

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

CIC/SA/A/2014/000243

Appellant : **Rakesh Agarwal**
Respondent : **Transport Dept., GNCTD**
Date of hearing : **15.12.2014**
Date of decision : **23.12.2014**

Information Commissioner : **Prof. M. Sridhar Acharyulu
(Madabhushi Sridhar)**
Referred Sections : **Sections 19(8), 4(1)(c) &
(d) 20 of RTI Act**
Result : **Penalty Dropped**
Observation : **Give reasons for defective
policy**

Summary: The Commission finds it an alarming aspect that certain taxis are left free on the roads without any policy prescription for verification and mandatory training, which facilitate the crime such as recent sexual assault on a woman by the driver of a Tourist Taxi operating through a mobile-app based company. This crime could have been prevented if the transport authorities had first prescribed the badge as part of the permit conditions and enforced it strictly. It should have necessitated police verification where perhaps, the rape accused Shivkumar Yadav's real character or fake certificates could have been discovered leading to refusing permit to ply on Delhi roads. It is the mandatory responsibility of the Transport Department to explain their policy in which certain taxis do not require any badge or to follow stricter conditions, under Section 4(1)(c) and (d) of RTI Act, especially when these administrative decisions and policies are seriously affecting the safety of people at large in the national capital city.

Heard on 15.12.14. Appellant present. Respondent is represented by Shri Ashok Kumar.

2. The Para 4 of the order of even No. dt.25.11.14 is reproduced below:

4. The Commission after hearing the submissions made directs the PIO (as on 12.8.13 to 3.1.14) along with MLO/Taxi Unit and MLO/Auto Unit(as on 12.8.13 to 3.1.14) to show cause as to why penalty u/s 20 should not be imposed upon them for not furnishing proper response thereby obstructing the flow of information. All of them are directed to appear before the Commission on **15.12.2014** at **2.30 PM** along with their written submissions, a copy of which shall be endorsed to the Appellant.

3. The appellant sought information regarding files of the auto rickshaws registered in 2013; copy of permit conditions for Black & Yellow taxi, Radio taxis, Economy Radio taxis, Tourist taxis, Gram Sewa vehicle and copy of permit conditions applicable to auto rickshaws. CPIO on 31.8.2013 replied that information on Points 1,2,5 & 7 does not pertain to Taxi Unit, Burari and on Points 3,4 & 6 information was already provided on the website.

4. From the reply of CPIO the appellant found to his surprise that no special permit conditions were there for Black and Yellow taxis (DL 1 T type) and for Tourist permit taxis (DL 1 Y type). This means that these taxis can ply without obtaining particular badge. Appellant said that if he was caught he could simply walk free after paying maximum fine Rs 100 cash on the spot. Appellant contended that transport department should have imposed permit conditions for plying of these taxis, and in contravention they should be penalised to pay Rs 10,000 in a traffic court and/or a prison sentence up to one year under Section 192 A of Motor Vehicle Act, 1988.

Section 192 A says:

192A. Using vehicle without permit.

(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of section 66 or **in contravention of any condition of a permit relating to the route** on which or the area in which or the purpose for which the vehicle may be used, shall be punishable for the first offence with a fine which

may extend to five thousand rupees but shall not be less than two thousand rupees and for any subsequent offence with imprisonment which may extend to one year but shall not be less than three months or with fine which may extend to **ten thousand rupees** but shall not be less than five thousand rupees or with both:

Provided that the court may for reasons to be recorded, impose a lesser punishment.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or for the transport of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.

(3) The court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.]

[This is Substituted by Act 54 of 1994, sec. 56, for section 192 (w.e.f. 14-11-1994)].

5. The appellant stated, such is the ignorance of the transport authorities that even the lesser penalty of Rs 100 is seldom levied on Black and Yellow Taxis and Tourist permit taxis out of the mistaken belief that the drivers of these taxis are exempt from holding a badge. The appellant explained that the process of issuance of badge entails four things:

- i. the driver needs to undergo 3 days mandatory training in soft skills,
- ii. his address is verified through local police,

- iii. his crime record and antecedents are verified through National Crimes Records Bureau, and
- iv. police verifies his reputation in the local area by making enquiries in the driver's neighbourhood.

6. The Commission finds it an alarming aspect that certain taxis are left free on the roads without any policy prescription for such verification and mandatory training, which facilitate the crime such as recent sexual assault on a woman by the driver of a Tourist Taxi operating through a mobile-app based company. It is relevant to mention that the Police have listed some norms and guidelines that may have been flouted in this crime:

- a. The accused driver Shivkumar Yadav did not undergo the mandatory police verification, and a background check was not conducted by the company.
- b. He did not have a driving licence issued by the Delhi Transport Authority, which is recommended for those engaged in driving cabs in the capital.
- c. Instead of a mandatory GPS system, the only link with the driver was an application that he had downloaded on the phone he was using. (<http://indianexpress.com/article/india/india-others/threatening-a-dec-16-uber-cabbie-sexually-assaults-woman-police/#sthash.KsIO4gEb.dpuf>)

7. It appears that this crime could have been prevented if the transport authorities had first prescribed the badge as part of the permit conditions and enforced it strictly. It should have necessitated police verification where perhaps, the rape accused Shivkumar Yadav's real character or fake certificates could have been discovered leading to refusing permit to ply on Delhi roads. Absence of this rule reflects defective or bad governance of Transport Authority.

A simple verification of driving license could have revealed the real character of this cab driver, who was having a long criminal history of being a serial sexual offender, accused of molestation in 2003, booked under Arms Act in 2006, robbery in 2013 in Manipuri, rape in South Delhi's Mehrauli in 2011 (assaulting a bar dancer) and also in a rape case in 2013 being released on bail, prior to which he spent seven months in Tihar Jail. The fact that he was driving taxi in Delhi for last several years shows how lax our transport authority's governance was. (<http://www.financialexpress.com/article/miscellaneous/uber-cabs-delhi-rape-case-the-unending-sexual-assault-spree-of-shiv-kumar-yadav/17525/>)

Delhi Police arrested an agent from a finance company for allegedly helping Uber car driver Shiv Kumar Yadav procure his fake character certificate, which he used to get an 'All India Tourist Permit' to drive a taxi from the Regional Transport Office. (<http://www.dailymail.co.uk/indiahome/indianews/article-2870787/Finance-agent-arrested-helping-Uber-rape-suspect-fake-character-certificate.html>). The Commission directs the public authority to submit a report as to how, who and on what basis he was given this permit, why the fact that he was not having driving licence and his past conduct was not taken into account. The Commission also directs the public authority to inform the Commission as to what steps they would take to prevent such kind of granting of permits.

The very fact that no conditions are there in the first place for taxis makes Delhi a very vulnerable place, especially for women and more so at night. The public authority should have learnt either from Nirbhaya episode [December 2012] or from crime of beating and raping a 27 year old woman in a hired vehicle driven by accused Shiv Kumar Yadav, who had criminal history of being sexual predator [December 2014]. Effective and good governance besides strict enforcement of norms alone prevent crimes.

8. The Commission exercising its powers under Section 19(8)(a) require the public authority to inform the appellant, the public in general, women in particular and this Commission, a) why such an effective regulatory permit conditions were not imposed, b) in the absence of it what measures they have in their power to restrict sexual crimes in the transport vehicles in streets of Delhi and c) whether they are considering any other permit conditions to be imposed, if not the above, to check the criminal conduct of drivers, and their irresponsible employers, within ten days from the receipt of this order. The Commission finds that there is an urgent need to frame strict permit conditions and enforce them immediately. It is the mandatory responsibility of the Transport Department to explain their policy in which certain taxis do not require any badge or to follow stricter conditions, under Section 4(1)(c) and (d) of RTI Act, especially when these administrative decisions and policies are seriously affecting the safety of people at large in the national capital city. The public authority has to publish all relevant facts while formulating important policies or announcing the decisions which affect public [s4(1)(c)]; provide reasons for its administrative or quasi judicial decisions to affected persons [s4(1)(d)]. The Commission directs the public authority to inform the public at large their policy or administrative decision and reasons for that regarding the points raised by the appellant and to prevent the sexual assaults. The Commission observes that the transport authority should have taken the fact of crimes on wheels as serious phenomenon affecting their reputation and to secure the prestige they are supposed to take strict measures for effective governance of transport administration.

9. On the complaint of the appellant that website of the Department was not accessible at all, the Commission directs the PIO to update the website, make it accessible and also navigable and submit a report in this regard to the Commission with a copy endorsed to the Appellant.

10. Appellant submitted that he does not wish to pursue the complaint and requested that penalty proceedings be dropped. In view of the above, penalty proceedings are dropped and the case closed with above directions.

Sd/-

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Babu Lal)
Dy. Registrar

Address of the parties

1. The CPIO
Transport Department
Govt. of NCT of Delhi
5/9 Underhill Road
Delhi 110 054
2. Shri Rakesh Agarwal
C/o Nyaya Bhoomi
B-9, Vikram Nagar
Feroze Shah Kotla
New Delhi 110 002