

CENTRAL INFORMATION COMMISSION

2nd Floor, C-Wing, August Kranti Bhawan
Bhikaji Cama Place, New Delhi -110066
Website:cic.gov.in

Complaint No.:- CIC/BS/C/2016/000255-BJ

Complainant : Mr. Radha Raman Tripathy
F-9, City Center, Sector – IV,
B.S. City – 827004, Jharkhand.
Mobile No. 7738263003.

Respondent : CPIO & Jt. Commissioner of Income Tax,
Range-3, Sector-1C/799-800, B S City, Bokaro
Jharkhand-827001

Date of Hearing : 09.06.2017
Date of Decision : 09.06.2017

Date of filing of RTI application	07.04.2016
CPIO's response	21.04.2016
Date of filing the First appeal	Not on Record
First Appellate Authority's response	Not on Record
Date of diarized receipt of second appeal by the Commission	10.05.2016

ORDER

FACTS:

The Complainant vide his RTI application sought information on 02 points regarding the total number of cases in which penalty u/s 221 of the Income Tax Act, 1961 had been imposed during the F.Y 2015-2016 and the total amount of penalty imposed thereon.

The CPIO vide its letter dated 21.04.2016 denied disclosure of information under Section 8(1)(j) of the RTI Act, 2005. Dissatisfied by the response of the CPIO, the Complainant approached the Commission.

HEARING:

Facts emerging during the hearing:

The following were present:

Complainant: Mr. Radha Raman Tripathy (M: 7738263003) through VC;

Respondent: Mr. Sanjiv Kumar Roy, JCIT (M: 8902198358) through VC;

The Complainant reiterated the contents of his RTI application and stated that cyclostyled, 'cut and paste' orders without application of mind had been passed by the CPIO in case no. CIC/BS/C/2016/000251/000252/000253/000254/ 000255-BJ dated 21.04.2006. It was argued that if the data was not maintained in their office, they could have easily transferred the RTI application to the concerned Competent Authority under Section 6(3) of the RTI Act, 2005, which was not done in the present case. The Complainant accused the Respondent of deliberately not providing the requisite information and submitted that the CPIO had disposed 11 of his RTI applications through a single reply without application of mind. It was noted that the CPIO had claimed exemption under Section 8(1)(j) of the RTI Act, 2005, which was incorrect and

inappropriate. He took strong objection to the reply of the CPIO and stated that it was irrelevant, unwarranted, misleading, revengeful, targeting the RTI applicant rather than furnishing information and therefore, prayed for imposition of penalty/ fine on the concerned CPIO under Section 20(1) of the RTI Act, 2005. The Complainant strongly objected to his personal details being disclosed by the CPIO on 21.04.2016 and contested the contradictory positions undertaken by the CPIO in different cases/individuals. The Respondent could not satisfactorily answer any of the issues raised by the Complainant.

On being queried by the Commission regarding the reasons for not approaching the FAA in the matter, the Complainant expressed his complete lack of faith and distrust in the First Appeal Mechanism within the Public Authority and narrated his personal experience in several other matters where the FAA had merely concurred with the CPIO without application of mind.

The Commission at the outset observed that the CPIO while responding to the RTI application incorrectly applied Section 8 (1) (j) of the RTI Act, 2005 on the queries raised by the Complainant in his RTI application on the ground that no larger public interest was being served in the disclosure of information. While claiming exemption under Section 8 (1) (j) of the RTI Act, 2005, the preliminary requirement was to ascertain whether the information sought was personal in nature and the need to determine, if any larger public interest was involved in the matter.

In this context, the Commission referred to the decision of the Hon'ble High Court of Kerala in *Treesha Irish v. The CPIO and Ors.* WP (C) No. 6532 of 2006 dated 30.08.2010 wherein it was held as under:

"23. There is no provision anywhere in the Act to the effect that information can be refused to be disclosed if no public interest is involved. Of course in a case of personal information, if it has no relationship with any public activity or interest, the information officer has discretion to refuse to disclose the same, if the larger public interest does not justify disclosure of such information. But on the ground of lack of public interest involved alone, the public information officer cannot refuse to disclose the information, without a finding first that the information is personal information having no relationship to any public activity or interest."

The Commission referred to the decision of the Hon'ble High Court of Bombay in the decision of *Kashinath J. Shetye v. Public Information Officer and Ors.* WP No.1 of 2009 dated 20. 01.2009 wherein it was held as under:

"When one becomes a public servant, he in strict sense becomes a public servant and as such, every member of public, gets a right to know about his working, his honesty, integrity and devotion to duty. In fact, nothing remains personal while as far as the discharging of duty. A public servant continues to be a public servant for all 24 hours. Therefore, any conduct/ misconduct of a public servant even in private, ceases to be private. When, therefore, a member of a public, demands an information as to how many leaves were availed by the public servant, such information though personal, has to be supplied and there is no question of privacy at all. Such supply of information, at the most, may disclose how sincere or insincere the public servant is in discharge of his duty and the public has a right to know"

The Commission instructs the respondent to convene periodic conferences/seminars to sensitize, familiarize and educate the concerned officials about the relevant provisions of the RTI Act, 2005 for effective discharge of its duties and responsibilities.

With regard to the imposition of penalty on the CPIO/PIO under Section 20 of the RTI Act, 2005, the Commission took note of the ruling of Hon'ble Delhi High Court in W.P.(C) 11271/2009 Registrar of Companies & Ors v. Dharmendra Kumar Garg & Anr. (delivered on: 01.06.2012) wherein it was held:

“ 61. Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a showcause notice under Section 20 of the RTI Act and the imposition of penalty. The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.”

Similarly, the following observation of the Hon'ble Delhi High Court in *Bhagat Singh v. CIC & Ors.* WP(C) 3114/2007 are pertinent in this matter:

“17. This Court takes a serious note of the two year delay in releasing information, the lack of adequate reasoning in the orders of the Public Information Officer and the Appellate Authority and the lack of application of mind in relation to the nature of information sought. The materials on record clearly show the lackadaisical approach of the second and third respondent in releasing the information sought. However, the Petitioner has not been able to demonstrate that they malafidely denied the information sought. Therefore, a direction to the Central Information Commission to initiate action under [Section 20](#) of the Act, cannot be issued.”

Furthermore, the High Court of Delhi in the decision of Col. Rajendra Singh v. Central Information Commission and Anr. WP (C) 5469 of 2008 dated 20.03.2009 had held as under:

“Section 20, no doubt empowers the CIC to take penal action and direct payment of such compensation or penalty as is warranted. Yet the Commission has to be satisfied that the delay occurred was without reasonable cause or the request was denied malafidely.

.....The preceding discussion shows that at least in the opinion of this Court, there are no allegations to establish that the information was withheld malafide or unduly

delayed so as to lead to an inference that petitioner was responsible for unreasonably withholding it.”

The Complainant was not able to substantiate his claims further regarding malafide denial of information by the respondent or for withholding it without any reasonable cause. However, there was a palpable uneasiness witnessed between both the parties which is not a healthy sign for the functioning of the Public Authority.

DECISION:

Keeping in view the facts of the case and the submissions made by both the parties, the Commission instructs the respondent to convene periodic conferences/seminars to sensitize, familiarize and educate the concerned officials about the relevant provisions of the RTI Act, 2005 for effective discharge of its duties and responsibilities. The CPIO is however, warned to be extremely careful and vigilant in handling RTI petitions in future, failing which the Commission would initiate penal action under Section 20(1) of the RTI Act, 2005.

The Complaint stands disposed accordingly.

(Bimal Julka)
Information Commissioner

Authenticated True Copy:

(K.L.Das)
Deputy Registrar

Copy to:

- 1- The Chief Commissioner of Income Tax, Income Tax Department
Central Revenue Building Main Road, Ranchi, Jharkhand;