third respondent, in reply, and through its counsel, Ms. Yogmaya Agnihotri, contends that action recommended by the CIC was indeed taken and that departmental proceedings were initiated against the sixth respondent. In this regard it is stated as follows: -

> *"xxxxx xxxxx xxxxx*
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> *XXIII) That the averments in paragraph 4 (XXIII) are denied and under reply it is submitted that regarding the letter dated 14-11-2006 of respondent no.6 it is stated that he has been held guilty for giving false information and accordingly has been served a memorandum under CDA Rules of 1978 of CIL. Furthermore an Enquiry Officer has also been appointed for holding an inquiry into the charges levelled against respondent no. 6 as per the service rules/ conditions of CIL. Hence it is not at all true that SECL Management/ Ministry of Coal have not taking any action against respondent no.6 based on the respondent no.1 decision.*
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> *xxxxx xxxxx xxxxx"*

7. The third respondent has not questioned the order of the CIC. The sixth respondent who entered appearance, in the proceedings and filed a reply does not dispute the order. He too submits that disciplinary action has been initiated against him. It is submitted that in the overall conspectus of the facts, this Court should desist from making any adverse order since the departmental proceedings are pending, as any order would adversely impact upon his (the sixth respondent's) service records.

8. The above discussion would show that though the petitioner had applied for information on 29.11.2005, he was made to wait and forced to file appeals to first appellate authority and later to the CIC. The internal processes, within the third respondent corporation, apparently were insensitive to the queries elicited and eventually after the CIC issued notice, did the third respondent furnish the information. It was in these circumstances that CIC issued notice to the PIO calling upon him why penal action should not be taken. That delay occurred, beyond the stipulated period in furnishing information is self evident. Both the orders dated 27.3.2006 and 29.5.2006 categorically record that there was delay. The only question, therefore, was whether after issuing notice and hearing the concerned deemed PIO - the sixth respondent, the CIC acted within its jurisdiction in not imposing the penalty of Rs.25,000/-.

9. Section 20, which is the provision enabling the CIC to impose penalty, reads as follows: -

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

10. A close and textual reading of Section 20 itself reveals that there are three circumstances, whereby a penalty can be imposed i.e.

(a) Refusal to receive an application for information;

(b) Not furnishing information within the time specified; and

(c) Denying mala fidely the request for information or knowingly given incorrect, incomplete or misleading information for destroying information that was the subject matter of the request.

Each of the conditions is prefaced by the infraction "without reasonable cause". The CIC in its second impugned order dated 29.5.2006 clearly recorded that the 6th respondent did not furnish any reasonable cause for the delay and that this fact stood "established". It desisted from imposing the penalty which it was undoubtedly competent to under Section 20 (1). It, however, recommended that action should be taken against the concerned Public Information Officer i.e. the sixth respondent under Section 20 (2). That part of the order is not in dispute.

11. Now, it is a well established proposition that a Tribunal – as the CIC un-deniedly is - can be corrected in exercise of judicial review jurisdiction by the High Court, if it fails to exercise jurisdiction lawfully vested in it or acts beyond its jurisdiction, an expression that includes

acting contrary to the provisions of law, or established principles of law or the Constitution. This proposition has been in existence for half a century since *Hari Vishnu Kamat v. Ahmad Ishaque* AIR 1955 SC 233, where the Supreme Court declared the parameters of judicial review against orders of quasi judicial bodies, and tribunals. These were explained in the later judgment, in *Surya Dev Rai v. Ram Chander Rai* 2003 (6) SCC 675, in the following terms:

> *"..... the High Court was not justified in looking into the order of December 2, 1952, as an appellate court, though it would be justified in scrutinizing that order as if it was brought before it under Article 226 of the Constitution for issue of a writ of certiorari. The limit of the jurisdiction of the High Court in issuing writs of certiorari was considered by this Court in Hari Vishnu Kamath v. Ahmad Ishaque 1955-IS 1104 : ((S) AIR 1955 SC 233) and the following four proposition were laid down :-*
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> *"(1) Certiorari will be issued for correcting errors of jurisdiction;*
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> *(2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice;*
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> *(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. Once consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.*
>
> *(4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."*

12. The Court while considering a complaint about the Tribunal infracting its bounds has to be alive to the fact that primary discretion in such cases is with the statutory Tribunal. At the same time, once it is established that the Tribunal, for no apparent reason, either exceeded its

jurisdiction or failed to exercise jurisdiction lawfully vested in it, the High Court would be justified in interfering with its orders.

13. In this case, order dated 29.5.2006 as well as the previous order of 27.3.2006 establishes that the information sought was furnished after CIC issued its orders. Moreover, shockingly, the petitioner was issued with charge-sheet – a fact borne from the order dated 29.5.2007, for "not having taken recourse to the remedies available within the public authority". In other words, the petitioner was sought to be proceeded against departmentally for the sin of approaching the PIO under the RTI Act, - a right guaranteed to him in law. In such cases, it is cold comfort for a litigant – such as the petitioner/applicant – who was driven to seek information, to approach the CIC, at Delhi, to be told that the erring official would be proceeded with departmentally especially after recording that the lapse i.e. the delay or even the unreasonableness of withholding of information was unjustified. The petitioner in effect was doubly deprived – in the first instance, of the information which was sought for, and secondly, he was exposed to an unjustified threat of enquiry. In these circumstances, even though the CIC recommended disciplinary action under Section 20 (2), its denial of any penalty order under Section 20, in the considered opinion of this Court, cannot be upheld.

14. As far as the sixth respondent's contention regarding possible prejudice in his departmental enquiry is concerned, this Court feels that an order under Section 20 would not in any manner come in the way of his defenses, lawfully available to him in such proceedings. The sixth respondent is not denying the findings recorded in the order dated 29.5.2006; in fact he has not even challenged it. The court cannot be unmindful of the circumstances under which the Act was framed, and brought into force. It seeks to foster an "openness culture" among

state agencies, and a wider section of "public authorities" whose actions have a significant or lasting impact on the people and their lives. Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. It is to ensure these ends, that time limits have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy.

15. In the above circumstances, Court is of the opinion that the impugned order to the extent it discharges the sixth respondent of the notice under Section 19 (8) and does not impose the penalty sought for has to be declared illegal. In this case, the penalty amount (on account of the delay between 28.12.2005 and the first week of May, 2006 when the information was given) would work out to Rs.25,000/-. The third respondent is hereby directed to deduct the same from the sixth respondent's salary in five equal installments and deposit the amount, with the Commission.

16. In the circumstances of the case, the third respondent shall bear the cost of the proceedings quantified at Rs.50,000/- be paid to the petitioner within six weeks from today.

17. The Writ Petition is allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

APRIL 28, 2009
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