

IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) NO.3464 /2007

03.09.2007

Date of decision: September 3rd, 2007.

AJAY KUMAR GOEL ??PETITIONER**THROUGH: Ms. Ratika Mehrotra, Advocate.****VERSUS****CENTRAL INFORMATION COMMISSION and OTHERS ??RESPONDENTS****Through: Mr. K.K. Nigam, Advocate for CIC;****Mr. Sanjeev Sabharwal, Advocate for MCD.****CORAM:****Mr. Justice S. Ravindra Bhat****1. Whether reporters of local papers may be allowed to see the judgment.? Yes****2. To be referred to the Reporter or not?
Yes****3. Whether the judgment should be reported in the Digest? Yes****CORAM :-****Mr. Justice S. Ravindra Bhat: (Open Court)****1. The petitioner in these writ proceedings challenges the orders , including the order dated 6-11-2006 issued by the first respondent, the Central Information Commission (hereafter called ?CIC?).****2. On 19-4-2004, this court made in order in writ proceedings directing the Municipal Corporation of Delhi, to take steps to remove weekly bazaars held in residential areas. The petitioner wrote a letter to the Deputy Commissioner MCD of the concerned zone requesting the authorities to implement the orders of the Court and take steps to clear in such weekly markets in same residential colonies. He alleges that the MCD authorities never replied to this request. The petitioner therefore applied under the Right to Information Act, 2005(hereafter called ?th Act?) on 17-11-2005 seeking information about action taken by the MCD authorities upon his letter on the subject. He elicited specific information regarding day-to-day movement of the files dealing with his letter and the amounts collected by the MCD authorities from weekly bazaars. By letter dated 19-12-2005 the second respondent replied to the petitioners application providing information about amounts collected from weekly bazaars. It is alleged that however, information about status of his later of 24 April 2004, and date wise movement of the file was not provided. The MCD's position**

was that removal of weekly bazaars was a policy matter and could not be decided at the zonal level. Dissatisfied with the response obtained, the petitioner filed a complaint under section 18 of the Act, with the CIC, alleging that the information given to him was in complete and misleading.

3. The CIC made an order on 23rd May 2006 directing the second respondent to supply the information sought by the petitioner and also to show cause why penalty under Section 20 of the Act should not be imposed on him, since the PIO was held to be in violation of the prescribed time-frame under Section 7. The second respondent did not show cause to the notice issued by the CIC; therefore the latter imposed a penalty of Rs.250/-each day subject to a maximum of Rs.25,000/-. It is alleged that these orders were disobeyed; the petitioner was constrained to prefer a review proceeding, before the CIC requesting it to define the time frame for compliance of its orders and also seeking initiation of disciplinary proceedings against the second respondent. This application was made on 26-6-2006. The CIC, on 9-8-2006 issued a direction to the third respondent, Commissioner of MCD to appear in person before it on 18-8-2006 and to show cause why he should not be prosecuted for non-compliance with directions, under section 20 of the Act.

4. Two hearings were held by the CIC, on 18-8-2006 and 26-8-2006. The petitioner's grievance here is that the proceedings were silent regarding the contempt committed by the Commissioner MCD. It is also alleged that the MCD officials failed to provide any reason why the CIC's order of 5-6-2006 was not complied with.

5. On 7-9-2006, the MCD replied to the petitioner that the information sought by him could not be provided as the files concerning the question were untraceable. It was also informed that the concerned official had retired and that records of that period had been seized by the Central Bureau of Investigation, [hereafter 'CBI?']. The relevant extract of that reply reads as follows:

?Point No. 1 and 2

The impugned application of Shri Ajay Kumar Goel dated 27-4-2004 was received in the Office of the then Deputy Commissioner Shahdara (South) Zone Shri D.R. Tamta on 28-4-2004 and the same was sent to the concerned Licensing Inspector to the hierarchy of Assistant Commissioner, Administrative Officer and Zonal Superintendent. The then Licensing Inspector Shri. V.P. Scott has retired from the Municipal Service. From the available records In the Licensing branch, the whereabouts and the movements of the application dated 27-4-2004 is not traceable. It is however, informed by the present staff of the Licensing branch that certain records of that period had been seized by the CBI in connection with some inquiry. In the absence of non-availability of relevant record/file, it is not possible to indicate just what action has been taken on the letter in question received from the applicant and the movement thereof.?

6. On 6-11-2006, the CIC made the impugned order closing the matter and rejecting the review petition. The order reads as follows:

?ORDER

The appellant has submitted that MCD has not supplied information relating to

whereabouts of his letter and movement of the file. From the letter of MCD, it appears that the concerned inspector dealing with the matter has since retired and the movement of the application dated 27-4-2004 is not traceable. MCD has also stated that the CBI, in connection with an inquiry, has ceased certain

records of that period. Double and finds that the information given is incomplete, and MCD on the other hand fields that they had given what they have. CIC naturally can neither enter into it judging the adequacy of the information supplied provided that all information available has indeed been so supplied, not cause an inquiry or devise and mechanism to trace what is claimed to be not traceable. We do, however, urge upon the public authority, in this case the MCD to maintain their data in such a manner so as to facilitate access to information to the citizen, which is mandated under Section 4 (1) of the aCT, but even such a direction can admittedly be prospective rather than retrospective.

In regard to the other matter about which the apple and has expressed his unhappiness is regarding applicability of a High Court order. MCD feels that the High Court order in question is applicable only within the residential precincts of Naraina Vihar. On the other hand the apple and feels that this order is applicable throughout Delhi. This Commission naturally cannot give an interpretation to an order of the Hon'ble High Court about its applicability.

Under these circumstances, the review petition is without merit and hence not maintainable...?

7. Ms. Ratika Mehrotra, learned counsel, besides reiterating the grounds urged in the petition, submitted that unavailability of records should not have been treated as a legitimate excuse for withholding information. The CIC should have directed MCD to fix responsibility and punish the guilty officers. The MCD could also have been directed MCD to reconstruct the file and provided it to the petitioner. The failure of CIC to issue such directions caused immense prejudice; besides it undermines the letter and spirit of the Act. It was submitted that instead of accepting the lame excuse of MCD, the the CIC ought to have appreciated that the explanation pointed to deliberate destruction of the record to prevent the petitioner from accessing information, which amounted to an offence under the Act.

8. Ms. Mehrotra next submitted that the CIC failed in its duty to reasonably ensure that complete and full information was furnished to the petitioner. This duty, it was alleged was reinforced by section 18 and Section 20. Counsel submitted that the adequacy, relevance and correctness of the information supplied by a public authority has to be ensured by the CIC, constituted as the highest body under the Act. Instead, the CIC accepted the excuse of the MCD and closed the matter. In doing so, it fell into grave error of law.

9. Counsel for MCD submitted that the main information sought by the petitioner concerned action taken on the letter for implementation of the High Court's decision. However the CIC proceeded on the assumption that information had not been supplied within the time, reckoning the date of submission of application by the petitioner has 17-11-2005. This date was in dispute since the Central Principal Information Officer had shown receipt of documents indicating that the application was received in the office on 23-11-2005. On

this, the CIC was satisfied that information had been supplied within the time. The order dated the 25-8-2006, it was submitted, recorded in some detail the various steps taken in the previous proceedings. Initially, notices issued to the MCD had not been made available to it; therefore it was unrepresented in the proceeding. On receiving the notice to show cause, a review petition was filed by the CPIO, which was dealt with on 25-8-2006. After satisfying itself that the MCD had not withheld information the CIC correctly closed the proceedings.

10. The above narrative would show that the main dispute is not as much about the content of information sought; it is about the response of the MCD in

2004, when the petitioner allegedly wrote a letter seeking information about implementation of an order of this Court. This aspect is of some relevance, because at that stage the Act had not been brought into force. Since there is some dispute about whether the petitioner had in fact made the application on the date he is urged to have made ? as the MCD alleges that it was received sometime later in November 2005, the question of a delayed response is essentially one of fact. On this issue, it would be not appropriate for this court, in writ jurisdiction, to examine the record and substitute the findings of the CIC, which is the competent tribunal invested with the authority to decide factual disputes.

11. The other issue is whether the CIC acted in error of law, in proceeding as it did, while accepting the explanation of the MCD regarding the unavailability of the files. There cannot be any dispute that the MCD as a public authority, is under an undeniable duty to maintain its records to best facilitate access to those wishing it. Nevertheless the MCD explained why the day to day movement the files could not be indicated to the petitioner. Its explanation was that the concerned official had retired and the files were missing. The other reason given was that the CBI had seized certain files. These facts are within the peculiar knowledge of the MCD. In the absence of any allegation of ill will or personal malice, it would be difficult to support the petitioners submission that the MCD deliberately suppressed information from him. If one sees the fact that the main concern held out by him, i.e. implementation of court orders had been redressed, the grievance about why a letter written two years before the application had not been allegedly attended, is of not equal importance.

12. As regards the view expressed by the CIC, that its jurisdiction did not extend to interpreting court orders, in my considered view, no exception can be taken in that regard. The CIC cannot be asked to interpret such orders as they do not fall within its normal functioning. It is not charged with the duty of implementing such court orders. One could have understood the MCD proceeding and giving an interpretation ? right or wrong ? which could have been the subject matter of proceedings before this court. However the limited mandate conferred upon the CIC is to ensure the provisions of the Act for supply of information to concerned applicants are dealt with and wherever required, implemented, according to law. If this perspective were kept in mind, as was properly done by the CIC in this case, there can be no score for grievance.

14. In view of the findings indicated above, there is no merit in this writ petition. It is, accordingly, dismissed without any order on costs.

**DATED: 3-9-2007 (S.
RAVINDRA BHAT)**

JUDGE

31