

केंद्रीय सूचना आयोग
CENTRAL INFORMATION COMMISSION
बाबा गंगनाथ मार्ग
Baba Gangnath Marg
मुनिरका, नई दिल्ली – 110067
Munirka, New Delhi-110067

File no.: CIC/NICHQ/C/2020/685079

In the matter of:

Saurav Das

... Complainant

VS

Central Public Information Officer,
National Informatics Centre (NIC),
Ministry of Electronics and Information Technology,
Electronics Niketan, 6, CGO Complex, Lodhi Road,
New Delhi- 110003

...Respondent

RTI application filed on	:	01/08/2020
CPIO replied on	:	13/08/2020, 04/09/2020
First appeal filed on	:	Not on record
First Appellate Authority order	:	Not on record
Complaint dated	:	10/09/2020
Date of Hearing	:	22/10/2020
Date of Decision	:	22/10/2020

The following were present:

Complainant: Present over VC

Respondent: Shri Swarup Dutta, Scientist F and CPIO NIC, present over VC

Information Sought:

The Complainant has made a reference to his earlier RTI Application having RTI No. NICHQ/R/E/20/00142 and reply dated 31/07/2020 wherein CPIO, NIC had not provided information on points 9, 13, 16, 17, 32, 33, 34, 35 and 37. In this context, the complainant has sought the following information pertaining to the Aarogya Setu App:

1. Provide the information about the scope of action that will be taken once user data is uploaded on the server. What sort of action is mandated as per the official records and standard of procedure and guidelines.
2. Whether any steps are being taken to check for false positives and false negatives. Provide the details thereof.
3. Whether the Intelligence Bureau is involved in any manner with use of the user data, any data that is collected and/or stored from the app users. If so, provide the details and the nature of involvement.
4. Whether any other intelligence/security/law enforcement agency is involved in the usage/collection/storage of user data collected from the app. If so, provide the details thereof.
5. And other related information.

Grounds for Complaint

The CPIO did not provide the detailed information.

Submissions made by Complainant and Respondent during Hearing:

The complainant requested to hold a hearing on an urgent basis due to the immense public interest in the matter and need for immediate public scrutiny. He also had pointed out that any failure by the public authorities to perform their duties as outlined in the Protocol, 2020 and its failure to inform the usage of people's personal and user data will have a severe and irreversible detrimental effect on people's right to privacy and therefore their fundamental right to life and liberty. He also submitted that the Aarogya Setu App will be rendered useless once the pandemic is over. In such a situation, if the normal time period of waiting is followed, it would take almost 2 years for the first hearing to come up before this Commission. He further submitted that this would lead to the matter becoming infructuous and of no use. Therefore, there is an urgent need to act and hear this matter urgently and on priority basis.

The Commission accepting the matter as related to right to privacy which is an essence of right to life and liberty deemed it fit to provide an opportunity of early hearing to the complainant and accordingly the hearing was fixed on priority basis.

The complainant in his complaint memo submitted that he had not received any detailed response from any of the 3 public authorities and therefore, it was deemed fit to approach the Commission u/s 18 of the RTI Act. He further submitted that information in respect of points no. 3 to 9 was not provided by the CPIO claiming that it was not held by NIC. He contended that the questions were related to the creation of the Arogya Setu App and its usage. The NIC being the responsible department for handling this App, it is difficult to accept the CPIO's contention that the records of this App's creation and how the data collected by this App being used, are not "held by NIC". In such a case, he raised a question as to who holds the information.

He further submitted that the CPIO was repeatedly reminded, both in the RTI and via emails, that in case any information is not held by the NIC, then **the CPIO must locate the concerned CPIO of the concerned Public Authority and transfer the RTI u/s 6(3) of the RTI Act within 5 days.** Till date, the CPIO has not made one bit of an effort to locate the concerned CPIO and transfer the RTI.

He further submitted that a first appeal was filed with the concerned FAA of NIC, highlighting the fact that despite several reminders and the RTI application itself mentioning Section 6(3) several times, the CPIO Mrs. Khanna has failed to dutifully identify the concerned CPIO and transfer the RTI application to them. He further pointed out that a complaint was also filed separately with the Union Secretary, MEITY and Director General, NIC against the CPIO's unlawful conduct.

He further submitted that this is wilful obstruction of free flow of information and has been done with a malafide intention to illegally withhold the crucial information asked for in the RTI application. The Arogya Setu App has been made mandatory in many places and has been downloaded by millions of Indians. The information as asked touches the right to privacy aspect of the citizens and the failure to provide the information, as asked in the RTI, is detrimental to people's fundamental right to privacy under right to life and liberty.

He further argued that the CPIO must face action under Section 20(1) & (2) of the RTI Act due to her failure to make efforts to provide information, by way of invoking Section 6(3) and for providing evasive replies in both her replies, which is done with malafide intention to withhold information from the Complainant. This is despite the fact that the CPIO was repeatedly requested

to invoke Section 6(3) but she deliberately avoided doing so and has effectively withheld the information from being provided.

He further submitted that due to the many credible media reports questioning the Aarogya Setu App and its making and handling, it is of utmost importance to bring transparency in the making and current handling of this App, which collects vast amounts of user and personal data of individuals. If the right to privacy is breached due to inept handling of people's personal and user data, it will be a breach to one's right to life and liberty. The information as asked for would fall under the category of threat to life and liberty of millions of Indians and if the urgent hearing is not provided, the matter will become infructuous and it is the mandate of the Commission to prioritise matters pertaining to one's, but in this case, millions of Indians' liberty on priority. This will be in larger public interest involved in the matter.

He requested the Commission to convert this Complaint to a Second Appeal as the matter could not have waited if the first appeal route was followed and the Complainant had no faith in approaching the FAA of the public authorities. He further requested to recognise a senior level officer of the NIC as the deemed CPIO in the matter and direct him/her to furnish all the information, in-detail, as asked for in the RTI application after collecting them from all concerned CPIOs and furnish them to the Complainant within 15 days from the receipt of this Commission's orders. He also pressed for action against Mrs. Seema Khanna, CPIO, NIC under section 20(1) and 20(2) of the RTI Act for wilfully and repeatedly refusing to act in conformity with the RTI Act with the proven malafide intention of illegally and effectively withholding information from the Complainant.

The CPIO, Shri Swarup Dutta, Scientist F was asked as to why he had not transferred the RTI application to the concerned public authority who is the holder of the information, to which he explained that he always follows the provisions of the RTI Act and he coordinates with the concerned division who is the holder of information. He pointed out that in this particular case, initially he had not received any response from the deemed PIOs and after the FAA's order some of the points were transferred to the custodian of the information and it was promised that a revised reply shall be given. He also submitted that at least 80 Public authorities are involved in this matter and accordingly the same is being forwarded to the ICMR, NITI Ayog and district health authorities all over the country.

The complainant contended that as an activist he experienced that the FAA passes mechanical orders. On being asked to substantiate the fact with certain case laws or concrete instances, he could not do the same but submitted that as he is a member of NCPRI and several other activists are there who share the same view point. He pointed out that the RTI application transferred to different public authorities has no meaning as the same are returned back to NIC stating that they are not the holder of information.

Observations:

Based on a perusal of the record, it was noted that the complainant's RTI application dated 01.08.2020 was in continuation of his previous RTI application's reply dated 31.07.2020. The same can also be considered a subsequent RTI application. The reason for pointing out the same is that the appellant by his own admission in the RTI application dated 01.08.2020 requested to refer to his previous RTI application with registration number RTI no- NICHQ/R/E/20/00142 and this RTI is to be seen as a continuation to it. He further mentioned that in the reply to the RTI application, information relating to points 9, 13, 16, 17, 32, 33, 34, 35 and 37 were said to be "not held by NIC", in such a case, the CPIO is mandated to transfer those parts of the RTI application to the concerned public authorities after locating such public authorities who hold the information. This is as per Section 6(3) of the RTI Act. This ought to have been done within 5 days from the receipt of the RTI but even after 3 months, the CPIO/deemed CPIO failed to comply with the law. This is illegal and a misconduct, in violation of the law. He also relied on the Hon'ble Delhi High Court judgement dt. 12.09.2014 in W.P.(C) 6088/2014 & CM Nos.14799/2014, 14800/2014 & 14801/2014 in the matter of Ministry of Railways & Anr V/s Girish Mittal in which the Court held as following-

"15. Forwarding an application by a public authority to another public authority is not the same as a Public Information Officer of a public authority arranging or sourcing information from within its own organisation. In the present case, undisputedly, certain information which was not provided to respondent would be available with the Railway Board and the CPIO was required to furnish the same. He cannot escape his responsibility to provide the information by simply stating that the queries were forwarded to other officials. Undeniably, the directions of CIC were not complied with."

He further mentioned that the PIO was penalised with a fine of Rs. 25,000/- in the above case.

At the outset, the Commission observed that the present RTI application was filed due to the unsatisfactory reply of the CPIO in respect of a previous RTI application which was replied to on 31.07.2020. The same is not the procedure to obtain correct and complete information, relating to a previously filed RTI. It is relevant to mention here that if a particular RTI application was not replied to properly, the applicant had the option to file a first appeal to the FAA or a complaint u/s 18 of the RTI Act and thereafter a second appeal also to the Commission. It is not the laid down procedure that an applicant will keep on filing RTI applications one after another pointing out the points which were not replied in any previous RTI. It should be appreciated by all concerned that right always corresponds with duty. An aggrieved party can have recourse to the procedure prescribed by the Act for correcting any erroneous decision but cannot conveniently exercise his right without following the laid down procedure.

The applicant has not exhausted the remedies available to him by going through the hierarchy of authorities created by the RTI Act in respect of his previous RTI. There can be a situation where the CPIO has not given a correct reply, and the applicant's right to information has been violated. There may be many other situations, but in this case, there is no such doubt because the applicant without waiting for the FAA's order is making serious allegations against the FAA stating that he has no faith in the said authority. The fact is that going into first appeal is a laid down procedure and in case the appellant felt there was urgency in the matter, this could have been brought to the notice of the FAA just as he has brought it to the notice of the Commission and sought early hearing. The Commission, therefore rejects the argument of the applicant for filing the present complaint. None of the reasons given have any basis other than his own perception of what may happen to his first appeal. Lack of faith in the FAA is also not based on any sound arguments or evidence for the same.

The applicant also confused the CPIO with one more RTIs and conveniently failed to wait for the FAA's order. Though there is no limitation on the RTI

applicant u/s 6 to file a subsequent RTI, but the approach he has adopted is objectionable and he has clearly stated that being dissatisfied with the CPIO's reply in that RTI has caused him to file this RTI, rather than going in first appeal and waiting for the FAA's order.

He cannot bypass the FAA and also file a complaint u/s 18 of the RTI Act after filing a second application, requesting for action against the CPIO and as well again requesting the Commission to convert the complaint into a second appeal to provide him relief in the form of information. Further, his plea that the first appeal procedure would be time consuming and therefore he filed a complaint is not at all acceptable in the present case for reasons as stated above. Had he filed a first appeal in the present case and the same was not disposed of as per the timelines laid down, then the Commission would have examined the same, but merely on the basis of the applicant's own perception the procedure laid down under the Act cannot be skirted.

The Commission has exclusive jurisdiction to decide the matter u/s 18 of the RTI Act. The provision is extracted below for better understanding:

18. Powers and functions of Information Commission.—

(1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission as the case may be **to receive and inquire into a complaint** from any person,—

(a) who has been unable to submit a request to a Central Public Information Officer, or State Public Information Officer as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or Senior Officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limits specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament, or the State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

In the light of the provisions of Sec 18 of the RTI Act, the Commission has examined the RTI application and prima facie finds no ground to admit this complaint due to the fact that the same is in continuation of a previous RTI application, which was replied to by the CPIO and the option of first appeal and second appeal were not exhausted by the applicant in that RTI application and instead a fresh RTI was filed. Having said that, the Commission finds that the present RTI application was also replied to and in case the same is not proper the applicant failed to provide material proof to substantiate that the reply given is not proper. On the basis of the applicant's mere allegation, action cannot be taken against the CPIO. Moreover, the first appeal process is still open and with an application for condonation of delay the applicant is at

liberty to approach the FAA and thereafter, if dissatisfied, he can file a second appeal, where scope for providing any further information can be examined. As far as the provisions of Sec 18 is concerned, the Commission did not find any prima facie scope for action against the CPIO. Moreover, his plea for conversion of the complaint into a second appeal is not maintainable in the absence of a first appeal. The Commission also finds it relevant to mention here that any FAA's order passed after 10.09.2020 i.e date of registration of this complaint cannot be decided on merits in this complaint. Further, the complainant had not submitted a copy of the first appeal in this case.

Decision:

In view of the above observations, the Commission has not found any scope for admission of this complaint u/s 18 of the RTI Act.

The complaint is disposed of accordingly.

Vanaja N. Sarna (वनजा एन. सरना)
Information Commissioner (सूचना आयुक्त)

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A.K. Assija (ऐ.के. असीजा)
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