

Central Information Commission
August Kranti Bhawan
Bhikaji Cama Place, New Delhi-110066

F.No.CIC/CC/C/2015/000182

Present:

- Complainant : 1. Shri Subhash Chandra Agrawal
: 2. Prof. Jagdeep Chhokar, Shri Anil Verma and Ms Shivani Kapoor, (authorized representatives of Shri Anil Bairwal)
- Intervener : Shri R.K. Jain
- Respondents : 1. Indian National Congress (INC)/ All India Congress Committee (AICC);
2. Bharatiya Janata Party (BJP);
3. Communist Party of India (Marxist) (CPM);
4. Communist Party of India (CPI);
5. Nationalist Congress Party (NCP);
6. Bahujan Samaj Party (BSP)
(all the respondents were absent)
- Dates of Hearing : 21.11.2014 and 07.01. 2015
- Date of Decision : 16.03. 2015

Order

1. The case was heard on 21.11.2014 and 07.01.2015 after a notice of enquiry issued on 03.11.2014 (F.No.CIC/SM/C/2011/001386 and 000838) under section 18(2) of the Right to Information Act, 2005 (RTI Act). The complaint was that the Commission's order of 03.06.2013 had not been implemented. Submissions were made by the complainants, Shri Subhash Chandra Agrawal and Prof. Jagdeep Chhokar (authorized representative of

Shri Anil Bairwal). The intervener, Shri R.K. Jain, also made submissions. The respondents did not attend the hearings.

Background

2. It may be recalled that Shri Agrawal in application dated 16.05.2011 had asked the Presidents/ General Secretaries of the INC/AICC and the BJP to supply information, *inter alia*, relating to election manifestos, fulfilment of promises, receipts and payments, proposals to Government and Election Commission about electoral reforms, etc. The Treasurer, AICC, by letter dated 20.05.2011 informed Shri Agrawal that INC/AICC did not come under the RTI Act. The BJP by letter dated 28.05.2011 informed Shri Agrawal that the BJP, not being a public authority, was not obliged to provide the information sought.

3. Shri Bairwal, in his application dated 29.10.2010, had asked the six national political parties, i.e., INC/AICC, BJP, CPI(M), CPI, NCP and BSP, to provide information about the sources, for a certain period, of the ten largest voluntary contributions. The Treasurer, AICC, by a letter dated 15.11.2010 informed Shri Bairwal that AICC did not come under the RTI Act. The NCP on 27.11.2010 informed that NCP was an NGO without resources for this work, while stating that the information be collected from the Election Commission and the Income Tax authorities with whom they were regularly filing returns. The CPI on 06.11.2010 informed the applicant about the sources of the ten maximum voluntary contributions as requested. The other political parties did not respond to Shri Bairwal.

4. Shri Agrawal and Shri Bairwal filed complaints in this Commission contending that the said national political parties came under the definition of “public authorities” in section 2(h) of the RTI Act. The complaints were heard by this Commission on 26.09.2012 and 01.11.2012. An order dated 03.06.2013 was passed.

5. The order held that the aforementioned national political parties were public authorities. The Presidents/ General Secretaries of these parties were directed to designate Central Public Information Officers (CPIOs) and appellate authorities at headquarters in six weeks. It was directed that the CPIOs respond to the RTI applications in four weeks time. The Presidents/ General Secretaries of these parties were also directed to comply with the provisions of section 4(1)(b) of the RTI Act.

Notice dated 03.11.2014 for enquiry

6. Shri Agrawal informed the Commission by representations dated 27.08.2013, 10.12.2013 and 23.12.2013 that none of the political parties had complied with the directions in the order of 03.06.2013. Accordingly, a

notice seeking comments of the concerned political parties was issued on 07.02.2014. Three political parties (INC/AICC; CPM; CPI) responded to the notice. Another notice dated 25.03.2014 was sent to the parties (BJP; NCP; BSP) that had not responded, of which, one party (NCP) responded.

7. The responses received were not satisfactory, therefore, a show-cause notice was issued on 10.09.2014 under section 18 of the RTI Act to all the six political parties to explain why an enquiry should not be initiated for non-compliance of this Commission's order dated 03.06.2013. Responses were received from four parties (INC/AICC; CPM; CPI; NCP). It was clear that none of the parties had taken steps to implement the order of 03.06.2013. Therefore, this Commission decided to hold an enquiry into the matter under section 18(2) of the RTI Act. Accordingly, a notice dated 03.11.2014 was issued fixing 21.11.2014 as the date for hearing.

Hearing on 21.11.2014

8. The respondents were absent during the hearing on 21.11.2014. Submissions were made by the complainants, Shri Agrawal and Prof. Jagdeep Chhokar, and by the intervener, Shri R.K. Jain.

9. During the hearing on 21.11.2014, Shri Agrawal submitted that penalty be imposed on the defaulting political parties and exemplary compensation be awarded. Shri Agrawal also said that the Commission make recommendations for terminating certain state-funded privileges and concessions being given to the political parties. Prof. Chhokar said that the political parties have deliberately not complied with the Commission's order and that their absence from the process has put the Commission in an awkward situation. Prof. Chhokar pressed for maximum penalty and exemplary compensation in accordance with a formula proposed by him. Shri Jain stated that the order of 03.06.2013 has not been questioned by the political parties before any court and that the directions therein were final and binding on the parties; and it is in this light that the issues of penalty and compensation have to be discussed.

Commission's interim order of 28.11.2014

10. Based on the hearing on 21.11.2014, the Commission passed an interim order dated 28.11.2014, highlighting the need for looking into:

(1) the nature and scope of this Commission's functioning as envisaged in the RTI Act to follow up on the compliance of its orders and directions;

(2) how to address a situation where the respondents do not engage in the process, such as the present instance where the political parties have not appeared in the hearings; and

(3) the need to identify the steps requisite for ensuring implementation of this Commission's order of 03.06.2013.

11. The Commission decided to provide another opportunity to the respondents to present their case. This would also be a chance for the complainants and intervener to make further submissions. The interim order of 28.11.2014 fixed 07.01.2015 as the date for hearing.

Hearing on 07.01.2015

12. The respondents were absent during the hearing on 07.01.2015.

13. The complainants, Shri Agrawal and Prof. Jagdeep Chhokar, and the intervener, Shri R.K. Jain, made submissions. The points on which they appeared more or less to be in agreement are:

(1) there is collusion between the respondent national political parties for not appearing before the Commission; this persistent ignoring of notices by the respondents and their keeping distance from the proceedings has affected the Commission's effectiveness;

(2) the Commission's order of 03.06.2013 is valid, final and binding on the respondent national political parties under the RTI Act;

(3) none of the respondents have approached the higher courts in appeal or writ petition, and that this was in accordance with the Attorney-General's advice, which recognized the legal strength and normativeness of the Commission's order of 03.06.2013;

(4) no parliamentary amendment Bill is under consideration currently for keeping political parties out of the RTI Act's purview; an earlier Bill had lapsed as the respondents did not pursue any legislative action to insulate the parties from information-disclosure to avoid giving the impression of being opposed to transparency;

(5) the willful non-compliance by the political parties comes from blatant defiance, intended to irretrievably weaken the Commission;

(6) the need for imposition of penalty and award of compensation;

(7) the enquiry initiated under section 18(2) of the RTI Act by the Commission's notice of 03.11.2014 should now be concluded.

Submissions by Shri Agrawal on 21.11.2014 and 07.01.2015

14. Shri Agrawal said that the political parties who legislated the right to information are themselves not respecting the law made by them, which has impacted adversely on the image of India's democracy. Shri Agrawal said that the absence of the respondents from the hearings was an "unprecedented situation", which was "...deeply motivated and hued in the colours of blatant defiance of the Commission's authority...", and that this

“...was an advertent disrespect of the Commission, to impede the ability of the Commission to perform its statutory function...”

15. Shri Agrawal further said that:

* non-compliance and the denial of information has hurt the proper exercise of voting rights; there is difficulty in making choice of the right candidate in the absence of information; many voters will not press the NOTA (none-of-the-above) button if they had access to information;

* Commission should take the “most stringent view”, and impose “maximum penalty” along with “exemplary compensation” on the President/Secretary of the defaulting political parties; though, as the hearing progressed it was indicated by the complainant that he could consider compensation for the actual loss, and would also be ready to accept a token compensation;

* Commission should make recommendations under section 25(5) of the RTI Act to the pertinent departments and agencies for withdrawal of government funded privileges such as accommodation on prime land, free media time, income tax exemptions, etc.; the need was mentioned for reviewing the criteria for registering political parties for availing facilities, e.g., copies of voter lists, etc.; with a view to screening out the “non-serious” parties, i.e., such as those not complying with the Commission’s order of 03.06.2013;

* the Election Commission can provide substantial help to this Commission for getting the order of 03.06.2013 implemented;

* the order of 03.06.2013 has not been challenged in a higher court, and that it is binding on the parties;

* the intention of the then Government had been, as per advice of its Attorney-General, not to appeal against the Commission’s order in the courts and to also desist from pursuing any amendment to the RTI Act for keeping political parties out of the definition of “public authority”;

* show-cause notice for penalty be sent to the President/ General Secretaries of the political parties, taking into account that CPIOs/ appellate authorities had not been appointed;

* that the political parties may defy orders to pay penalty on the pretext that no CPIO has been appointed.

Submissions by Prof. Chhokar on 21.11.2014 and 07.01.2015

16. Prof. Chhokar said that he generally agreed with Shri Agrawal, but was not in concurrence on certain points. Prof. Chhokar further submitted that he strongly objected to the absence from the process of the respondent national political parties despite the several opportunities given by this Commission. He said that this has not only caused detriment to the complainant, but has also impacted adversely on the reputation of the state

instruments. Prof. Chhokar said that the situation is unforeseen, created by the arrogance of the respondents and their unseemly defiance of the Commission. Prof. Chhokar said that a notice for imposition of penalty and award of compensation be issued to the President/ General Secretary of the national political parties.

17. Prof. Chhokar further elaborated that:

- * sections 18, 19 and 20, all part of the RTI Act's chapter V, must be read together as an integrated whole and be "interpreted and effectuated in conjunction with the statute in its entirety";
- * there was the need to recognize adequately the growing public cynicism on account of non-compliance by the national political parties and their sidelining of the Commission's directives; and the detrimental effect of such an attitude on the state of democracy;
- * there is a public expectation that the Commission would take effective steps to restore the rule of law and respect for institutions that has received a serious setback on account of non-compliance of the order of 03.06.2013, which "stands frustrated";
- * the statute has vested sufficient powers in the Commission for ensuring compliance with the law laid out in the RTI Act;
- * in the absence of CPIO, penalty be imposed on the President/ Secretary of the political parties; and that accordingly a notice be issued; and similar commensurate action be taken for award of compensation;
- * in context of awarding compensation, the detriment suffered does not necessarily have to be specifically linked with an individual complainant, the detriment could be on the "state of democracy", which in the present case is "serious and potentially catastrophic", and that this was a case where exemplary punishment be awarded;
- * the compensation should be equal to five percent of the average of the annual income as declared by the six political parties in their income tax returns;
- * that the complainant has the legal standing to claim compensation on behalf of the democracy of the country;
- * that the Commission can ensure attendance of the respondents as per section 18(3) of the RTI Act, which equips the Commission with the powers of a civil court under the Civil Procedure Code; but it is doubtful if any useful purpose would be served in prolonging the enquiry;
- * notices be issued to the respondents for penalty and compensation, even if past behaviour indicates that they will ignore the process.

Submissions by Shri Jain on 21.11.2014 and 07.01.2015

18. Shri R. K. Jain, stated the following:

- * the order of 03.06.2013 passed by this Commission is valid, binding and final;
- * that the order of 03.06.2013 was a “composite order in which a complete system was directed to be set up along with creation of an operational mechanism”, including a CPIO at the headquarters of the six national political parties with appellate authorities, which respond to information-seeking applications in accordance with the stipulated timelines, along with taking action on the voluntary disclosure provisions;
- * that the order is not ex-parte but passed after giving the respondents opportunity to be heard; and that the manner of violation of the directions in this order is a deliberate denigration of this Commission’s authority;
- * none of the political parties has challenged the order before the High Court or Supreme Court, therefore, the same has become final and binding under section 19(7) of the RTI Act;
- * the jurisdiction of the Commission to pass the said order of 03.06.2013 cannot be questioned at this stage before this Commission;
- * the statement by the INC/ AICC (see para 22 below) about the continuing pendency of an amendment Bill to keep political parties outside the RTI Act’s purview is not borne out by facts;
- * an order, such as that of 03.06.2013, cannot just be passed and left in a vacuum and that, despite the lack of directness in the RTI Act, the Commission has the requisite powers, even if incidental and ancillary, to get its orders enforced;
- * action on non-compliance of the orders passed by this Commission can be validly undertaken under section 18 of the RTI Act, which defines the powers and functions of the Commission.

19. Reference Shri Agrawal’s proposal to make recommendations under section 25(5) of the RTI Act, i.e., to cease grant of concessions and subsidies to the political parties, Shri Jain submitted that this Commission should not go beyond the directions given in its order of 03.06.2013. As regards the suggestion of Prof. Chhokar on compensation, Shri Jain said that a complainant cannot ask for compensation on behalf of all the citizens of the country, and that the compensation has to be confined to the “sufferings” of the information seeker, taking into account also that the order of 03.06.2013 is time bound and not an open ended order.

Approach of the Respondents

20. The respondents did not attend the hearing on 21.11.2014. Another date, 07.01.2015, was fixed, but the respondents, again, did not appear.

21. Letters from the respondents, received in the Commission prior to the notice of 03.11.2014, have been referred to in paras 6 and 7, above.

Subsequent to the notice a letter dated 06.01.2015 was received from INC/AICC. The complainants/ intervener present on 07.01.2015 for the hearing were given copies of the letter.

22. The aforementioned letter from INC/AICC states that: "...Nothing in the RTI Act suggests that a political party is a "public authority"... The CIC has expanded its own jurisdiction beyond the letter and spirit of the RTI Act, which is *ex facie* illegal...that the order dated 03.06.2013 is in excess of the powers of the CIC contemplated under Section 18 of the RTI Act...if the CIC so chooses, it may...find out the status of the Right to Information (Amendment) Bill, 2013...it is requested that these proceedings may either be closed or adjourned *sine die* till the final outcome of the proceedings before Parliament."

23. Prof. Chhokar objected to the suggestion of the INC/ AICC in their letter that records be summoned from the Government or the Rajya Sabha/ Lok Sabha Secretariat to find out the status of the Right to Information (Amendment) Bill, 2013 along with requisitioning a copy of the Parliamentary Standing Committee's pertinent report. Prof. Chhokar said that the said Bill had lapsed with the dissolution of the Lok Sabha in 2014.

24. The various responses received from the respondents, generally speaking, are along similar lines. They question the Commission's competence to pass the order of 03.06.2013. The respondents have said that the order is not acceptable to them as it was contrary to law and given without jurisdiction. It was also stated by the respondents that the Parliament is considering a Bill to amend the RTI Act to keep the respondents outside the purview of the Act.

25. The no-jurisdiction argument by the respondents was described as an afterthought by the complainants. The respondents did not challenge the Commission's order of 03.06.2013 in court. To question the Commission's competence or jurisdiction now would be at odds with the substantive weight that has already come to be associated with the order, taking into account the Statement of Objects and Reasons of the RTI (Amendment) Bill, 2013. The Statement recognizes upfront the order's implications and the *raison d'etre* of the proposed amendment to the RTI Act. The reason for the amendment is: "... the CIC has made a liberal interpretation of section 2(h) of the said Act..." and that "...Declaring a political party as public authority under the RTI Act would hamper its smooth internal working..." The Commission's jurisdiction is not under question.

26. The plea that the Commission is without jurisdiction is not credible. This cannot be sustained in the light of para 25 above. If, at all, there is a

question, it is not connected with jurisdiction. The Commission has addressed a number of cases in which like matters have been addressed and decided, including, whether an entity is a public authority. It is mentionable that there is a specific provision (section 19(8)(a)(ii)) enabling the Commission to require the public authority to appoint a CPIO. The respondent national political parties were declared to be public authorities, and consequently, the Commission directed appointment of a CPIO in the order of 03.06.2013.

Order of 03.06.2013 – binding and final

27. The Commission's order is binding as per section 19(7) of the RTI Act. The Supreme Court in the case of Namit Sharma vs Union of India in WP(Civil) No. 210 of 2012, held "...An order passed by the Commission is final and binding and can only be questioned before the High Court or the Supreme Court in exercise of the Court's jurisdiction under Article 226 and/or 32 of the Constitution, respectively." The respondent national political parties chose not to approach any court.

28. The respondents have not questioned the order of 03.06.2013 before any court. Not only is the order legally correct, it is convincing from the standpoint of the aims and objectives espoused by the RTI Act with reference to transparency, accountability and access to information. It was a full bench of the Commission, which had held in the order that "...It would be odd to argue that transparency is good for all State organs but not so good for Political Parties, which, in reality, control all the vital organs of the State...The criticality of the role being played by these Political Parties in our democratic set up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of section 2(h)... also point towards their character as public authorities..."

29. No competent court has intervened in the matter. The complainants said that none of the respondents went to the courts as the order was legal. It was said that needlessly opposing the order would impair the profile of openness and transparency that political parties and other bodies in public life seek to promote for themselves. The political parties did not wish to be seen as barriers to accountability, hence did not question the Commission's order in any higher court. The RTI (Amendment) Bill, 2013 seeking to keep political parties outside the purview of the RTI Act, was also allowed to lapse. There is no judicial or legislative intervention impacting on the order. The crux is that the order of 03.06.2013 is valid, binding and final.

Closure of Enquiry

30. The complainants and intervenor said that the respondents have deliberately kept away from the hearings, and that even if they would have come, it was unlikely that any contribution would have emanated. It was said that it is reasonable to assume that the respondents will not implement the Commission's order, and that nothing would be achieved in continuing to fix date after date for hearings in the enquiry. Hence, it is pointless to prolong the enquiry taking into account the persistent lack of engagement of the respondents with the process. The indication emerging was that the enquiry should now be concluded.

Assessment of the Hearings

31. The Commission, at the apex of the RTI Act's working mechanism, seeks to ensure access to information held by public authorities, mindful of statutory safeguards, operational norms and timelines. The objective is to promote transparency and accountability for enhancing governance and containing corruption. The provisions help achieve openness along with protection of confidentiality where required. Efficiency and effectiveness are important considerations. Public interest is the guiding light.

32. The Commission attends to: **(a)** complaints about implementation and institutional shortcomings under section 18; and **(b)** appeals under section 19 against the decisions taken in public authorities on applications seeking information. In the present case, the hearings on 21.11.2014 and 07.01.2015, following a notice under section 18(2), enquired into complaints that the respondents had not implemented the Commission's order of 03.06.2013.

33. The Commission's powers and functions are defined in chapter V of the RTI Act. There could be many situations requiring the Commission to step in, e.g., grievances against the CPIO for being evasive or delaying information. The working mechanism may be malfunctioning or may not have been set up at all as in the present instance. There can be differences on how to interpret the exemption from disclosure clauses in the RTI Act, the rights and obligations entailed, and the scope of definitions such as "information", "public authority", "record", "right to information", "third party" (section 2(f)(h)(i)(j)(n)).

34. What has happened in the present case is that the respondents have taken no action on the directions given by the Commission on 03.06.2013. Shri Jain described this to be a "complete, comprehensive and composite order", directing the setting up of a "full working apparatus" with timelines

for execution. Shri Jain said that the order had the following components: **(a)** AICC/INC, BJP, CPI(M), CPI, NCP and BSP declared public authorities under section 2(h) of the RTI Act; **(b)** Presidents/ General Secretaries of the above political parties directed to designate CPIOs and appellate authorities at their headquarters; **(c)** appointments to be done in six weeks; **(d)** CPIOs to respond to the RTI applications extracted in the order of 03.06.2013; **(e)** response to go in four weeks; and **(f)** Presidents/ General Secretaries of above political parties to comply with section 4(1)(b) of the RTI Act by way of voluntary disclosures.

35. The six national political parties, as public authorities, were directed to comply with the obligations stipulated in the RTI Act. According to chapter II of the RTI Act, the public authorities have to maintain all records duly catalogued and indexed as prescribed, publish information about their working with details about budget, organizational structure, decision making processes, category of documents held, etc. CPIOs and appellate authorities have to be appointed, and systems put in place for disposal of requests and providing information. However, the political parties have not taken any action.

36. In effect, if a citizen under the RTI Act wants to know the ten largest donors to any political party, or whether a party has sent any proposals for electoral reforms to the Election Commission, or about the promises made in an election manifesto, the information-seeker would not know where to file the application. There is no address to send an information-seeking application as the CPIOs and appellate authorities have not been appointed. The complainants, during the hearings, said that non-compliance by the respondents calls for consequences, including imposition of penalty (sections 19(8)(c); 20), the award of compensation (section 19(8)(b)) and recommendations (section 25(5)) about the withdrawal of facilities and concessions granted to the political parties.

37. How to proceed further would have to be discerned from chapter V of the RTI Act, listing the powers and functions of the Commission. The three sections, 18, 19 and 20, in this chapter, at first glance appear to be well juxtaposed and amenable for being grouped together. Prof. Chhokar said that all these sections “must be read together as an integrated whole....” However, in recent times, the case for distinguishing between the nature and scope of the two sections, 18 and 19, has assumed significance, underlined by some court orders. It appears that the contrast between complaints and appeals has become more marked. Section 19 is about responding to appeals arising from the decisions of the CPIO and first appellate authorities, whereas section 18 is about complaints on institutional and operational issues.

38. The present case subscribes to section 18, under which the notice for hearings was issued. Complaints, reference section 18(1)(a)(b)(c)(d)(e)(f), refer to situations of no CPIO having been appointed, denial of information, breach of timelines, unreasonable fees, incomplete or misleading information, restrictions on accessing records, etc., i.e., a range of issues, quite often on the systems side of the Commission's functioning. Section 18, arguably, has a wider canvas than section 19, the latter functioning in a singularly focused way with reference to applications for information, generally speaking, for resolving day-to-day individual issues. Section 18 is supervisory in nature, under which directions can be given also to appoint CPIO, as was done in the present instance.

39. The contrast between the role of the two sections is brought out by the Supreme Court's judgment, dated 12.12.2011 in Chief Information Commissioner vs. State of Manipur (Civil) Appeal Nos. 10787-10788 of 2011): " ... It has been contended before us ... that under Section 18 of the Act the...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... Commission...under Section 18 is an order of penalty provided under Section 20... We uphold the said contention and do not find any error in the impugned judgment of the High Court whereby it has been held that the Commissioner while entertaining a complaint under Section 18 of the said Act has no jurisdiction to pass an order providing for access to the information..." In other words, while section 18 can be the route for addressing complaints, it cannot be the pathway to get information.

40. Distinct from section 18, the Commission's role under section 19 is that of the second or final appellate authority to decide appeals against the orders of the first appellate authority, the level higher than the CPIO. Appeals are also heard if no orders are passed by the first appellate authority within the stipulated timeframe. In the present instance, the respondents did not act on the order of 03.06.2013 that directed the appointment of CPIOs and first appellate authorities, hence no mechanism is in existence to enable any action on information-seeking applications.

41. Section 19(8) gives guidance about the directions that the Commission can contemplate in situations such as this where information is not being provided in accordance with the norms or where the mechanism has not been put in place. However, this case is of pre-CPIO stage. Without a CPIO or first appellate authority there is no context for an appeal to the Commission. Despite the Commission's order of 03.06.2013, the CPIO has not been appointed. This is not a case of the CPIO being at

fault. It is the head of the public authority who has omitted to appoint the CPIO. Can the Commission's curative and penal powers be made applicable to the head of the public authority for compelling compliance with the order of 03.06.2013 and the provisions of the RTI Act?

42. The complainants, seeking information, have faced loss and detriment keeping in view that their effort, time and money has not borne fruit on account of non-compliance by respondents. Hence, this should have been a fit case for penalizing the respondents and compensating the complainants. According to section 19(8)(b), the Commission has the power to require the public authority to compensate the complainant for any loss or other detriment suffered. Section 19(8)(c) states that the Commission has the power to impose any of the penalties provided under the RTI Act. But, according to section 20(1), penalty can be imposed only on the CPIO. In this light, questions arise about the outlook for the imposition of penalty and award of compensation.

Penalty

43. The complainants have prayed for imposition of penalty. Section 20(1) of the RTI Act provides that if the Commission is of the opinion that the CPIO has, without reasonable cause, refused to receive any application for information or has not furnished information within the stipulated time or has malafidely denied the information sought or knowingly given incorrect, incomplete or misleading information, a penalty of upto Rs. 25,000 can be imposed by the Commission.

44. Shri Chhokar, the complainant, said that penalty be imposed on the President/ General Secretary of the political parties who had the responsibility to appoint the CPIO. But, the RTI Act is clear: the penalty can be imposed only on the CPIO. Section 20 is invoked when the CPIO is at fault. There is no mention of imposition of penalty on the first appellate authority who very often flout the provisions of the RTI Act by not passing order on the appeals or do so in breach of the prescribed time limits. The intention of the legislature is clear, that the penalty can be imposed only on the CPIO. The RTI Act has made the CPIO the centerpiece on matters of penalty. The provisions specify that the CPIO is entitled to being heard before any penalty is imposed. The onus is on the CPIO to prove that he acted reasonably and diligently.

45. In the instant case, the parties declared as public authorities have failed to appoint CPIOs. So, what to do if the CPIO has not been appointed, i.e, on whom to impose the penalty. The law is silent on this. Imposition of penalty on the political parties or their Presidents/ General Secretaries

would not be correct taking into account that section 20 of the RTI Act speaks of imposition of penalty on the CPIO only. Section 20 also allows the Commission to recommend disciplinary action against a CPIO who has persistently failed to fulfil his responsibilities under the RTI Act. The Commission is unable to resort to this section because there is no CPIO.

Compensation

46. Compensation is awarded under section 19(8)(b) of the RTI Act, which empowers the Commission to order a public authority to compensate the complainant for any loss or any other detriment suffered. How to approach the issue of compensation, keeping in view the variance in the submissions of the two complainants, Shri Agrawal and Prof. Chhokar. They differ on the nature and scope of compensation under the RTI Act and the quantum to be paid.

47. Prof. Chhokar stated that non compliance by the political parties has had a detrimental effect of serious proportions on the state of democracy in the country, generating cynicism and pessimism, while giving credibility to the premise that the respondents, bestowed by the people with political power and authority, are above the law. Prof. Chhokar said that such non-compliance will make citizens lose faith in the legal institutions and democratic values. In this light, Shri Chhokar sought compensation on behalf of “Indian democracy” and “society as a whole”. Prof. Chhokar has prayed for award of compensation, equal to five percent of the average annual income as declared by the six parties in their income tax returns, to be paid into the Prime Minister’s Relief Fund.

48. Shri Agrawal, on the other hand, seeks compensation for the loss or detriment suffered by him individually as a complainant. Shri Agrawal, in the initial stages of the hearing, pressed for “exemplary compensation”. He indicated, later, the need for making good the loss and detriment actually suffered by him, but towards the closure of the hearing stated that he would be satisfied with a token compensation of one rupee per political party. In this connection, Shri Agrawal stated that this case had an adverse effect on his health on account of mental pressure and aggravated tension due to having to prepare for the case time and again.

49. Reference Prof. Chhokar’s views on compensation, Shri Jain submitted that a complainant cannot ask for compensation on behalf of all the citizens of the country; the compensation has to be confined to the sufferings of the information seeker. Shri Jain said that the meaning of the word ‘compensation’ has to be understood in a manner which is compatible with the letter and spirit of the RTI Act. Under the scheme of the statute, it should be granted only when the compensation-seeker justifies the loss,

injury or any other detriment suffered by him on account of any act or omission on the part of the CPIO or any other officer or the public authority concerned.

50. A question is whether compensation under the RTI Act can be claimed on behalf of a citizen for any loss or other detriment to democracy or society as a whole resulting from non-compliance of the Commission's order of 03.06.2013. Each instance of non-compliance by a public authority is detrimental to democracy, however, from a reading of section 19(8)(b), it is apparent that it is the complainant who has to be compensated. The RTI Act states that the public authority will "compensate the complainant for any loss or other detriment suffered".

51. Section 18 is unclear about the action that the Commission can take on the findings emanating from an enquiry. Section 18 does not mention recourse to section 19(8)(b) consequent to enquiry findings. On the issue of the room available to the Commission for handling complaints, relevant is an order of the High Court of Delhi in Union of India vs. PK Srivastava, LPA 195/2011, of 09.04.2013. It was stated here that: "...compensation to the complainant for any loss or other detriment suffered by him can be awarded by the Commission only while deciding an appeal filed before it ... The aforesaid Section does not provide for grant of compensation merely on the basis of a complaint made to the Commission, without an appeal having been preferred to it."

Discussion on the points raised in interim order of 28.11.2014

52. The questions raised in the interim order of 28.11.2014 are mentioned above, in para 10. These need to be commented upon due to their relevance for a perspective on the working of chapter V of the RTI Act with a view to framing an outlook on what to do next taking into account the fact that the respondents have not complied with the Commission's order of 03.06.2013.

53. In respect of the point in para 10(1), above, i.e., following up on compliance, it is the Commission's responsibility to ensure implementation of its orders. Matters relating to non-compliance of the Commission's orders may be considered under section 18. In an order of 11.06.2009 in Radhika Arora vs CIC, complaint nos. CIC/WB/C/2008/00859, etc., the Commission said: "We have already decided...to follow up on compliance of decisions of the Commission... that Secretary of the Commission...will now assume responsibility for ensuring compliance with all decisions made by the Commission. For this purpose, a Register of Non-Compliance will be opened, which will be

processed by the Office of Secretary, CIC and on conclusion of the complaint, the complaint will either be closed or registered as a complaint for hearing under...section 18(1) and proceeded upon by the Bench of the Information Commissioner concerned.”

54. The Commission is expected to get its orders complied with. The High Court of Andhra Pradesh in order dated 05.03.2012 in W.P. No.1380/2012 – Kadiyam Shekhar Babu vs Chairman, A.P. Public Service Commission, in the context of an order by the State Information Commission, observed “...In case the respondents did not comply with the...order passed by the APIC, then remedy of the petitioner is under Section 20...before the said information commission.” The Court said that “...The Right to Information Act, 2005 is a self-contained enactment and it provides for stringent measures for enforcement of the orders of the authorities...for providing information. If the required information is not furnished...the petitioner instead of approaching the authorities under...the said Act, approached this Court under Article 226 of the Constitution. This Court is not the executing Court for implementation of the orders passed by various authorities under the Right to Information Act, 2005.”

55. The High Court of Karnataka order dated 27.01.2009 in the matter of C.C.C. No.525/2008 (Civil) - Sri G. Basavaraju vs Smt. Arundathi, President, Ananda Cooperative Bank Ltd., has held that “...S.20 of RTI Act provides for penalties. It confers powers on the Commission on the basis of which it can enforce its order...It is cardinal principle of interpretation of Statute, well-settled by...decisions of the Apex Court, that, Courts or tribunals, must be held to possess power to execute its own order. Further, the RTI Act, which is a self-contained Code, even if it has not been specifically spelt out, must be deemed to have been conferred... the power...to make its order effective, by having recourse to S.20.” It has also been held that “...provisions of S.20 can be exercised by the Commission also to enforce its order...”

56. The point in para 10(2), above, refers to a situation where the respondents do not engage in the process, and keep away from the hearings. The RTI legislation had come to fruition because of across-the-board support. It was not expected that the respondents would avoid the proceedings. The assumption is that holders of information will engage in the proceedings as the Act balances competing considerations and conflicting interests. Parties do not shy away from encountering each other’s stand to arrive at optimal outcomes. The definitions in the RTI Act, the exemption from disclosure clauses and other provisions ensure that workable solutions are reached. A situation, where the respondents, ignoring the Commission’s notice, distance themselves from the statutory

proceedings in a matter of such wide public interest, has come about, perhaps, for the first time.

57. The point in para 10(3), above, refers to the need to identify ways and means for implementing the Commission's order. In this connection, various actions came to be proposed during the hearings on 21.11.2014 and 07.01.2015, which were: **(a)** action under section 18(3), i.e., exercising powers as a civil court with a view to getting the respondent national political parties to participate in the hearings and the concomitant process; **(b)** action under section 25(5) giving recommendations to the pertinent public authorities for withdrawing facilities to the political parties; **(c)** imposition of penalty under sections 19(8)(c) and 20; and **(d)** award of compensation under section 19(8)(b).

58. Section 18(3) equips the Commission with the powers of a civil court for the purpose of ensuring attendance and evidence in an enquiry. In this connection, the complainants said that no real purpose will be served even if the presence of the defaulting parties is ensured in the enquiry as they are unlikely to submit any material other than what has already been given by them. The matter under discussion is not limited to a one-time disposal of specific complaints and a decision on penalty and compensation. The matter goes beyond the complaints in this particular instance as there would be various applications in the pipeline and demands for information under the RTI Act. Hence, the need is for the respondents to set up an operational mechanism as per the Commission's order of 03.06.2013.

59. Section 25(5) was cited by Shri Agrawal, when he referred to his letters to the Commission, dated 21.11.2014, 02.12.2014 and 05.12.2014, proposing that recommendations be made to institutions such as the Ministry of Urban Development, Election Commission of India, Prasar Bharti, Central Board of Direct Taxes, etc., for terminating certain government funded concessions to the respondents. The privileges included prime accommodation, free media time, income tax exemptions, etc. Shri Agrawal said that it was not only about applying pressure for implementing the Commission's order, but was also about recognizing that defaulters were not deserving of any State-funded benefit. Shri Agrawal sought a separate order on the subject. Shri Jain, the intervener, said that this proposal is extraneous to the order of 03.06.2013, and that the Commission should not go beyond the directions contained therein.

60. Section 25(5) does not apply here. According to section 25(5), the Commission can recommend to a public authority the steps that ought to be taken for promoting conformity with the RTI Act if it appears to the Commission that the practice of a public authority in relation to the

exercise of its functions under the RTI Act does not conform with the provisions or spirit of the RTI Act. This Commission has taken a similar view in case No. CIC/SM/C/2011/901285 (on 14.08.2014) – C.J.Karira vs PIO, High Court of Madras. We are of the view that any recommendations made to authorities that are not parties before the Commission would not stand judicial scrutiny.

61. Reference penalties, this can be imposed only on the CPIO; and not on the first appellate authority or the public authority. Section 20 of the RTI Act provides that if the CPIO has refused to receive an application for information or has failed to furnish information within the stipulated time or has acted malafidely to deny information or has given incorrect information, a penalty can be imposed on the CPIO. It seems that the legislative intent has been to impose monetary penalty on the defaulting CPIO and nobody else. If penalty is imposed on a public authority, it will contravene the RTI Act.

62. Reference compensation, the expressions ‘to compensate’, ‘any loss’ or ‘other detriment suffered’ have not been defined in the RTI Act or its rules. The word ‘compensation’ means anything given to make amends for loss, damage, injury or suffering. It is to be paid by a person whose act or omission has caused loss or injury to another. The idea is to see that the person suffering receives equal value for his loss. In other words, compensation cannot be awarded for any remote possibility of a loss or suffering.

63. Prof. Chhokar’s view (para 47, above) had been that compensation be awarded, equal to five per cent of the average of the annual income of the political parties. Prof. Chhokar also said that the detriment did not have to be connected with an individual complainant, and that the detriment could be to democracy implying that all citizens were affected, calling for exemplary compensation. This was not agreed to by Shri Agrawal who said that compensation under the RTI Act may be granted only when the complainant praying for award of compensation is able to demonstrate that the loss, injury or other detriment suffered by him is on account of an act or omission on the part of the public authority.

64. Shri Jain agreed with Shri Agrawal, that the compensation has to be equated with the loss or detriment actually suffered by the complainant, and that this had to be viewed in tangible terms and not philosophically in the context of loss to the citizens as a whole in a democracy. Shri Jain said that a complainant cannot ask for compensation on behalf of all the citizens of the country, and that the compensation has to be confined to the “sufferings” of the information seeker, taking into account that the order of

03.06.2013 was time bound and not open ended. It will be appropriate to conclude that it is unlikely that such a general prayer, as made by Prof. Chhokar, would be permissible under the scheme of the RTI Act.

65. In the course of the hearing Shri Agrawal, after making a case for “exemplary compensation”, claimed actuals in this regard and subsequently said that he would be satisfied with a token compensation of one rupee per party. Shri Agrawal said that the reason why he was scaling down his earlier claim was because it would take considerable time and effort to assign a money value to the loss and detriment suffered by him. Shri Agrawal said that it was a complex exercise to calculate the actual loss to him on account of the costs incurred in time spent, transportation, opportunity costs, mental agony, toll on health, book royalties lost and that his priority now was for the matter to conclude.

66. The respondents have left unimplemented the Commission’s directions of 03.06.2013, causing loss or detriment to the claimants. There appeared to be a case for awarding some compensation. In this context, relevant is the order dated 09.02.2013 of the High Court of Delhi in the matter of L.P.A. No.195/2011 – Union of India vs P.K. Srivastava; it was held that “...while deciding a complaint received from the respondent, the Commission could only have imposed penalty prescribed in sub section (1) of Section 20 of the Act, but could not have awarded any compensation to him in exercise of the powers conferred upon it by Section 19(8)(b) of the Act.” Hence, the prayer for grant of compensation to the complainants in the matter of this complaint under section 18 cannot be allowed.

Conclusions

67. Consideration of this case was premised on the understanding that the Commission has the responsibility to get its orders and directions implemented by the parties, and that matters relating to non-compliance should be considered under section 18 of the RTI Act taking into account the other relevant provisions. The discussion has included the penalty and compensation clauses in chapter V of the RTI Act where the Commission’s powers and functions are described in respect of both complaints and appeal cases. The possibility of making recommendations under section 25(5) was also assessed.

68. What emerges from the discussions in the hearings is as follows:

(1) The enquiry under section 18 can be brought to a close. The respondents were absent *en bloc* from the hearings on 21.11.2014 and 07.01.2015, and no useful purpose will be served by fixing another date.

(2) The Commission's order of 03.06.2013 is binding and final. It has not been affected by any judicial or legislative intervention. The respondents have been declared public authorities, but they have not taken the steps prescribed for implementation. The impediment has come because the respondents have not appointed the CPIOs as directed, hence the RTI applications referred to in the order of 03.06.2013 are still pending.

(3) The Commission is not geared to handling situations such as the present instance where the respondents have disengaged from the process. The Commission, having declared the respondents to be public authorities, is unable to get them to function so. This unusual case of willful non-compliance highlights the need to identify the legal gaps and lacunae in the implementation mechanism. An obvious conclusion is that in cases such as this, the Commission is bereft of the tools to get its orders complied with.

(4) The penalty provisions have been made infructuous as there are no CPIOs. Penalty can be imposed only on the CPIO, and on no one else, not even the first appellate authority in the event of a default. The prayer made in this case for penalizing the non-complying public authorities cannot be considered.

(5) There is a trend towards compartmentalization of the two sections, 18 and 19, by distinguishing between complaints and appeals. There is recognition that the two sections provide different procedures and distinctive remedies. One is supervisory, and the other is appellate. There have been shifts in the way the RTI Act's schema and scope of functioning is coming to be perceived, while acknowledging that the two provisions cannot substitute each other. However, petitioners invoke the complaints and appeal dimensions together. The nature of the RTI Act's implementation is such that legally distinguishable concepts get blurred and bunched with RTI applications that can be read under both sections.

(6) Reference the proposal for withdrawing the facilities and concessions given by government to political parties, the position is that section 25(5) is not applicable in the present case. The provision applies to those instances where "...the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act..." It is for the concerned government departments or agencies to examine the matter from the standpoint of their institutional system and arrive at their own findings as to how non-compliance with the Commission's order of 03.06.2013 has impacted on the rules and norms under which the facilities and concessions have been provided.

(7) There are, in the law, gaps needing to be addressed, e.g., in the context of action against the public authority for non-compliance with the Commission's directions under section 19(8) to appoint a CPIO; the silence in section 18 on what to do with the enquiry results; the apparent ambivalence in the linkages between sections 18 and 19(8). Other questions are: how does the penalty provision work in the absence of a CPIO; how can the Commission get the respondents to function as public authorities after designating them so; how to provide relief to a complainant unable to file a second appeal in cases where the public authority has not appointed a first appellate authority; the steps required for getting an order implemented; a clearer demarcation of duty with implications for liability, compensation and penalty. It is reasonable to argue that if there is persistent non-compliance, apart from the CPIO, there must be some assignment of responsibility at the level of the public authority.

Decision

69. We have arrived at the conclusions above taking into account that the Commission's order of 03.06.2013 was not challenged in any court. As per the Commission's order, which is final and binding, the respondent national political parties are public authorities under the RTI Act.

70. It is clear that the respondents have not implemented, as public authorities, the directions contained in the Commission's order. In this light, the provisions for penalty and compensation were examined. It is felt that though the respondents have not taken any step towards compliance, the legal position is such that in this case imposition of penalty and award of compensation cannot be considered.

71. The following is decided:

(a) the respondents are not in compliance with the Commission's order of 03.06.2013 and the RTI Act. The respondents, as public authorities, have not implemented the directions contained in the Commission's order and there is no evidence of any intention to do so;

(b) the submissions made by the complainants for the imposition of penalty and the award of compensation are not allowed in view of legal considerations;

(c) the prayer for making recommendations to public authorities, reference para 68(6), above, is not allowed;

(d) a copy of this order be sent to the Department of Personnel and Training, Government of India, for taking action as deemed appropriate for addressing the legal gaps and issues that have come to light during the hearings, including those mentioned in para 68(7) above, with a view to ensuring compliance of this Commission's orders; and

(e) the complainants are at liberty, in view of the facts and circumstances of this case, to approach the higher courts for appropriate relief and redressal.

72. It is ordered that an authenticated copy of this order be sent to the parties through registered post.

73. With this order of the Commission, the case is closed.

(Manjula Prasher)
Information Commissioner

(Sharat Sabharwal)
Information Commissioner

(Vijai Sharma)
Information Commissioner

Authenticated true copy

(Dr. M.K. Sharma)
Registrar