

OFFICE OF THE FIRST APPELLATE AUTHORITY
(Appointed under the Right to Information Act, 2005)
The Institute of Company Secretaries of India ICSI House
C-36, Sector-62, Institutional Area
Noida - 201 309 (U.P.)

Appeal No.00106/2024

IN THE MATTER OF:

Mr. AJAY KUMAR GUPTA
C 25, NIZAMUDDIN EAST,
NEW DELHI,
Pin:110013
DELHI

Appellant

Vs.

Central Public Information Officer
The Institute of Company Secretaries of India
'ICSI House', 22, Institutional Area, Lodi Road,
New Delhi - 110003

Respondent

Date of Order: 21st November 2024

ORDER

(1) The Appellant has filed first Appeal- No. ICSOI/A/E/24/00106 on 25.10.2024 under Section 19(1) of the Right to Information Act, 2005 in connection with Response vide letter dated 25.10.2024 against the Central Public Information Officer (hereinafter referred to as Respondent) of the Institute of Company Secretaries of India.

(2) The Appellant vide his RTI Application No. ICSOI/R/E/24/12547 dated 28/09/2024 has requested the following information:

“This pertains to the office of the CPIO, Disciplinary Directorate, the Institute of Company Secretaries of India, ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110003. This further pertains to the complaint of the applicant against Ms. Sheetal Sharma under unique reference number DC/960/2023 as per the enclosed interim order dated 19.09.2024. The following information is sought as per records:

1. Please provide copy of the prima facie opinion dated 25.07.2024 of the Director (Discipline) as per records in the matter DC/960/2023.
2. Since the interim order clearly records that the same was formed after further investigation, please provide copy of all documents annexed in the file that constitutes such further investigation as carried out by the Director (Discipline).
3. Please provide details on whether the Respondent CS Sheetal Sharma was provided a hearing in the subject complaint as per records.”

(3) The Appellant has submitted in the instant appeal with regards to the reply provided by the Respondent to the RTI queries as under:

“CPIO is being made aware that mere pendency of a complaint cannot attract the provisions of Section 8(1)(h). CPIO is duty bound to provide detailed explanation as to how could the provision of the prima facie opinion of the Director Discipline in a matter where the hearing is being called can lead to impediment of investigation, if the same can be called an investigation as per the mandate of law. Copy of the documents as obtained under further investigation is a matter of right of the applicant and it is apprehended that the same is being denied intentionally as an act of deliberate obstruction. Furthermore, the response to Point 3 is inconclusive. The Applicant seeks details as to whether a hearing WAS provided already to CS Sheetal Sharma in the matter while CPIO states that a hearing notice has been issued an information that was never sought. FAA is requested to ensure supply of exact information as has been sought and not let CPIO hoodwink the applicants under such misleading responses.”

(4) The reply of the Respondent against the instant appeal is as under: -

“Since the RTI application pertains to Directorate of Discipline of the ICSI, therefore, the CPIO has asked for written submission from concerned Directorate for the same. Their submission is mentioned below:

Reply to query numbers 1 and 2 –

1. Prima facie opinion (after further investigation) in the complaint DC/960/2023 is before Board of Discipline under Section 21 of the Company Secretaries Act, 1980 (the Act), read with Rule 3 of the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (the Rules). Copy of Interim order of the Board of Discipline has already been sent to the parties.
2. The Board of Discipline considered the prima facie opinion and felt that before taking any decision on the prima facie opinion, it is desirable to hear the Complainant and the Respondent. The Board of Discipline had decided to call the parties pursuant to Section 21 C of the Company Secretaries Act, 1980.
3. In this regard, we bring to your notice about clause (b) and (c) of sub-rule (2) of rule 9 of the Rules which provides as under:

*“(b) If the Board of Discipline or the Committee, as the case may be, agrees with the prima facie opinion of the Director under clause (a) above, then the Board of Discipline or the Committee may proceed further under **Chapter IV or V respectively**.*

*“(c) if the Board of the Discipline or the Committee, as the case may be, disagrees with the prima facie opinion of the Director under clause (a) above, it shall either close the matter or **advise the Director to further investigate the matter.**”*

Clause (b) of sub rule (3) of the rule 9 provides as under:

*“(b) if it disagrees with such opinion of the Director, then it may either proceed under chapter IV of these rules, if the matter pertains to the First Schedule, or refer the matter to the **Committee to proceed** under Chapter V of these rules, **if the matter pertains to the Second Schedule or both the Schedules, or may advise the Director to further investigate the matter.**”*

Further Rule 14 of the rules provides as under:

“(2) if the Board of Discipline decides to proceed further under clause (b) of sub rule

(2) of rule 9 or under clause (b) of sub rule (3) of the rule 9,, it shall expeditiously cause to deliver to the respondent and the complaint , a copy each of the following:

(a) prima facie opinion formed by the Director; and

(b) particulars or documents relied upon by the Director, if any, during the course of formulation of prima facie opinion.”

4. In the instant matter, the Board of Discipline is yet to decide on the prima facie opinion of the Director (Discipline). At this stage the Rules do not provide for delivering the copy of the prima facie opinion.

Hence, it attracts Section 8(1)(h) of the RTI Act, 2005.

Reply to query number 3 –

Copy of Interim order of the Board of Discipline issued on 19th September,2024 has been sent to the parties. Notice to the parties for appearance before the Board of Discipline for hearing will be issued for the date as may be fixed by the Presiding Officer in the matter. It is clarified that BOD has yet not heard any of the parties in the matter.

Therefore, the appeal deserves to be dismissed.”

- (5) This Office has carefully considered the application, the response, the appeal and the records made available and finds that the matter can be decided based on the material available on record.

This office concurs with the submissions of the Respondent in his reply to the instant appeal.

The appeal is accordingly disposed of.

Sd/-

(Asit Kumar Rath)
First Appellate Authority

Copy to:

1. Mr. AJAY KUMAR GUPTA
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2. Central Public Information Officer
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New Delhi - 110003
3. Directorate of IT - For publishing on the website.