

Public Notice

Sub: CIC Order No.164658 and 195197 dated 26.12.2017 on RTI Case; Vishwas Bhamburkar Vs. PIO, HUDCO, set aside by Hon'ble High Court of Delhi vide its Order/Judgement dated 11.01.2018

This is to notify to all concerned that HUDCO, being aggrieved by the Order dt. 26.12.2017 of Central Information Commission (CIC) in Appeal No. CIC/HUDCO/C/2017/195197 and Complaint No. CIC/HUDCO/C/2017/164658, had challenged the said orders before the Hon'ble High court of Delhi, vide W.P (C) No. 284/2018, titled PIO, Housing and Urban Development Corporation Ltd. (HUDCO) and Anr. Vs Vishwas Bhamburkar. Hon'ble High Court of Delhi, vide its Judgement dated 11.01.2018, was pleased to set aside most of the said Order/Judgement passed by the CIC. A copy of the Order/Judgment dated 11.01.2018 of the Hon'ble High Court of Delhi is uploaded herewith

Encl : As above

**Central Public Information Officer
HUDCO**

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

+ **W.P.(C) 284/2018**

**PIO, HOUSING AND URBAN DEVELOPMENT
CORPORATION LTD. AND ANR.**

..... Petitioners

Through: Mr Sanjay Jain, ASG, Mr Rohit
Sharma, Mr Yuvraj Sharma, Ms Rajul
Jain, Ms Adrija Thakur and Mr
Gauravjeet Narwan, Advocates.

versus

VISHWAS BHAMBURKAR

..... Respondent

Through: Mr Amit Dubey, Mr Vaibhav Tiwari
and Mr Vikas Kakkar, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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11.01.2018

VIBHU BAKHRU, J

CAV No. 17/2018

1. Learned counsel for the respondent/caveator enters appearance on behalf of the respondent. The caveat stands discharged.

CM No.1184/2018

2. Allowed, subject to all just exceptions.

W.P.(C) 284/2018 & CM 1185/2018

3. The petitioner no.1 is the current and petitioner no. 2 is the former

Public Information Officer (PIO) of Housing & Urban Development Corporation Limited (HUDCO). They have filed the present petition impugning two separate orders dated 26.12.2017 (hereafter 'the impugned orders') passed by the Central Information Commission (hereafter 'the CIC'). One of the impugned orders was passed in the second appeal preferred by the respondent under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act') and the second was passed in a complaint preferred by the respondent under Section 18 of the Act, alleging denial of information as sought for by the respondent within the specified period.

4. The petitioners claim that the directions issued by the CIC in the impugned order passed in the second appeal are based on erroneous assumptions and are without jurisdiction.

5. Briefly stated, the relevant facts necessary to address the controversy are as under:-

5.1 On 01.08.2016, the respondent filed an application with petitioner no.2 (who was the PIO of HUDCO at the material time) seeking certain information. The said application ran into three pages and the information sought for was on 24 counts. In substance, the information sought by the respondent related to expenditure incurred by HUDCO on various heads, which were related or connected with the Chairman and Managing Director (CMD) of HUDCO. This included the expenditure incurred on gifts during the three financial years 2013-2016; the expenditure incurred on the official residence of the CMD of HUDCO; and information relating to air conditioners and the car provided to the CMD of HUDCO.

5.2 Petitioner no.2 did not immediately provide the information as sought for by the respondent and by a letter dated 05.08.2016 called upon the respondent to submit documents, such as passport, Adhaar Card, Voter Identity Card or any other proof of citizenship, to prove his identity. The said communication also stated that the said documents were required to process the respondent's application for information under the Act.

5.3 The respondent did not provide the said information as sought for by petitioner no.2; he filed a complaint (bearing complaint no. CIC/HUDCO/C/2017/164658) dated 16.08.2016 under Section 18 of the Act, before the CIC, alleging denial of information. On 19.09.2016, the respondent also preferred an appeal under Section 19 of the Act before the First Appellate Authority (FAA). The said appeal was rejected by an order dated 28.09.2016, whereby the FAA called upon the respondent to establish the usefulness of the information sought for by the respondent and also to rephrase his application within the prescribed word limit.

5.4 Aggrieved by the order of the FAA, on 22.12.2016, the respondent preferred a second appeal bearing no. CIC/HUDCO/A/2017/195197 before the CIC under Section 19(3) of the Act. This was disposed of by the impugned order dated 26.12.2017.

5.5 On 19.04.2017, the CIC issued a show cause notice in the proceedings relating to the complaint filed by the respondent (CIC/HUDCO/C/2017/164658) calling upon the CPIO of HUDCO to show cause why maximum penalty should not be imposed upon him for not providing the information within the prescribed time. In the said show cause

notice, the CIC also directed as under:-

“The Commission directs the CPIO to facilitate inspection of all the exhibits and files related to: (i) names and beneficiaries for whom amounts were spent from the coffers of HUDCO for gifts for years 2013 to 2016; (ii) renovation of official residence of its Chairman and Managing Director in ASIAD village (iii) Mr. Rajkumar and Mr, Harish employed in capacity of Chairman and Managing Director respectively and remunerations paid to each of them; (iv) appointment of Ms, Shweta Kulshreshtha as Management Trainee in Uttarakhand; (v) Vigilance clearance given to Mr. Ravi Kant. The respondent authority is directed to facilitate inspection on 20.04.2017 at 1130 hours.”

5.6 On 05.07.2017, the CIC issued an interim order dated 05.07.2017 in the second appeal preferred by the respondent (CIC/HUDCO/A/2017/195197) making certain adverse observations.

5.7 Thereafter, by a letter dated 13.07.2017, the petitioner submitted a query wise response to the respondent's application under the Act.

6. The CIC passed the impugned order in the second appeal preferred by the respondent issuing various directions including directing the CMD of HUDCO to submit copies of vouchers pertaining to the expenditure incurred in purchasing gifts. The CIC also made recommendations to the Comptroller and Auditor General of India to take note that HUDCO had spent several lakhs of rupees each year for purchasing gifts without maintaining records. The CIC further recommended that Ministry of Urban Development and Government of India conduct a probe into the expenditure incurred by HUDCO. The relevant extract of the said impugned order reads as under:-

“24. The Commission directs the Chairman and Managing Director of HUDCO to submit the copies of vouchers pertaining to spending of Rs.28,22,897/-, file notes, list of the persons to whom the gifts are given, and the details of the business that was promoted because of this within one month.

25. The Commission recommends the Comptroller and Auditor General to take note of the admission and claim that the HUDCO spent lakhs of Rupees every year to purchase costly gifts without maintaining records, examine whether it is permissible, if not, take necessary steps to check unhealthy practices if any. The RTI Act is made with a purpose to empower the citizen to demand the financial indiscipline, challenge the irregularities and scandals by legally securing information. By purchasing lakhs worth gifts, not maintaining records, denying the information by using illegal tracts, harassing RTI applicant, the HUDCO proved that there is merit in the apprehensions of the applicant about corruption, which needs to be thoroughly probed.

26. The Commission recommends the Ministry of Urban Development, Government of India to probe the expenditure of HUDCO and Incorporate healthy records maintenance and accountability practices besides taking stern action against those responsible for the above irregularities.

27. Section 19(8) says:

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

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(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;

28. Exercising the power mentioned above, the Commission requires the HUDCO to maintain records of every expenditure in

proper manner and provide access to the same under RTI Act, and to file a comprehensive report on compliance of its obligation under section 4 of RTI Act, by 15.01.2018, failing which the Commission will be compelled to initiate fresh penalty proceedings for non-compliance of the order of the CIC and Section 4 of RTI Act.”

Reasons and Conclusions

7. The principal question that falls for consideration is whether the directions as issued by the CIC in its impugned order passed in the second appeal are within the CIC's jurisdiction. The second appeal before the CIC - bearing no. CIC/HUDCO/A/2017/195197 - related to denial of information and, concededly, the information as sought for by the respondent was subsequently provided.

8. The CIC is a statutory body constituted under Section 12 of the Act and its functions and powers are circumscribed by the provisions of the Act. The CIC has to perform its functions and exercise its powers strictly in accordance with the Act.

9. In view of the above, it is apparent that the recommendations made by CIC to Comptroller and Auditor General of India or the Ministry of Urban Development, Government of India are outside the CIC's jurisdiction under the Act.

10. The observation that HUDCO has admitted that it does not maintain records of purchases of costly gifts, is also unwarranted. HUDCO had provided the account of expenditure incurred on purchase of gifts,

mementoes, souvenirs. The CPIO had informed the respondent that a sum of ₹12,00,703/- was spent in the year 2014-15 and a sum of ₹16,11,194/- was spent during the financial year 2015-16 on the purchase of Mementoes and souvenirs, which were distributed by HUDCO on various occasions. Therefore, there was no reason to believe that HUDCO did not maintain record of such purchases. HUDCO had explained that it does not maintain record of persons to whom the mementoes and souvenirs are distributed. Plainly, this does not mean that HUDCO had spent money “without maintaining records”

11. The petitioners are essentially aggrieved by the direction contained in Paragraph 28 of the impugned order. A plain reading of the said order indicates that the CIC has directed HUDCO to maintain records of every expenditure in a proper manner. Undisputedly, HUDCO is required to maintain records of every expenditure and there can be no objection to a direction to do so. The direction that HUDCO provide access to the records under the Act would obviously be subject to the provisions of the Act. In other words, HUDCO is not obliged to provide any access to information, which is otherwise exempt under the Act. Insofar as the compliance of obligations under Section 4 of the Act is concerned, there is no dispute that HUDCO being a public authority is required to comply with provisions of Section 4 of the Act.

12. In view of the above, HUDCO may indicate the extent of its compliance of Section 4(b) of the Act to the CIC within a period of eight weeks from today. However, since information as sought for by the respondent has already been provided, the question of initiating any further

proceedings for imposing penalty does not arise.

13. The CIC's direction to the CMD of HUDCO to submit copies of vouchers pertaining to expenditure of ₹28,22,897/- and file notes, list of persons to whom the gifts are given and the details of the business that was promoted is, plainly, without any jurisdiction. There is no provision in the Act which entitles CIC to demand accounts or function as an auditor of a Public Authority. As stated above, the role of the CIC is limited to the functions as specified under the Act. Accordingly, the said direction is set aside.

14. By the order dated 26.12.2017 passed in complaint bearing no. CIC/HUDCO/C/2017/164658, the CIC has levied a penalty of ₹25,000/- on petitioner no.2 for denial of information for delay in providing the information. Without going into the merits of the said decision, learned counsel for both the parties agree that they would be satisfied if the impugned order is modified to reduce the penalty on petitioner no.2 from ₹25,000/- to ₹5000/-. In view of the above, the impugned order passed by the CIC in CIC/HUDCO/C/2017/164658 is modified to the said extent.

15. The petition and the pending application are disposed of in the above terms.

VIBHU BAKHRU, J

JANUARY 11, 2018

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