

**CENTRAL INFORMATION COMMISSION BHAWAN**

Baba Gangnath Marg, Room No. 416,  
Munirka, New Delhi-110067

F. No. **CIC/SA/C/2016/000161-YA**

Date of Show Cause Hearing : **30.11.2017**  
Date of Decision : **03.01.2018**

Appellant/Complainant : Mr. Sandeep Marwah

Respondent : PIO, Value Added Officer  
Through: Ms. Poonam, AC/CPIO,  
Ward 64; Mr. J P Bhatia - AVATO  
Mr. Vikas Kumar Gupta, Ms.  
Sheela Anand

**Information Commissioner : Shri Yashovardhan Azad**

**Relevant facts emerging from appeal:**

RTI application filed on : 27.02.2015  
PIO replied on : -  
First Appeal filed on :  
First Appellate Order on :  
2<sup>nd</sup> Appeal/complaint received on :

**Show Cause Decision**

**Background of the case:**

1. The complainant filed six RTI applications regarding the misuse of sales tax by M/s State Organization of Builders, Proprietor: Mr. L C Adlakha and M/s Deltex Enterprises, proprietor: Sneh Adlakha. Upon non receipt of satisfactory reply from the PIO, the applicant filed First Appeal. Despite order dated 07.01.2016 filed by the FAA, the PIO did not comply with the directions nor furnished information. Hence the complainant approached the Commission.
2. The Commission vide order dated 21.12.2016 held as follows:  

*“.....3. Commission directs the complainant and Ms. Poonam, PIO to submit their written submissions after exchanging the copies among them and appear before the Commission on 30.12.2016 at 12:00 noon...”*

3. After hearing the matter on 30.12.2016, the Commission held as follows:

“.....4. Ms. Poonam stated that the dealer M/s. State Organisation Builders Proprietor Mr. L.C. Adhlaka, falls under ward 63. She claimed that it was transferred in 2015 itself, however, Mr. Ashish Kumar Pandey representing ward 63 said that he got physical files transferred day before yesterday from ward 64. The appellant complained that the original documents given by the department showed that the dealer referred above was from ward 64. He alleged that they are trying to waive off around Rs. 45,00,000/- as penalty/interest/demand etc. The appellant says that though he had inspected the files during February, March and April months of 2016 and selected the documents required, but the then CPIOs Mr. Vikas Gupta and Ms. Sheela Anand did not provide those copies they have delayed the response to his RTI application by hook or crook for more than 18 months and in the meanwhile they manipulated to excuse the dealer and he suspects corruption there. He also alleged that in spite of a written statement from the dealer, and a letter from Additional Commissioner Special Zone, Department of Trade and Taxes, Vigilance – GNCTD dated 22.06.2012 they have not taken any action. Mr. Ashish Kumar Pandey offered appellant to have inspection and take whatever papers he requires. Ms. Poonam sought for time to search for more information from the system. The two CPIOs are granted time upto 02.02.2017 to provide complete information to the appellant as available with them.

5. The Commission directs the present CPIOs to facilitate the inspection as assured on 05.01.2017 at 11:00 AM and furnish the required documents as available with them.

6. The Commission requires the office of the Directorate General, Vigilance Unit, Central Public Works Department, A-Wing, Nirman Bhawan, New Delhi 110 108 and the Chief Commissioner, Department of Trade and taxes, GNCTD, 3<sup>rd</sup> Floor, Vyapar Bhawan, IP Estate, New Delhi 110 002 to consider this as a complaint, take action and inform the appellant action taken before 02.02.2017.

7. The Commission directs Mr. Vikas Gupta, Ms. Sheela Anand, the then CPIOs of Ward-64 (till September 2016), Ms. Poonam, CPIO Ward-64 and Mr. Ashish Kumar Pandey CPIO Ward-63 to show-cause why a maximum penalty should not be imposed against each of them for denying the information till today and causing delay by shifting responsibility against each other, before 02.02.2017...”

## **Show Cause Hearing: 30.11.2017**

1. Pursuant to the Commission's order dated 30.12.2016, the matter was transferred to this Bench, as per allocation of Roster. Perusal of the file revealed that some replies have been received from the Noticee/s. Brief excerpt of the said replies are as follows:

I. Submissions of Sh. Ashish Kumar Pandey, PIO (Ward No. 63)-Dept. of Trade and Taxes, GNCTD are as follows:

*"1. Earlier, the firm was falls under the jurisdiction of ward-64.*

*2. The firm was transferred to ward-63 due to unknown reason, even the business premises of firm (M/s State Organisation of Builders, TIN-07576934608) was not shifted and comes under territorial jurisdiction of ward-64.*

*3. A file pertains to the firm/dealer was handed over to Record Keeper of ward-63 on **16/09/2016**. (copy enclosed)*

*4. The RTI applications of Sh. Sandeep Marwah was forwarded to PIO (W-63) on **23/12/2016**. (copy enclosed)*

*5. The information regarding hearing in Hon'ble CIC of this case was given to PIO (W-63) by PIO (W-64). (copy enclosed) on 26.12.2016.*

*6. The facts about availability of file in ward-63 came in the knowledge of PIO (W-63) on **28/12/2016** when applicant Sh. Sandeep Marwah appeared before the First Appellate Authority regarding another RTI application, pertains to this firm/dealer, wherein applicant brief the facts before FAA.*

*7. Available information on the system was provided/forwarded to the applicant vide letter dated **29/12/2016**. (copy enclosed) and asked concerned record keeper to trace the file to provide the information to the applicant.*

*8. The undersigned/ PIO (W-63) during hearing in the Hon'ble CIC on **30.12.2016**, offer to the applicant for inspection of concerned file and providing all required documents available in the file.*

*9. The applicant Sh. Sandeep Marwah visited the O/o Joint Commissioner (VAT) **02/01/2017** and requested him to direct the concerned authorities to make available/ensure inspection of the concerned file and providing documents. Accordingly, the applicant inspected the file on **02&03/01/2017**.*

*10. Duly signed photocopies of all the documents available on the file (13 pages of noting and 452 pages of correspondence) was provided to the applicant on **11/01/2017** and acknowledgement has also been taken in this regard. (copy enclosed).*

*11. As well above progress of this RTI matter concerned Assistant Commissioner dealing the matter of firm taken up*

*the matter and after getting a VAT Inspector Report regarding territorial jurisdiction of the firm and getting approval of the worthy Commissioner (VAT) the firm was again transferred to ward-63 due to any technical error etc. (copy enclosed).*

II. Submissions of Sh. Vikas Kumar Gupta, AC (Ward No. 100)-Dept. of Trade and Taxes, GNCTD are as follows:

*“.....till April 2016 the undersigned was Assistant Commissioner/PIO for the dealers whose names started from A to M. Regarding all the matters, including RTI applications related to the dealers whose names started from N to Z, Mrs. Sheela Anand was the Assistant Commissioner/PIO for Ward 64. The undersigned was relieved from ward 64 in September, 2016 after handing over the charge to Mrs. Poonam, Assistant Commissioner/PIO.*

*Sir, the matter in question related to M/s State Organisation of Builders. Since the name of the dealer starts with ‘S’ alphabet, the PIO for providing information related to this dealer was Mrs. Sheela Anand, Assistant Commissioner till her relieving from Ward 64, i.e. upto April, 2016.*

.....

*Till April, 2016 Mrs. Sheela Anand was the PIO and there is no question of handing the RTI application regarding M/s State Organisation of Builders. After the relieving of Mrs. Sheela Anand neither the applicant filed any RTI application nor Mrs. Sheela Anand intimated any such pending application. The undersigned was not aware that any action was left under RTI Act in the application filed by the applicant. Meanwhile, the trade & taxes department, in routine, changed the jurisdiction of many dealers including M/s State Organisation of Builders. Since the jurisdiction of this dealer was changed by the department from Ward 64 to Ward 63 and the undersigned ceased to be Assistant Commissioner/PIO of M/s State Organisation of Builders, the file of the dealer was searched and sent to the AC (Ward 63) vide note dated 09.09.2016, containing the summary of the case. Sir, from the aforesaid submissions it is clear that the undersigned was not the PIO for the matter under question till April, 2016. Further, the undersigned was not aware about what information is to be given to Mr. Sandeep Marwah.*

III. Submissions received from Smt. Poonam, AC (Ward No. 9&16)-Dept. of Trade and Taxes, GNCTD are as follows:

*“...In this connection it is submitted that the undersigned was posted in ward no. 64, Trade & Taxes Department on 21 Sep. 2016. During that period the firm M/s State Organisation of Builders was under the jurisdiction of ward-63 and not in ward-64. Also all record related M/s State organisation of Builders was transferred and received in ward-63 on 16.09.2016.*

.....

*Sir, it is also submitted that the above said transfer of dealer namely M/s State Organisation of Builders to ward 63 is a routine exercise of trade and taxes deptt. and physically record were also sent to the concerned ward in routine. However the undersigned being a responsible Government servant, never denied to co-operate with the applicant till the entire tenure in Ward 64 i.e. upto 07.07.2017...*

2. During the Show Cause hearing fixed on 30.11.2017, the following proceedings occurred:
  - i) One Mr. J P Bhatia appeared on behalf of Sh. Ashish Pandey, introducing himself as the Link Officer and made only one submission about having consigned the relevant case file to some other department. Not being the Noticee in the case, he was unable to shed any further light in this case.
  - ii) Sh. Vikas Gupta appeared and in his response submitted a one page note without any supporting documents, contents whereof have been already discussed above. He orally submitted that he was not the PIO on Apr 2016, without submitting any corroborative documents to that effect.
  - iii) Sheela Anand: Noticee Smt. Sheela Anand appeared during the hearing, but it emerges from the perusal of records, she has not submitted any explanation in response to the Show Cause Notice. She simply stated during the hearing that whatever information was sought during her tenure, she had provided the same to the appellant. She has further stated that in view of certain objections raised by the third parties, viz. Mr. Adlakha, she was restrained from providing any further information. She cites a decision which is not applicable in this case. The Noticee states that this is a case arising out of personal grudge, wherein the Appellant is the estranged husband of the daughter of the third party. The appellant is fighting a divorce case with his wife and in the process of settling personal score with the Third party (appellant’s father-in-law) has been raising all of these

queries under RTI Act and has been prolonging this litigation. The Noticee further stated that she has superannuated in Aug 2016.

Smt. Poonam: She appeared during the hearing and submitted that the ward no. 63 was not part of her jurisdiction and she has submitted so even in her Reply addressed to the Commission in response of the Show cause notice. She further avers that inspection of the file had been provided to the appellant, pursuant to Commission's direction.

Complainant states that information has still not been provided, neither recovery of the tax made despite Commission's observation.

### **Decision:**

Perusal of the records and submissions of parties bring out the following pertinent points:

- i.) The information sought fell within the jurisdiction of ward-64, while the RTI application was forwarded to Ward no. 63 on 23.12.2016.
- ii.) The facts about availability of file in ward-63 came in the knowledge of PIO (W-63) on 28.12.2016 and information as available on the system was provided by PIO – Ward no. 63 to the appellant on 29.12.2016.
- iii.) The pursuant to the Commission's order dated 30.12.2016, the applicant Sh. Sandeep Marwah visited the O/o Joint Commissioner (VAT) 02.01.2017 and inspected the required file on 02&03/01/2017.
- iv.) Duly signed photocopies of all the documents available on the file (13 pages of noting and 452 pages of correspondence) was provided to the applicant on 11/01/2017.

1. Thus in so far as Mr. Ashish Kumar Pandey, the PIO-Ward No. 63 is concerned, it appears that he has furnished all available information to the appellant well in time (upon receipt of the RTI application and in compliance with the Commission's directions) and hence there appears no *malafide* in his conduct. The Reply to Show Cause submitted by him is found self explanatory and the Commission deems it just to drop the penal proceedings initiated against him.
2. In so far as Ms. Poonam is concerned, the position so emerges from her submissions that when she was posted in ward no. 64, Trade & Taxes Department on 21 Sep. 2016, during that period the firm M/s State Organisation of Builder was under the jurisdiction of ward-63 and not in ward-64. Also all record related M/s State organisation of Builders was transferred and received in ward-63 on 16.09.2016. Thus she cannot be considered the actual custodian of information, having

literally crossed paths. The Commission is of the opinion that since Ms. Poonam was not even the custodian of information at the relevant point of time, no case of “deliberate obstruction of information” can be attributed to her. Accordingly, the penal proceedings against Ms. Poonam is also exonerated of the penal charges.

3. Now coming to the case of Mr. Vikas Kumar Gupta, it is noted that he has explained that the matter in question related to M/s State Organisation of Builders. Since the name of the dealer starts with ‘S’ alphabet, the PIO for providing information related to this dealer was Mrs. Sheela Anand, Assistant Commissioner till her relieving from Ward 64, i.e. upto April, 2016.

He has further explained that till April, 2016 Mrs. Sheela Anand was the PIO and she did not hand over the RTI application regarding M/s State Organisation of Builders to the officer-in-succession i.e. the Noticee-Mr. Vikas Kumar Gupta. After the relieving of Mrs. Sheela Anand neither the applicant filed any other RTI application nor Mrs. Sheela Anand intimated any such pending application. The undersigned was not aware that any action was left under RTI Act in the application filed by the applicant. Meanwhile, the trade & taxes department, in routine, changed the jurisdiction of many dealers including M/s State Organisation of Builders. Since the jurisdiction of this dealer was changed by the department from Ward 64 to Ward 63 and the undersigned ceased to be Assistant Commissioner/PIO of M/s State Organisation of Builders, the file of the dealer was searched and sent to the AC (Ward 63) vide note dated 09.09.2016, containing the summary of the case.

In these factual premises, the culpability for causing obstruction to the flow of information does not accrue against Sh. Vikas Kumar Gupta as is evident from his detailed and clear explanation. The factual position thus narrated indicates that the actual custodian of information was Mrs. Sheela Anand who held the post of PIO till April 2016. She neither provided the information to the appellant nor did she handover the relevant RTI application to her successor-in-office viz. Sh. Vikas Kumar Gupta. The penal proceeding initiated against the Noticee, Sh. Vikas Kumar Gupta is accordingly dropped.

4. The last Noticee in this case is Mrs. Sheela Anand, who has not submitted any written explanation, despite specific direction of the Commission. Factual matrix of the case reveals that the actual custodian of information was Mrs. Sheela Anand, being the PIO/AC-Ward No. 4, but in violation of the provisions of the RTI Act, she caused obstruction in the dissemination of information by denying the same to the appellant without any reasonable cause. Submissions of her colleague and successor-in-office, viz. Sh. Vikas Kumar Gupta reveal that Mrs. Anand had not handed over the RTI application to him. The

only submission Mrs. Anand has made before the Commission is that she has superannuated in August 2016. Such a submission is irrelevant while considering Show Cause proceedings initiated under RTI Act. The culpability of the Noticee is undisputed in this case in denial and suppression of information held by her. And in the process of such denial of information for a period of over 18 months, she has allegedly aided in the loss of Rs. 45,00,000/- as penalty/interest/demand etc. payable by the third party. The appellant had stated that though he had inspected the files during February, March and April months of 2016 and selected the documents required, but copies thereof were not provided by the custodian of information at that point of time. The appellant had also alleged that in thus delaying in furnishing of the information, the PIO managed to manipulate to excuse the dealer-third party. Hence, simply because the Noticee is no longer in service does not rid of the dereliction of duty and such loss to the public exchequer. Mrs. Sheela Anand has failed to provide any justification for delay of information despite adequate opportunity and instead has sought to avoid the rightful penal consequence of her misconduct and gross violation of the law, done by her while holding post.

Hence, the Commission in exercise of its powers vested under Section 20 of the RTI Act directs that the following action be taken against the Noticee:

1. Penalty to the tune of Rupees Twenty Five Thousand is imposed on Mrs. Sheela Anand, for causing deliberate obstruction in the dissemination of information; and
2. The Commission hereby recommends Department of Revenue, Ministry of Finance, GoI being the employer/cadre controlling authority of the Noticee Ms. Sheela Anand, since superannuated, to initiate departmental action against her under Rule 9 of the CCS (Pension) Rules 1972 for having shown dereliction of duty, which in turn resulted in a prima facie pecuniary loss to the exchequer.

**(Yashovardhan Azad)**  
**Information Commissioner**

As per the decision of Commission of even date, in exercise of powers vested under Section 20(1) of the RTI Act, 2005 penalty/s of: **Rupees Twenty Five Thousand** is being imposed on the Noticee, the then PIO/AC-Ward No. 64, Mrs. Sheela Anand payable in five instalments of Rupees Five Thousand each.

The first instalment of the aforesaid penalty/s should reach the Commission by 20.01.2018 and the last instalment of penalty/s should reach by 20.05.2018. The penalty/s imposed should be remitted through Demand Draft or a Banker's Cheque drawn in favour of the Pay & Accounts Officer, CAT, payable at New Delhi and the same should be sent to Shri Shanti Priye Beck, Joint Secretary (Admn.), Central Information Commission, Baba Gang nath Marg, Munirka, New Delhi – 110 067.

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

**(R.P.Grover)**  
**Designated Officer**

Addresses of the parties:

1. The CPIO under RTI,  
O/o Value Added Officer,  
Ward No. 64, 7<sup>th</sup> Floor, Vyapar Bhawan,  
IP Estate, New Delhi.
2. Shri Sandeep Marwah,  
B-20, 3<sup>rd</sup> Floor, Lajpat Nagar-3,  
New Delhi-110024.