

Central Information Commission, New Delhi
File No. CIC/SH/A/2014/000009
Right to Information Act-2005-Under Section (19)

Date of hearing : 13th March 2014

Date of decision : 18th March 2014

Name of the Appellant : **Shri C J Karira.**
Plot No. 26, Road No. 1,
Balamrai Society, Mahendra Hills,
Secunderabad-500 026

Name of the Public Authority : **Central Public Information Officer,**
Unique Identification Authority of India,
2Nd Floor, Tower-1, Jeevan Bharati
Building, Connaught Circus,
New Delhi - 110 001

The Appellant was present at the NIC Studio, Hyderabad.

On behalf of the Respondents, the following were present:-

1. Shri Shrish Kumar, ADG.
2. Shri Shambhu Choubey, Assistant.

Information Commissioner : **Shri Sharat Sabharwal**

This case pertains to an RTI application dated 27.9.2013, filed by the Appellant to Unique Identification Authority of India (UIDAI), seeking information regarding sharing of data, concerning UID cards, held by the public authority. The Appellant filed an appeal to the CIC under section 19(3) of the RTI Act on 15.1.2014. In this appeal, he stated, inter alia, that he had filed his application under the "life or liberty" proviso of section 7(1) of the RTI Act. His RTI application was received in the office of the public authority on 1.10.2013. Not having received a reply from the CPIO, he filed an appeal to the First Appellate Authority on 13.11.2013. The FAA did not conduct any hearing or pass any order. The CPIO wrote to the Appellant on 23.12.2013, replying to three queries and stated that information in response to the remaining queries would be provided shortly. The Appellant stated that the information on three queries, provided by the CPIO vide his letter dated 23.12.2013, was "incomplete and incorrect", because HPCL and the State Bank of Mysore had his UID number and had got the same authenticated through UIDAI, while the CPIO had stated in his reply that his data had not been shared with any entity outside the UIDAI. The Appellant prayed for direction to the CPIO to provide him complete and correct information free of charge, imposition of penalty on the CPIO under section 20(1) of the RTI Act for the delay in provision of information, a warning to the FAA to dispose of appeals to him within the stipulated time limits under the RTI Act, departmental action against the CPIO and the FAA under the relevant rules and regulations and a direction to the public authority to arrange training on RTI matters for its concerned officials.

2. We heard the submissions of the Appellant and the Respondents. The CPIO stated that information on the remaining three queries in the RTI application had been provided to the Appellant vide their letter dated 13/16.1.2014. The Appellant's appeal dated

13.11.2013 was also disposed of by the FAA vide his letter dated 7.3.2014. The Appellant acknowledged having received the above communications from the Respondents. On the issue of provision of the requisite information to the Appellant, it is seen that three of his queries related to the requests received by the Respondents for authentication/confirmation/matching of any of his data held by the UIDAI, the details of the persons or entities asking for such authentication etc. and certified copies of requests for such authentication and replies thereto of the Respondents. The CPIO had stated in his reply dated 23.12.2013 that the Appellant's data had not been shared with any entity outside the UIDAI. The Appellant submitted that this information was misleading because he had given his UID number to his gas agency and bank in connection with provision of subsidy on supply of cooking gas cylinders. The Respondents stated that the use of the UID number, provided by the Appellant to his gas agency and bank, was for the limited purpose of ensuring that the person being provided the gas cylinders and subsidy was the same. It did not involve authentication/matching by those agencies with the data held by the Respondents. Two of the queries related to the procedure by which a UID number holder could surrender his UID number and card and get his data erased from the data base of the Respondents. The CPIO informed the Appellant vide his letter dated 13/16.1.2014 that as on date, there was no such procedure adopted by the UIDAI to delete the UID number from the UID database. The Appellant submitted that such a procedure needed to be introduced by the Respondents. The Commission, however, is not competent to go into this issue. Having received the above information from the Respondents, the Appellant is at liberty to raise this matter in appropriate fora, should he wish to do so. The last query in the RTI application sought information regarding the non-UIDAI entities/persons, who have access to his personal/demographic/biometric data held

by UIDAI or with whom UIDAI has shared such data. The CPIO informed him vide his reply dated 13/16.1.2014 that UIDAI would share data only in such cases where the resident has given the consent for sharing the same. The CPIO further stated that the data would be shared only on a formal request by the State concerned through the Nodal Departments for the delivery of welfare and public services and schemes of the Government. The Appellant submitted during the hearing that a declaration in the application for UID number obtains the consent of the applicant for such sharing of data. The Respondents stated that such consent is not mandatory, but optional.

3. While submitting his RTI application, the Appellant had stated that he was filing it in larger public interest under “life or liberty” proviso of Section 7 (1) of the RTI Act, 2005 and that, therefore, it should be responded to in 48 hours as his personal liberty and freedom were “affected by UID project, which I have come to know has been operating without any legislative statute whatsoever, and my personal data / biometrics were given to / shared with private players with overseas affiliations after my consent was deceitfully obtained.” During the hearing, the Appellant referred to some unspecified judicial pronouncements which, according to him, have maintained that the Right to Privacy is covered under Right to Liberty. In the above context, we note that the scope of the term “life or liberty” in the proviso to Section 7 (1) of the RTI Act, has been considered by the Commission in some of its earlier pronouncements. In its decision No. CIC/SG/A/2012/000814/18825 dated 9.5.2012, the Commission had observed as follows:-

“Proviso of Section 7(1) states that where the information sought concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request. This provision has to be applied only in exceptional cases and the norm is that information should

be provided within thirty days from the receiving date. Whether the information sought concerns the life or liberty of a person has to be carefully scrutinized and only in a very limited number of cases this ground can be relied upon. The government machinery is not designed in a way that responses to all RTI Applications can be given within forty-eight hours. A broad interpretation of 'life or liberty' would result in a substantial diversion of manpower and resources towards replying to RTI Applications which would be unjustified. Parliament has made a very special exception for cases involving 'life or liberty' so that it would be used only when an imminent threat to life or liberty is involved.

The life or liberty provision can be applied only in cases where there is an imminent danger to the life or liberty of a person and the non-supply of the information may either lead to death or grievous injury to the concerned person. Liberty of a person is threatened if she or he is going to be incarcerated or has already been incarcerated and the disclosure of the information may change that situation. If the disclosure of the information would obviate the danger then it may be considered under the proviso of Section 7(1). The imminent danger has to be demonstrably proven. The Commission is well aware of the fact that when a citizen exercises his or her fundamental right to information, the information disclosed may assist him or her to lead a better life. But in all such cases, the proviso of Section 7(1) cannot be invoked unless imminent danger to life or liberty can be proven.”

Going by the above interpretation of the Commission, the case before us does not fall within the scope of “life or liberty” in the proviso to Section 7 (1) of the RTI Act. However, we took this appeal up for consideration out of turn as the answers of the public authority to the queries of the Appellant in the instant case may be of interest to a large number of UID card holders, who may have similar apprehensions as the Appellant regarding sharing of the data provided by them to the UIDAI for obtaining a UID card.

4. We next come to the issue of delay in responding to the RTI application. Even though, as stated above, the application did not fall within the scope of the “life or liberty” proviso, the CPIO was required to respond to it within thirty days of its receipt, under Section 7 (1) of the RTI Act. However, it is clear that the RTI application was not

responded to within this time frame. A part of the application dated 27.9.2013 which, according to the information provided by the Appellant, was received in the office of the public authority on 1.10.2013, was responded to by the CPIO only on 23.12.2013. The remaining information was provided by the CPIO vide his letter dated 13/16.1.2014. Further, the First Appellate Authority neither gave a personal hearing to the Appellant, as requested in his appeal dated 13.11.2013 to the FAA; nor did the FAA pass any order on the above mentioned appeal till 7.3.2014, i.e. well beyond the time-limit laid down in the RTI Act. Moreover, by this time, Shri Shrish Kumar, ADG, who was CPIO at the time, when the RTI application was filed and when it was partially responded to on 23.12.2013, had been appointed the First Appellate Authority and the order dated 7.3.2014 was passed by him. Shri Shrish Kumar, therefore, sat in judgment, in his capacity as FAA, over the earlier handling of the matter by him in his capacity as the CPIO. This was not appropriate because a person, performing quasi-judicial functions, cannot and should not sit in judgment over his own earlier actions in a different capacity.

5. As far as the delay in responding to the RTI application on the part of the CPIO is concerned, Shri Shrish Kumar has shown us papers regarding action on the RTI application within the public authority. It is clear that he had to seek information on the queries in the RTI application from different authorities within the UIDAI, which took some time. However, equally clear are the time gaps in action on this application, which could have been avoided, had the CPIO given a regular follow up to the application, to ensure timely action on it. In this context, the CPIO has informed us that until 18.11.2013, when an order was passed by the public authority to appoint thirteen CPIOs, dealing with different subjects, as well as different FAAs to deal with applications in different fields, he

(Shri Shrish Kumar) was the sole CPIO at the UIDAI Headquarters. He has further submitted that there had been a surge in the RTI applications to the UIDAI through the online RTI portal since August- September 2013, and as many as 480 applications were received between August & November 2013. Therefore, it was humanly not possible for him to give regular follow up to each and every application. We are surprised that a public authority such as the UIDAI, with widespread public dealings, should have thought it fit to have only one CPIO until recently. We agree with the submission of Shri Shrish Kumar that in the face of such a situation, it was humanly not possible for him to give a regular follow up to RTI applications. In view of the foregoing, this case does not meet the requirement of Section 20 (1) of the RTI Act regarding non-furnishing of information by a CPIO within the time specified under Section 7 (1) "without any reasonable cause". Accordingly, we do not regard it as a fit case for imposition of penalty on the CPIO. Amongst his prayers in the second appeal, the Appellant has also asked for departmental action against the CPIO and the FAA under the relevant rules and regulations. In this context, while taking a serious view of non-disposal of the appeal dated 13.11.2013 by the FAA within the stipulated time-frame, we note that there is no provision in the RTI Act for departmental action against FAA in such cases. Disciplinary action against CPIO is provided for in Section 20 (2) of the RTI Act. However, we note that this case does not meet the requirement, stipulated in Section 20 (2), of non-furnishing of information within the time specified under Section 7 (1) of the RTI Act "without any reasonable cause and *persistently*." At the same time, the handling of the RTI application makes it clear that the dealing officers were not fully conversant with the requirements of the RTI Act. This calls for a familiarisation / training programme for all the concerned officers of UIDAI, dealing with RTI matters.

6. Having carefully considered the records and submissions before us, this appeal is disposed of by giving the following directions to UIDAI by virtue of the powers vested in us under Section 19 (8) of the RTI Act, 2005:-

- (a) The public authority must at all times maintain an adequate number of CPIOs and FAAs to ensure that all applications and appeals filed under the RTI Act are disposed of strictly within the time-limits laid down in the said Act.
- (b) Since Shri Shrish Kumar, the former CPIO has now been appointed the First Appellate Authority, another FAA may be designated to dispose of appeals, if any, against responses to RTI applications given earlier by Shri Shrish Kumar in his capacity as CPIO.
- (c) The public authority should organise a training programme on RTI matters, for all its concerned officials, at an early date.

7. Copies of this order be given free of cost to the parties. Aside from sending copies of this order to the usual recipients, the Registry is directed to send a copy by name to the functionary heading the UIDAI.

Sd/-
(Sharat Sabharwal)
Information Commissioner

Copy to:-

**Shri Vijay S. Madan
Director General,
Tower- 2, 3rd Floor, Jeevan Bharati Building,
Connaught Circus, New Delhi**

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.

**(Vijay Bhalla)
Deputy Registrar**