

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

% Date of Decision: 28.10.2013

+ **W.P.(C) No.6755/2012**

J.K.MITTAL Petitioner

Through:Petitioner in person with Mr.Varun

Gaba, Advocate

versus

CENTRAL INFORMATION COMMISSION AND ANR

..... Respondents

Through:Mr.Amrit Pal Singh, CGSC for R.2
with Mr.Naresh Kumar, Dy. Registrar,
CESTAT in person.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J. (ORAL)

The petitioner before this Court filed an application dated 4th February, 2012 before the Central Public Information Officer (CPIO) of Central Excise & Service Tax Appellate Tribunal (CESTAT) seeking certain information. Alleging that the CPIO had failed to provide information sought in terms of the aforesaid application, the petitioner filed a complaint before the Central Information Commission under Section 18 read with Section 20 of the Right to Information Act, seeking imposition of penalty against the said CPIO under Section 20 of the Act.

In the aforesaid complaint, the petitioner clearly stated that he had filed a separate appeal under Section 19 of the Act before the First Appellate Authority and in the complaint he was seeking action against the CPIO since the Hon'ble Supreme Court in **CIC vs. State of Manipur & Ors.** had held that the procedure contemplated under Section 18 of the Act was altogether different from the procedure contemplated under Section 19 of the Act and, therefore, the Commission has no power, while dealing with a complaint, to direct providing of the information subject-matter of the complaint. In Para 6 of the complaint, the petitioner reiterated that he was not seeking any information and the Commission had no jurisdiction to direct providing of the information while considering a complaint under Section 18 of the Act.

2. The aforesaid complaint was disposed of by the Commission, vide impugned order dated 19th July, 2012 which, to the extent it is relevant, reads as under:-

“2. In order to avoid multiple proceedings under sections 18 and 19 of the RTI Act, viz., complaints and appeals, this case is remitted to CPIO, Customs Excise & Service Tax, Appellate Tribunal, New Delhi (along with copy of appeal and RTI-request), with the following directions:

(i) In case no reply has been given by the CPIO to the Complainant to his RTI- request dated 14.2.2012 CPIO should furnish a reply to the Complainant **within two weeks** of receipt of this order.

(ii) In case CPIO has already given a reply to the Complainant in the matter, he should furnish a copy of his reply to the Complainant **within one week** of receipt of this order.”

3. Section 18 of the Act, to the extent it is relevant provides that it shall be the duty of the Commission to receive and enquire into a complaint from any person who has been refused access to any information requested under the Act or who has not been given a response to a request for information or access to information within the time limits specified under the Act. It is, therefore, obligatory for the Commission to decide such a complaint on merit instead of simply directing the CPIO to provide information which the complainant had sought. If the Commission finds that the CPIO had without reasonable cause refused to receive an application for information or had not furnished information within the prescribed time or had given incorrect, incomplete or misleading information, it is required to impose prescribed penalty upon such a CPIO/SPIO, as the case may be. In the cases covered by Sub-section (2) of Section 20 of the Act, the

Commission is also required to recommend disciplinary action against the concerned CPIO or SPIO, under the service rules applicable to him. Section 19 of the Act, on the other hand, provides for a first appeal to the First Appellate Authority under Sub-section (1) and a Second Appeal to the Commission under Sub-section (3) of the aforesaid Section. Sub-section (8) of the aforesaid Act deals with the power of the Commission with respect to the appeals preferred in terms of Sub-section (3) of the said Section and reads as under:-

“8. In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,-

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including-

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;
(b) require the public authority to compensate the complainant for any loss or other detriment suffered;
(c) impose any of the penalties provided under this Act;
(d) reject the application.”

4. The scope of the powers of the Commission under Section 18 of the Act came up for consideration of the Hon'ble Supreme Court in **Central Information Commissioner vs. State of Manipur 2012(286) E.L.T. 485(S.C.)** Appellant No.2 in the aforesaid case filed an application dated 9.2.2007 seeking certain information from the State Information Officer. Since no response was received, he preferred a complaint before the State Chief Information Commissioner under Section 18 of the Act. The said State Chief Information Commissioner directed respondent No.2 before the Apex Court to furnish the information which appellant No.2 had sought. The aforesaid direction of the State Chief Information Commissioner was challenged by the State by way of writ petition. The appellant No.2 had filed yet another complaint before the Chief Information Commissioner which also had met a similar fate at the hands of the State Chief Information Commissioner. A learned Single Judge of the High Court upheld the order passed by the State Chief Information Commissioner. Being

aggrieved, the State preferred an appeal before a Division Bench of the High Court which held that the Commissioner had no power to direct the respondent to furnish information since such a power could be exercised only in terms of Section 19 of the Act. The Commissioner was accordingly directed to dispose of the complaint in accordance with law. Being aggrieved by the order passed by the Division Bench, the Chief Information Commissioner preferred an appeal by Special Leave. Rejecting the appeal filed by the Commissioner, the Apex Court, *inter alia*, held as under:-

“...28. The question which falls for decision in this case is the jurisdiction, if any, of the Information Commissioner under Section 18 in directing disclosure of information. In the impugned judgment of the Division Bench, the High Court held that the Chief Information Commissioner acted beyond his jurisdiction by passing the impugned decision dated 30th May, 2007 and 14th August, 2007. The Division Bench also held that under Section 18 of the Act the State Information Commissioner is not empowered to pass a direction to the State Information Officer for furnishing the information sought for by the complainant.

29. If we look at Section 18 of the Act it appears that the powers under Section 18 have been categorized under clauses (a) to (f) of Section 18(1). Under clauses (a) to (f) of Section 18(1) of the Act the Central Information Commission or the State Information Commission, as the case may be, may receive and inquire into complaint of any person who has been refused access to any information requested under this Act (Section 18(1)(b)) or has been given incomplete, misleading or false information under the Act (Section 18(1)(e)) or has not been given a response to a request for information or access to information within time limits specified under the Act (Section 18(1)(c)). We are not

concerned with provision of Section 18(1) (a) or 18(1)(d) of the Act. Here we are concerned with the residuary provision under Section 18 (1)(f) of the Act. Under Section 18(3) of the Act the Central Information Commission or State Information Commission, as the case may be, while inquiring into any matter in this Section has the same powers as are vested in a civil court while trying a suit in respect of certain matters specified in Section 18(3)(a) to (f). Under Section 18(4) which is a non-obstante clause, the Central Information Commission or the State Information Commission, as the case may be, may examine any record to which the Act applies and which is under the control of the public authority and such records cannot be withheld from it on any ground.

30. It has been contended before us by the Respondent that under Section 18 of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under Section 18 is an order of penalty provided under Section 20. However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bona fide.

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37. We are of the view that Sections 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies. One cannot be a Substitute for the other.

38. It may be that sometime in statute words are used by way of abundant caution. The same is not the position here. Here a completely different procedure has been enacted under Section 19. If the interpretation advanced by the learned Counsel for the Respondent is accepted in that case Section 19 will become unworkable and especially Section 19(8) will be rendered a surplusage. Such an interpretation is totally

opposed to the fundamental canons of construction. Reference in this connection may be made to the decision of this Court in *Aswini Kumar Ghose and Anr. v. Arabinda Bose and Anr.*: AIR 1952 SC 369. At page 377 of the report Chief Justice Patanjali Sastri had laid down:

“It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute.”

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42. Apart from that the procedure under Section 19 of the Act, when compared to Section 18, has several safeguards for protecting the interest of the person who has been refused the information he has sought. Section 19(5), in this connection, may be referred to. Section 19(5) puts the onus to justify the denial of request on the information officer. Therefore, it is for the officer to justify the denial. There is no such safeguard in Section 18. Apart from that the procedure under Section 19 is a time bound one but no limit is prescribed under Section 18. So out of the two procedures, between Section 18 and Section 19, the one under Section 19 is more beneficial to a person who has been denied access to information.”

5. In view of the above referred authoritative pronouncement of the Apex Court, there can be no dispute that while considering a complaint made under Section 18 of the Act, the Commission cannot direct the concerned CPIO to provide the information which the complainant had sought from him. Such a power can only be exercised when a Second Appeal in terms of Sub-section (3) of Section 19 is preferred before the Commissioner.

6. As noted earlier, in his complaint, the complainant had specifically referred to the above referred order of the Apex Court and had also drawn the attention of the Commission to the legal proposition, as enunciated in the above referred decision. A perusal of the impugned order would show that the Commission either did not at all advert to the above referred decision or for the reasons which cannot be gathered from the order , it decided not to refer to the aforesaid decision of the Apex Court in the impugned order.

7. The complainant, who appears in person, states that in fact such orders have been passed by the Commission in a number of cases despite the attention of the Commission having been specifically drawn to the authoritative pronouncement of the Apex Court. He volunteers to give particulars of some such cases.

8. For the reasons stated hereinabove, the impugned order dated 19th July, 2012 passed by the Central Information Commission is hereby set aside and the Commission is directed to dispose of the complaint (No.CIC/SS/C/2012/000336) of the petitioner within four months from today, in accordance with the procedure prescribed in the Act.

9. As regards, the grievance expressed by the petitioner that the Commission, despite its attention being drawn to the above referred

decision of the Apex Court continues, while considering a complaint under Section 18 of the Act, to direct the concerned CPIO to provide information instead of deciding the complaint on merits, it is expected that the Commission henceforth will decide the complaints on merits instead of directing the CPIO to provide the information which the complainant had sought. Of course, it would be open to the Commission to give such a direction while entertaining a second appeal under Sub-section (3) of Section 19 of the Act.

The petition stands disposed of.

V.K. JAIN, J

OCTOBER 28, 2013

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