

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नई दिल्ली, New Delhi – 110067

शिकायत संख्या / Complaint No.

CIC/BCOIN/C/2019/128724
CIC/BCOIN/C/2019/128885

Shri Sumatilal Kataria

... शिकायतकर्ता /Complainant

VERSUS/बनाम

Public Information Officer
State Bar Council
Madhya Pradesh High Court Campus,
Jabalpur - 482001

...प्रतिवादीगण /Respondent

Date of Hearing : 17.06.2021

Date of Decision : 21.06.2021

Chief Information Commissioner : Shri Y. K. Sinha

Relevant facts emerging from appeal:

Since both the parties are same, the above mentioned cases are clubbed together for hearing and disposal.

Case No.	RTI Filed on	CPIO reply	First appeal	FAO	2 nd Appeal dated
128724	19.12.2018	30.04.2019	-	-	18.06.2019
128885	19.12.2018	30.04.2019	-	-	18.06.2019

Information sought and background of the case:

(1) CIC/BCOIN/C/2019/128724

The Complainant filed an RTI application dated 19.12.2018 seeking information on the following 06 points:-

1. Number of complaints received against the practicing lawyers since the year 2017;
2. Name of advocates who violated the provisions of the Advocate Act, 1961,

3. Details of complaints/disciplinary cases against the advocates sent to Indore Chapter of the Council;
4. Copy of inward DAK register showing intake of the complaints received against advocates since 2017.
5. Copy of orders on action taken against the advocates published u/s 4(1)(b) of the RTI Act.

The CPIO vide letter dated 30.04.2019 informed the Complainant that he can be given information about an individual case which is related to him as it was not possible to give all the information.

Feeling aggrieved and dissatisfied, the Complainant approached the Commission with the instant complaint.

(2) CIC/BCOIN/C/2019/128885

The Complainant filed an RTI application dated 19.12.2018 seeking information on the following points:

1. Copy of Inward Dak Register showing receipt of his complaint dated 5.9.2017 and also of reminder letter dated 13.06.2018 as also of copy of complaint sent on 14.6.2018.
2. Copy of notice sent by the Bar Council to Mr. Vinay Zelawat seeking his explanation with regard to the complaint dated 5.9. 2017 by the complainant.
3. Copy of reply to notice from the Bar Council received from Mr. Vinay Zelawat
4. Copy of proceedings recorded on disposal of his complaint dated 5.9.2017
5. Copy of letter sent by the Bar Council to the complainant on disposal of his complaint dated 5.9.2017.
6. Copy of letter forwarding his complaint for regular hearing at Indore Chapter of the Bar Council.

The CPIO vide letter dated 30.04.2019 informed the Complainant that he can be given information about an individual case which is related to him as it was not possible to give all the information. A letter dated 28.05.2019 sent by the Officiating Secretary, State Bar Council, MP was also enclosed with the Complaint where it was mentioned that his Complaint was dismissed as allegation of professional misconduct was not justified.

Feeling aggrieved and dissatisfied, the complainant approached the Commission with the instant complaint.

Facts emerging in Course of Hearing:

A written submission has been received from the Complainant in Complaint No CIC/BCOIN/C/2019/128724 vide email dated 14.06.2021 wherein it was stated that instead of supplying him the information within 30 days, the Executive

Secretary of SBC returned the IPO towards the fees and requested for a DD after 3 months on 16.03.2019. He then complied with the PIO's request. Again on 30.04.2019, the SBC informed him that only information relating to his case can be provided which is still awaited. Stating that the information was vital with regard to his complaint dated 05.09.2017, the Complainant prayed for imposition of penalty against the erring official and compensation to him for deliberate withholding/ delay in information and detriment caused as the advocate regarding whom he had filed the complaint could not be taken to trial.

Another written submission has been received from the Complainant in Complaint No CIC/BCOIN/C/2019/128885 vide email dated 14.06.2021 wherein it was stated that instead of supplying him the information within 30 days, the Executive Secretary of SBC returned the IPO towards the fees and requested for DD after 3 months on 16.03.2019. He then complied with the PIO's request. Again on 30.04.2019, the SBC informed him that only information relating to his case can be provided which is still awaited. He stated that the information sought was about general functioning of the SBC and prayed for imposition of penalty against the erring official and compensation to him for deliberate withholding/ delay in information.

A written submission is also received from the Secretary, State Bar Council, MP dated 04.06.2021 in Complaint No CIC/BCOIN/C/2019/128885 wherein it was stated that State Bar Councils are statutory bodies established under Section 3 of the Advocates Act, 1961 that were set up as different councils for the states and UT's of India. They are regulatory bodies making rules for the legal profession and education in their respective states and also act as representatives of advocates of the states thereby acting in their interests. Section 6 of the Advocates Act also lays down the functions to be performed by the State Councils in their respective states. They work in coordination and under the supervision of Bar Council of India which is a national body established under Section 4 of the Advocates Act. Referring to Section 2 (k) of the RTI Act, it was stated that the State Bar Council is governed by the State Information Commission of MP and that the "appropriate government" with respect to the State Bar Council of MP is the Government of MP, since with respect to State Bar Council MP, all funds are provided by the Government of MP under different schemes like Mukhyamantri Adhivakta Kalyan Yojana, 2012; Adhivakta Kalyan Yojna, 1989; Scheme of Library (Development) of Bar Association in MP, etc. Thus, the Complaint was wrongly filed before the Central Information Commission. Moreover, a reference was made to the reply dated 28.05.2019 sent to the Complainant wherein the outcome of his complaint was intimated. It was also stated that the Complainant had a right to file an appeal under Section 37 of the Advocates Act, 1961 before the Bar Council of India.

In order to ensure social distancing and prevent the spread of the pandemic, COVID-19, hearing through audio conference was scheduled after giving prior notice to both the parties.

The Complainant participated in the hearing through audio conference. He referred to his written submissions and stated that there was a deliberate delay in providing the information as the IPO enclosed with his RTI application was deliberately returned after almost 3 months from the date of receipt of filing the RTI application. Moreover after depositing the fee in the mode suggested by the PIO, no information is provided, till date. With regard to the contention of the Respondent that the State Information Commission, Madhya Pradesh was the correct forum to file the complaint in the present matter, the Complainant referred to the decision of the Commission in CIC/SA/A/2015/001262, 001263, 001264 and 001265 dated 17.03.2016 wherein similar information regarding the number of complaints received against advocates, number of complaints disposed off, number of advocates who had violated the provisions of the Advocates Act, etc was sought. In the said matter, the CIC directed the CPIO, Bar Council of Punjab and Haryana to furnish the information sought and suo motu disclose the same as per Section 4 (1) (b) of the RTI Act. The Bar Associations of Rewari, Faridabad, Punchkula and Gurgaon were also directed to provide a copy of complaints, if any, forwarded to the State Bar Council.

The Respondent represented by Shri Prashant Dubey, Secretary, State Bar Council, Madhya Pradesh participated in the hearing through audio conference. At the outset he denied the receipt of notice of hearing from the Commission in Complaint No CIC/BCOIN/C/2019/128724. With regard to Complaint No CIC/BCOIN/C/2019/128885 he argued that the Complainant had incorrectly filed the instant complaint before the Central Information Commission as the State Bar Council, Madhya Pradesh was amenable to the jurisdiction of the State Information Commission, Madhya Pradesh. He re-iterated the written submissions in Complaint No CIC/BCOIN/C/2019/128885 for substantiating the contention regarding the jurisdictional issue. He also stated that the outcome of the Complaint dated 05.07.2017 which is the subject matter of the information sought in CIC/BCOIN/C/2019/128885 was already informed to the information seeker vide letter dated 28.05.2019. However, the Complainant did not exhaust the appeal mechanism under the Advocates Act, 1961 if he was aggrieved with the decision.

Decision

Keeping in view the facts of the case and the submissions made by both the parties, the Commission at the outset disagrees with the plea taken by the Respondent on the jurisdictional issue regarding the Complaint u/s 18 being incorrectly filed before this Commission. The Respondent has relied on the provisions of the Advocates Act, 1961 and the RTI Act, 2005 in doing so. The Commission however finds the interpretation of the Respondent incorrect for the following reasons: The State Bar Council of Madhya Pradesh is established in accordance with the provisions of the Advocates Act, 1961 which is a central legislation. Section 3 (a) of the Advocates Act, 1961 states as under:

“State Bar Councils.—(1) There shall be a Bar Council— (a) for each of States of Andhra Pradesh, Bihar, Gujarat, 1[Jammu and Kashmir],

2[Jharkhand] 3[**Madhya Pradesh**, Chhattisgarh], 4[***], 5[***], 6[Karnataka], Orissa, Rajasthan 7[Uttar Pradesh and Uttaranchal], to be known as the Bar Council of that State;”

The constitution of state bar council, terms of its members, its powers and functions, etc have been prescribed under the Advocates Act, 1961. Nowhere in the provisions of the Advocates Act, 1961 the role of State Governments is prescribed in the constitution/ establishment of State Bar Councils, manner of their functioning, appointment/ removal of members, etc. Rather, the power of general supervision and control over State Bar Councils vests with the Bar Council of India as per Section 48B of the Advocates Act, 1961. A reference can also be made to Section 49A of the Advocates Act, 1961 as per which the Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act including rules with respect to any matter for which the Bar Council of India or a State Bar Council has power to make rules.

The Commission also does not find merit on the reliance placed by the Respondent on Section 2 (a) which defines the term “appropriate government”. Section 2 (a) clearly states that for a public authority that is established, constituted, owned, controlled or substantially financed by the Central Government or Union Territory administration, the “appropriate government” would be the Central Government. In the present instance, the State Bar Council, Madhya Pradesh is a creation of the Advocates Act, 1961 enacted by the Central Government. Moreover, the Second Appeals/ Complaints filed against the decisions of CPIO/ FAA of High Courts of each State and the Bar Council of India are also heard and decided by this Commission. Hence, there appears no reason why the instant Complaint filed against the PIO, State Bar Council, Madhya Pradesh cannot be decided by this bench.

With regard to the substantive issues raised by the Complainant, the Commission observes that prima facie there has been an inordinate delay in responding to the RTI application. Furthermore, there appears no cogent reason why instead of providing the information, the application was rejected on a technical plea and Complainant was requested vide letter dated 16.03.2019 to deposit fee by way of Demand Draft in the name of the Secretary, State Bar Council of Madhya Pradesh. The Commission observes that instead of adopting a dilatory approach, the CPIO should have focused on the RTI queries and provided point wise response.

The OM issued by the DoP&T in File No. 10/9/2008-IR dated 05.12.2008 specifically addresses the issues in the instant matter. The relevant extract of the OM is as under:

"Refusal to accept an application on the ground that the demand draft/ banker's cheque/ IPO submitted by the applicant has been drawn in the name of the Accounts Officer may amount to refusal to accept the application. It may result into imposition of penalty by the Central Information Commission on the concerned Central Public Information Officer

under Section 20 of the Act. All the public authorities should therefore ensure that payment of fee by demand draft/ banker's cheque/ IPO made payable to the Accounts Officer of the public authority is not denied."

Furthermore, Hon'ble Delhi High Court in the matter of Union of India vs. Vansh Sharad Gupta in W.P(C) 4761/2016 held that the technical approach undertaken by the Public Authorities for not filing the RTI application with the prescribed RTI fees should not be allowed to come in the way of substantial justice. The relevant observations made in the judgment are as under:

"3. In the present writ petition, it has been averred that the respondent never filed an RTI application in the prescribed form and the requisite fee. It is also stated that the respondent did not file the first appeal and hence the second appeal could not have been entertained by the CIC.

4. This Court is not an appellate Court of the CIC. Technical and procedural arguments cannot be allowed to come in the way of substantial justice. The directions given by the CIC in the impugned order are not only fair and reasonable but also promote the concept of rule of law. It is unfortunate that the petitioner did not take the initiative on its own to upload the latest amended bare Acts"

With regard to the queries raised in the RTI application under consideration in Complaint No CIC/BCOIN/C/2019/128885, the PIO has provided the action taken on the information seeker's complaint dated 05.09.2017. However, the remaining points are unaddressed. Similarly, no information is provided with regard to the queries under consideration in Complaint No CIC/BCOIN/C/2019/128784. The Commission has also confirmed that the notice issued for Complaint No CIC/BCOIN/C/2019/128784 had been delivered on 09.06.2021. Thus, the Registry of this bench is directed to issue a Show Cause notice to Shri Prashant Dubey, Secretary, State Bar Council, Madhya Pradesh to explain as to why penal action should not be initiated against him as per the RTI Act, 2005. The PIO must submit his explanation by 15.08.2021.

With the above direction, the instant Complaints stand disposed off accordingly.

Y. K. Sinha (वाई. के. सिन्हा)
Chief Information Commissioner (मुख्य सूचना आयुक्त)

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

S. K. Chitkara (एस. के. चिटकारा)
Dy. Registrar (उप-पंजीयक)
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