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

+ W.P.(C) 5204/2008

DR.(MRS.) SARLA RAJPUT Petitioner

Through Mr. Subhash Oberoi, Adv.

versus

CENTRAL INFORMATION COMMISSIONER & ORS. ... Respondent

Through Ms. Usha Saxena, Adv. for C.P.
Saxena, Adv. for CIC.
Mr. R.K. Singh, Adv. with Ms. Deepa
Rai, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

% **02.07.2009**

As per office noting respondent No.4, Ms. Suja Rose John has been served. The respondents have not filed counter affidavit and there is no appearance on behalf of respondent No.4. Respondent No.4 is accordingly proceeded ex-parte.

2. Respondent No.4 had filed an application under Right to Information Act, 2005. Dr. (Mrs.) Sarla Rajput, the petitioner herein was the Public Information Officer, who processed the application and furnished reply. No satisfied, the respondent No.4 preferred first appeal and then approached

the Central Information Commission by way of second appeal.

3. The Central Information Commission by order dated 15th December, 2007 allowed the second appeal making observations against the stand taken by the National Council for Educational Research and Training (NCERT for short). By the same order dated 15th December, 2007, the Central Information Commission also imposed a penalty of Rs.25, 000/- on the petitioner under Section 20(1) of the Right to Information Act, 2005. The relevant portion of the order dated 15th December, 2007, reads:-

“6. In the absence of the Appellant, The Commission heard the Respondents who insisted that they could not disclose the information asked for by the Appellant only because they had not been permitted to do so by the higher authorities. They wanted to bring to the commission’s notice their published brochure containing the rules of their Department laying down that such information may be treated as confidential. Listening to them, it was obvious that they were completely oblivious of the fact that there was something in place now known as the Right to Information Act-2005. The Respondents kept on insisting that since they were officials they were bound by the rules contained in their published brochure. This, in fact, is the first time that the Commission has had to listen such a stand taken by the Respondents. It is all the more surprising for, now, the RTI-Act is more than two years old. The Commission takes grave objection to this stand of the Respondent and imposes a penalty of Rs. 25, 000/- on the PIO for what it considers willful suppression of facts under Section 20 (1) of the RTI-Act, which lays down as follows:

“20 (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:”

4. Section 20(1) of the Right to Information Act, 2005 reads as under:

“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:

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.”

5. Before imposing penalty of Rs. 25,000/- vide order dated 15th December, 2007 reasonable opportunity of hearing was not granted to the Public Information Officer i.e. the petitioner. No notice was issued to the petitioner to explain her stand and justify her position. Proviso to Section

20(1) requires and mandates reasonable opportunity of being heard before a public information officer is burdened with penalty. Further penalty under Section 20(1) of the Act can be imposed when conditions mentioned therein are satisfied. Penalty is not automatic or mandatory when an appeal is allowed by the Central Information Commissioner.

6. The stand of the petitioner is that she had retired from services of NCERT on 31st January, 2007 and she did not have any information about pendency of the appeal before the Central Information Commission. It may be also noted that personal penalty of Rs.25, 000/- has been imposed on the petitioner and the said penalty is to be recovered as per the order dated 15th December, 2007 from the salary of the petitioner and as per the second order dated 23rd June, 2008 from the pension payable to the petitioner.

7. In these circumstances, there is clear violation of proviso to Section 20(1) of the Right to Information Act, 2005. Order dated 15th December, 2007 imposing penalty of Rs. 25, 000/- on the petitioner cannot be sustained. It is accordingly set aside.

8. Counsel for the Central Information Commission has drawn my attention to order dated 23rd June, 2008. This order was passed pursuant to an application for review made by NCERT. After order dated 15th December,

2007 imposing penalty of Rs. 25,000/- was passed, a show cause notice under Section 20(1) of the Right to Information Act, 2005 was issued to the petitioner on 15th January, 2008. The Right to Information Act, 2005 under Section 20(1) does not envisage a post decisional show cause notice. Show cause notice has be issued before a penalty order is passed and before any final findings are recorded for imposing penalty under Section 20(1) of the Right to Information Act, 2005. In fact, the counsel for the petitioner disputes the receipt of notice dated 15th January, 2008. In these circumstances, I do not think that order dated 23rd June, 2007 can be sustained. The said order is also set aside.

9. The matter is remanded back to the Central Information Commission to decided the question whether any penalty should be imposed on the petitioner under Section 20(1) of the Right to Information Act, 2005. The petitioner will appear before the Central Information Commissioner on 10th August, 2009 either in person or through a representative. The Central Information Commissioner will re-examine the question whether any penalty should be imposed upon the petitioner under Section 20(1) of the Right to Information Act, 2005 without being influenced by the earlier orders. It is clarified that this Court has not expressed any opinion on merits.

The petition is accordingly disposed of.

SANJIV KHANNA, J.

JULY 02, 2009

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