

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

File no.: CIC/DEOIT/C/2020/685084

In the matter of:

Saurav Das

... Complainant

VS

1. Central Public Information Officer,
National E-Governance Division (NEGD),
Ministry of Electronics and Information Technology,
Department of Electronics and Information Technology,
Electronics Niketan, 6, CGO Complex, Lodhi Road,
New Delhi- 110003

&

2. Central Public Information Officer,
Ministry of Electronics and Information Technology,
Electronics Niketan, 6, CGO Complex, Lodhi Road,
New Delhi- 110 003

... Respondents

RTI application filed on	:	01/08/2020
CPIO replied on	:	07/08/2020
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, 24/11/2020
Date of Decision	:	26/10/2020, 26/11/2020

The following were present:

Complainant: Present over VC

Respondent: Shri S.K Tyagi, Deputy Director and CPIO, Shri D K Sagar, Deputy Director Electronics and Shri R A Dhawan, Senior General Manager (HR & Admn) and CPIO NeGD

Information Sought:

The complainant has sought the following information:

1. Provide the certified true copy of the entire file related to the creation of the Aarogya Setu app including a) origin of proposal, b) approval details, c) companies, d) people, govt. departments involved, e) file notings related to the app, f) comments on files by various officers, g) copies of communications between private people involved in making/developing the app and government departments concerned, etc. h) copies of request for collaboration with people from industry who have helped in making this app i) all communications received from all contributors/advisers of this app who have helped make this app. The responses be also provided. j) Internal notes, memos, file notings, correspondences while making this app and finalising it. k) Minutes of the meetings held while creating this app. l) Notings/documents related to any meetings between the Government and private contributors to this app. m) Details of meetings/inputs received from any other government agency on this app.
2. Provide the details of the law/legislation under which the app was created and is being handled.
3. Whether the Government of India has any proposal to bring in a law separately for this App and its handling.
4. And other related information.

Grounds for Complaint

The CPIO, NEGD and Ministry of Electronics & Information Technology did not provide any 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 to the Commission mentioned that there was no reply given by the CPIO, National E-Governance Division, MeitY and CPIO, MeitY.

He further submitted that he filed this RTI application seeking to get information about the process of creation of Aarogya Setu App and other information relating to its creation. He further clarified that the present RTI also contains a few points which were also asked to the NIC vide RTI with reg. no. NICHQ/R/E/20/00283 dt. 01/08/2020. It was noted by the Commission that the referred RTI was adjudicated by the Commission in case no. CIC/NICHQ/C/2020/685079 on 22.10.2020.

The complainant further submitted that the information was anyway not provided by the NIC in that case since it stated that it “does not hold the information” relating to the App’s creation, which is very surprising since it is the App’s developer. Now MeitY also has not provided any information relating to the App’s creation and other matters.

He strongly pleaded that in effect, no one has any information on how this App was created, the files relating to its creation, who has given inputs for this App’s creation, what audit measures exists to check for misuse of the personal data of millions of Indians, whether any anonymisation protocols for user data have been developed and about who this data is being shared with. This is despite the fact that any omissions and commissions by these public authorities and any failure to perform their duties as outlined and mandated under the Protocol, 2020, could essentially lead to security compromise of millions of Indians’ personal and user data. This would be a grave breach of fundamental right to privacy on a massive scale and threaten people’s constitutionally guaranteed right to life and liberty.

He further argued that there seems to be a pattern among these public authorities to wilfully withhold information from any applicant asking for this information as no public authority has any details about any of the questions as asked which to him seems out-rightly false, malafide and done with an effort to frustrate and harass the applicant to give up.

He further requested that a senior level officer of the Ministry of Electronics and Information Technology be recognised as the deemed CPIO by this Commission in this matter and he/she be directed to furnish all the information in detail to the Complainant after collecting them from all relevant CPIOs.

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 also pressed for action against the CPIO, National E-Governance Division, MeitY under section 20(1) and 20(2) of the RTI Act for wilfully and repeatedly refusing to act in conformity with the RTI Act despite sending repeated reminders requesting them to furnish the information.

He further requested 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.

Shri D K Sagar Deputy Director and CPIO, Department of Electronics submitted that a timely reply was given to the applicant on 07.08.2020 informing him that the RTI application has been transferred to the PIO, NeGD u/s 6(3) of the RTI Act. Shri R A Dhawan, Senior General Manager (HR & Admn) and CPIO NeGD submitted a copy of the reply dated 02.10.2020 in which he stated that the information sought in the RTI does not relate to NeGD. Accordingly, NeGD do not have any information on the above. He could not explain why it took him almost two months to provide a reply and that too informing that the information sought is not related to NeGD. Shri S.K Tyagi, Deputy Director and CPIO, MeitY was also present during the hearing and hence he was asked as to from where the information relating to the creation of Arogya Setu app can be

accessed. He also could not give a plausible explanation except that the creation of the same involves inputs from NITI Ayog. He further could not explain as to how it is possible that the App was created and the Ministry of Electronics and Information Technology has no clue about its origin. The Commission took note of the fact that on the same day two more complaints were also decided and the CPIO, from NIC was present in those cases but the CPIO NIC had also transferred those RTIs to different public authorities to obtain information of similar nature. Apparently, the CPIO, MeitY and all concerned CPIOs present during the hearing have provided a very evasive kind of reply as well as submissions and not even attempted to trace the holder of the information in this case. Moreover, the applicant has rightly pointed out that the App is being used by masses at large and can have wide reaching effects and breach of privacy cannot be ruled out completely. This Commission would not get into the right to privacy aspects as the technical details of the App and the regulatory mechanism has not yet been examined by any competent Court of Law.

Observations:

After hearing the averments of all the concerned parties and also the CPIO NIC who was present in this case on the basis of oral direction by the Commission, the denial of information by all the concerned authorities cannot be accepted at all.

It is relevant to mention here that Sec 6(3) of the RTI Act cannot be used by public authorities to push off the matter.

Taking note of the decision in case no. 685079 of the same complainant decided on 22.10.2020, the present complaint cannot be converted into an appeal. However, the complainant's plea that the CPIO, National E-Governance Division, MEITY should be penalised under section 20(1) and 20(2) of the RTI Act for wilfully and repeatedly refusing to act in conformity with the RTI Act despite sending repeated reminders requesting them to furnish the information seems correct in the absence of a reasoned and justifiable reply from the CPIOs concerned.

The reply dated 07.08.2020 given by the Department of Electronics & Information Technology was perused and the same read as follows:

"The online RTI request has been transferred to PIO, NeGD under section 6(3) of the RTI Act. Hence, the said online RTI request is disposed off from the portal."

Shri R A Dhwan's submission that information sought is not related to NeGD and Shri Tyagi's and Shri Sagar's submissions that the RTI application was transferred to NeGD shows that ultimately the steps taken till today failed to locate the source from where information can be accessed. The Commission observes that it is a current issue and it is not possible that there was no file movement while creating this App, a citizen cannot go round in circles to find out the custodian.

The CPIO, NIC's submissions that the entire file related to creation of the App is not with NIC is understandable, but the same submissions if accepted from MeITY, NeGD and NIC in toto, then it becomes more relevant to now find out how an App was created and there is no information with any of the relevant public authorities.

The Commission observed that none of the CPIOs provided any information. Therefore, the Commission directs the CPIO, NIC to explain this matter in writing as to how the website <https://aarogyasetu.gov.in/> was created with the domain name gov.in, if they do not have any information about it. Moreover, the registry is directed to send an e-mail to the e-mail id-support.aarogyasetu.gov.in as mentioned in the website directing them to send the concerned authority to be present before the Commission on the next date of hearing.

Furthermore, as per the website <https://aarogyasetu.gov.in/> it is mentioned that the content is owned, updated and maintained by the MyGov, MeitY. Therefore, Shri Tyagi is directed to explain in writing who is the concerned CPIO to explain regarding MyGov, MeitY maintaining the app. The CPIO NIC also should explain that when in the website it is mentioned that Aarogya Setu Platform is designed, developed and hosted by National Informatics Centre, Ministry of Electronics & Information Technology, Government of India, then how is it that they do not have any information about creation of the App.

None of the CPIOs were able to explain anything regarding who created the App, where are the files, and the same is extremely preposterous.

It is relevant to quote the Hon'ble Supreme Court decision in *Namit Sharma v. Union of India* 2012 (8) SCALE 593 in which it was held that the purpose and object for the enactment of the RTI Act was to make the government more transparent and accountable to the public and to ensure access to information to every citizen from the public authorities.

Further, the Hon'ble Supreme Court in ICAI v. Shaunak H Satya & Ors SLP (C) No.2040/2011 further held that the right to information regarding the functioning of public authorities is a fundamental right as envisaged under Article 19 of the Constitution of India. Further, it was pointed out that the very preamble of the RTI Act, 2005, substantiates the fact that the Act, does not create any new right but only provides machinery to effectuate the fundamental right to information. Furthermore, the Information Commissions are the implementing agencies/machinery. The right to access to information has only exemptions provided in Section 8 of the RTI Act. The Government of the people means the information should be open to public for informed citizenry.

Keeping in view the above ratio, the Commission took cognizance of the present complaint u/s 18(f) of the RTI Act and as per the mandate under that provision is of the view that it is necessary to identify the source/ custodian of information in respect of the complainant's request for obtaining access to records under this Act. The addressees cannot simply wash their hands off by stating that the information is not available with them. Some effort should have been put in to find out the custodian(s) of the information sought, by the concerned public authorities when apparently they are the relevant parties.

Interim Decision:

In view of the above observations, the Commission is constrained to issue a show cause notice to the concerned CPIOs

1. Shri S.K Tyagi, Deputy Director and CPIO,
2. Shri D K Sagar, Deputy Director Electronics
3. Shri R A Dhawan, Senior General Manager (HR & Admn) and CPIO NeGD
4. Shri Swarup Dutta, Scientist F and CPIO NIC

to explain why penalty u/s 20 of the RTI Act should not be imposed on them for prima facie obstruction of information and providing an evasive reply.

The CPIO, NIC shall also submit written submissions detailing their role in creation of the website <https://aarogyasetu.gov.in/> with the domain name gov.in. The CPIO, NeGD shall also explain the delay of about 2 months in replying to the RTI application.

The Commission directs the above-mentioned CPIOs to appear before the bench on **24.11.2020** at **01.15 pm** to show cause as to why action should not be initiated against them under Section 20 of the RTI Act. The CPIOs are also directed to send a copy of all supporting documents upon which they choose to rely upon during the hearing. The said documents be sent to the

Commission atleast 5 days prior to the hearing via linkpaper. If any other persons are responsible for the said omission, the CPIO shall serve a copy of this order on such persons to direct their presence before the bench as well.

The Registry shall endorse a copy of this interim order to the Secretary MeitY, CEO MyGOV and Director General NIC for information and necessary action.

The case is adjourned accordingly

Date of Hearing: 24/11/2020

Date of Decision: 24/11/2020

The following were present:

Respondent: Shri D.K Sagar, Deputy Director and CPIO (eGov), Shri R.A Dhawan, Senior General Manager, NeGD and Shri Swarup Dutta, Scientist-F and CPIO, NIC, Mr Shiloma Rao, GM and CPIO, NeGD, present CPIO, (present over Intra VC)

Submissions made by Respondent during the hearing:

All the CPIOs present during the hearing submitted that the written submissions dated 18.11.2020 may be considered as a common response of all concerned to adjudicate the matter.

Shri S.K Tyagi vide e-mail dated 19.11.2020 informed the Commission that as he is on bed rest (due to Corona) as advised by the doctor, he is not able to attend the showcause proceedings in person. He further relied on the written submissions dated 18.11.2020.

Shri Swarup Dutta submitted that he was not an original party to the case and NIC had replied properly and the FAA NIC had given the applicant a personal hearing in the spirit of the RTI Act in two other similar cases pertaining to the same subject matter.

Shri R.A Dhawan submitted that at that time they tried to collect the information from different sections/departments as the information was scattered but he could not do the same before the hearing on 22.10.2020 and therefore was unable to explain the matter.

Shri D.K Sagar submitted that previously the matter was scattered in different sections but after the CIC's order the concerned information was brought

together exclusively on one platform and he is now the DD in charge of handling all queries through RTIs on the Aarogya Setu app.

The present CPIO, Mr Rao tendered an unconditional apology on behalf of the concerned CPIOs as public confidence was shaken due to their irresponsible submissions before the Commission regarding the availability of information relating to the Aarogya Setu App. He admitted that the subject matter is of prime importance and unnecessarily the RTI application was poorly handled by the officers by providing what appeared to be evasive replies whereas actually there is nothing to hide and the creation of this app was a positive step and had actually helped immensely in controlling the pandemic.

The CPIO submitted that the requisite documents including privacy policies, details of usage etc. were made available in the portal itself on 02.04.2020 and on 08.04.2020 the Empowered Committee team details were also made available. Moreover, responsible senior officers were also included in these teams. He further added that more than 10 public conferences were held and very significantly the app was made open source. They even launched a bug bounting programme in which if anybody found fault with the app there was a provision for them to be rewarded also. He further submitted that recently the back end code was also made available. Everything regarding the app from its start is in public domain. He affirmed that from 2nd April 2020 onwards there was enough information in public domain.

If that was the case, the Commission during the hearing asked as to why the concerned officers could not provide any answers whatsoever during the previous hearing. The present CPIO then submitted that possibly the same happened due to lack of coordination among the different CPIOs and the fact that the information was scattered among various sections /departments. He stated that after the issuance of the showcause notice, it was brought to the notice of the competent authorities and the Ministry took the matter very seriously and accordingly the CPIOs were instructed to be pro active in supplying information. He referred to a circular of the MEITY dated 19.11.2020 in which a single CPIO has been given the responsibility to handle the subject matter under RTI. He informed that henceforth the entire matter of Aarogya Setu shall be dealt with by a single CPIO, Deputy Director, E-GOV Division, MEITY, Mr D K Sagar. He also submitted that this was done to ensure timely disposal of RTI applications and dissemination of maximum information in the spirit of the RTI Act.

The Commission asked Shri D K Sagar as to why he had not diligently gathered information before attending the previous hearing which could have prevented this showcause notice, to which he clarified that it was not that information was not available, but it was scattered in different divisions, and it took some time to bring it together and thus they were not able to satisfy the queries during the previous hearing. He assured the Commission that henceforth, RTI matters shall be dealt with with utmost care and caution.

The CPIOs viz. Shri S.K Tyagi, Deputy Director and CPIO, Shri D.K Sagar, Deputy Director and CPIO (eGov), Shri R.A Dhawan, Senior General Manager, NeGD and Shri Swarup Dutta, Sci-F and CPIO, NIC vide written explanations dated 18.11.2020 expressed their apologies and regret for not being able to respond clearly and coherently to the RTI application filed by the applicant as also during the hearing of the complaint dated 10.09.2020 filed by the applicant before the Commission.

They submitted that the above was primarily on account of the query of the applicant being related to multiple agencies and Government Departments for which though the entire information was available in public domain but the same was not specifically available to the individual CPIOs and hence a proper and clear reply could not be submitted in time to the applicant or during the hearing before the Commission .

They further submitted that the applicant had also filed two additional RTI applications with regard to the Aarogya Setu App to CPIO NIC which have already been responded to by NIC vide replies dated 10.08.2020 (disposed of online). Additional information was also provided to both the queries by e-mail dated 04.09.2020 and as part of the FAA's order in appeal disposed of on 15.10.2020 wherein all the queries under the purview of NIC were answered and the others are being transferred to the concerned organisations.

They submitted that vide orders No. 40-3/2020-DM-1(A) dated 29.03.2020 and 01.05.2020, the Central Government had constituted empowered groups under the Disaster Management Act, 2005 to ensure public safety, identify the problem areas and provide practical solutions in a time bound-manner and out of the same empowered groups, the Empowered Group no. 9 on technology and data management under the purview of Ministry of Electronics and Information Technology was entrusted with the responsibility of coordinating all technological solutions for fighting COVID-19.

They also submitted that the development of the Aarogya Setu App was done at a time when the entire nation was impacted by the COVID-19 pandemic and

the nation had gone into a complete lockdown in the last week of March 2020 following the call for Janata Curfew on 22.03.2020. The nature of COVID 19 virus is such that most people who get infected by the virus remain asymptomatic for around 2 weeks before showing any symptoms which results in a delay in the test diagnosing them as COVID-19 positive. During the period before they have been detected COVID positive such people may continue to infect other people with whom they come in contact and contribute to the spread of the virus. In order to address this, in many countries around the world a contact tracing app has proved to be an effective tool to alert people if they have come in contact with anyone who is tested positive for COVID-19 .

In view of the above, stakeholders from across Industry-Academia and Government authorities, including officials from NITI Aayog and MeitY had come together to build a Contact Tracing App for India. In the month of March, 2020 several such apps were being built, and after due consideration of all the competing Apps, it was decided that a National App for contact tracing namely Aarogya Setu will be built to strengthen the fight against COVID-19.

This app was built in a record time of less than 3 weeks without any cost to Government and was launched on 2nd April, 2020. Within 13 days of the launch of the App it had more than 50 million users which was a world record of the fastest time to reach 50 million users for any mobile app.

He further submitted that the App has more than 164 million users which is more than the combined users of all other Contact Tracing Apps in the world.

The app has proved to be effective in informing and alerting people if they have come in contact with any COVID-19 positive person and has also helped in educating people about the behavioural changes that may be needed regarding usage of masks, social distancing and hand washing. The app has also helped in identification of potential hotspots and strengthened the ability of health authorities and District Administrations in the fight against COVID-19. The app has been designed with a privacy first policy and the entire data of the users is completely safe. **Most of the data remains on the mobile phone of the users and gets auto deleted after 30 days if the person concerned is not COVID-19 positive. Data of only those who are tested positive is pushed to the server, with the objective of alerting people who might have come in Bluetooth contact with those who tested positive. Such data is also deleted after a maximum of 60 days from the date a person recovers. These protocols are clearly defined and available in public domain.** The Android and IOS code

of Aarogya Setu is available in the open domain alongwith the names of the persons who have been involved in the development of the app.

To establish a working mechanism of the Aarogya Setu Platform Ecosystem, MeitY has established an organisational set up consisting of members as given in the O.M dated 08th April 2020 and later on modified with the addition of P& CEO, NeGD and CEO, MyGOV as one of the members of the organisational set up (O.M dated 08.04.2020 and 28.04.2020).

In order to ensure secure data collection by the Aarogya Setu mobile application, protection of personal data of individuals, the MeitY has issued the Aarogya Setu Data Access and Knowledge Sharing Protocol 2020. The Aarogya Setu application fully complies with this protocol.

The user of the Aarogya Setu application is safeguarded with the provisions of the Information Technology Act, 2000 and Disaster Management Act, 2005. Moreover, all the necessary protection to the personal data of users is ensured as per the provisions of the proposed Personal Data Protection Bill 2018. The following privacy safeguards have already been provided to all the users of Aarogya Setu application and notified in the privacy policy and terms of the usage of the App.

- i. No personal data collected without user consent.
- ii. User is clearly informed regarding the following:
 1. What data is collected and how it is collected
 2. How the data will be used
 3. Retention of the data
 4. Rights of the users
 5. Security measures in place
 6. Grievance Redressal
- iii. Collected data is encrypted and stored on the user's phone.
- iv. Data is sent to servers only if the user tests positive for COVID or the user voluntarily submits his/her data with consent.
- v. Copy of Privacy policy and terms of usage was also enclosed.

All the necessary information about the Aarogya Setu application is already available in public domain, and details of application developers and contributors are also made available in the Github https://github.com/nic-delhi/AarogyaSetu_Android/graphs/contributors

The Ministry also issued necessary orders and directives to all CPIOs concerned to comply with the timelines and provisions of the RTI Act 2005 in letter and spirit to promote transparency.

The entire information and relevant documents regarding the development of the app are also available in the public domain on "aarogyasetu.gov.in". The site was created with the domain name gov.in for NIC and approved by NIC's Nodal Officer and competent authority.

Regular press releases have also been issued regarding the Aarogya Setu App including dissemination of information via social media and hence, there is no reason to believe that at any point of time the Government has not shared information with regard to the functioning or development of the app. Copies of all press releases were annexed.

The CPIOs of NeGD, MeitY and NIC further extended their apology for not being able to share the above information at the time of the hearing on 22.10.2020 and requested to drop the showcause notice in view of all that has been explained during the hearing now.

Observations:

At the outset it was informed by the Registry of this bench that a written request has been received from the complainant to allow him to attend the showcause proceedings as per principles of natural justice. In response to this, reference is drawn to the judgement of the Hon'ble High Court of Delhi in the case of *Ankur Mutreja v. Delhi University* in LPA 764/2011 dated 09.01.2012 wherein it was held as under:

- a) the Act does not provide for the CIC to, in the penalty proceedings, hear the information seeker, though there is no bar also there against if the CIC so desires;*
- b) that the information seeker cannot as a matter of right claim audience in the penalty proceedings which are between the CIC and the erring information officer;*

c) there is no provision in the Act for payment of penalty or any part thereof imposed/recovered from the erring information officer to the information seeker;

d) the penalty proceedings are akin to contempt proceedings, the settled position wherein is that after bringing the facts to the notice of the Court, it becomes a matter between the Court and the contemnor and the informant or the relator does not become a complainant or petitioner in contempt proceedings."

The aforementioned decision was also relied upon and affirmed by the Hon'ble High Court of Delhi in its decision in Anand Bhushan v. R.A. Haritash: ILR (2012) 4 Delhi 657 wherein it was held as under:

"8.....The information seeker has no locus in the penalty proceedings, beyond the decision of the complaint/appeal and while taking which decision opinion of default having been committed is to be formed, and at which stage the complainant/information seeker is heard.

9. In the context of the RTI Act also, merely because the CIC, while deciding the complaints/appeals is required to hear the complainant/information seeker, would not require the CIC to hear them while punishing the erring Information Officer, in exercise of its supervisory powers."

Following the above ratio, the Commission finds it pertinent to mention here that it was not inclined to allow the applicant to participate in the showcause proceedings as the matter is between the Commission and the respondents.

It is relevant to mention here that due to the CPIOs' poor preparation of the facts of the case the impression given to the Commission on 22.10.2020 during the first hearing was that there is no information available in public domain.

The Commission observed that the present case is a complaint and not a second appeal, therefore, it cannot direct the CPIO to provide information. However, in all fairness, the present CPIO volunteered to satisfy the complainant and provide information (in hard copies) as well hyperlink wherever applicable within 3 days from the date of issue of this order.

The Commission finds it relevant to mention here that subsequent to the present show cause notice hearing, it has come to light that there was plenty of material available in public domain on the app, however, the CPIOs gave the wrong impression. Therefore, the complainant's grievance appeared well founded that he was not given any information and therefore it appeared that there was none and the whole matter appeared to be non-transparent.

The present CPIO had also requested to take on record that the intent behind creating this app was to control the pandemic and not to breach the privacy of individuals. He was involved in the development stage and even World Health Organisation (WHO) had appreciated the app. He requested to drop the showcause notice considering the subject matter as unique and considering all the facts that have now been placed before the Commission.

He had again reiterated that henceforth the RTI Act shall be upheld in the true spirit of transparency.

Mr Rao also informed that date-wise events shall be informed to the applicant starting from April 2020, so that whole information as available from time to time in public domain is known to him.

Based on a perusal of the written explanation and the relevant enclosures, the Commission observed that the fact remains that the CPIOs concerned were not prepared for the hearing on 22.10.2020 and it is after the showcause notice was issued, that they located the documents and provided a detailed explanation. As far as the showcause notice issued was concerned, the questions raised by the Commission now stand answered in detail by the present CPIO. However, the fact remains that the complainant was not given a proper reply guiding him to the hyperlink where the information sought was available nor was he given the copies of the relevant guidelines. The key information is that vide orders No. 40-3/2020-DM-1(A) dated 29.03.2020 and 01.05.2020, the Central Government had constituted empowered groups under the Disaster Management Act, 2005 to ensure public safety, identify the problem areas and provide practical solutions in a time bound-manner and with regard to the overall aspect of controlling the pandemic 11 empowered groups were formed. The Empowered Group no. 9 on technology and data management under the purview of Ministry of Electronics and Information Technology was entrusted with the responsibility of coordinating all technological solutions for fighting COVID-19. Further, stakeholders from across Industry-Academia and Government authorities, including officials from

NITI Aayog and MeitY had come together to build a Contact Tracing App for India. This app was built in a record time of less than 3 weeks without any cost to Government and was launched on 2nd April, 2020. Within 13 days of the launch of the App it had more than 50 million users which was a world record of the fastest time taken to reach 50 million users for any mobile app. Furthermore, it was also observed that the privacy concern raised by the applicant was also properly explained by the CPIOs in their written submissions.

The Commission observes that after the showcause notice was issued the CPIOs made all possible efforts and coordinated with the concerned record holders to provide a proper explanation. However, due to the callousness and lackadaisical approach of the CPIOs during the hearing on 22.10.2020 the Commission was constrained to issue a showcause notice for want of a proper response to the RTI applicant and to the queries raised during the hearing. Nevertheless, from the above explanation it is also clear that there was no malafide intent on the part of the CPIOs, rather, they failed to provide a point-wise reply to the applicant due to the data being available in a scattered manner and due to the fact that proper co-ordination among all the concerned agencies was not undertaken before appearing for the hearing .

The Commission finds that there is enough and more information regarding the said App in public domain which can be accessed by citizens at large. Further, a lot of work has been done in a very short time to bring out this app to help in containing the spread of Covid-19.

Finally, with regard to the imposition of penalty on the CPIO/PIO under Section 20 of the RTI Act, 2005, the Commission took note of the ruling of the Hon'ble Delhi High Court in W.P.(C) 11271/2009 Registrar of Companies & Ors v. Dharmendra Kumar Garg & Anr. (delivered on: 01.06.2012) wherein it was held:

" 61. Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any

reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a showcause notice under Section 20 of the RTI Act and the imposition of penalty. **The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed.** This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfil their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute."

Similarly, the following observation of the Hon'ble Delhi High Court in Bhagat Singh v. CIC & Ors. WP(C) 3114/2007 is pertinent in this matter:

"17. This Court takes a serious note of the two year delay in releasing information, the lack of adequate reasoning in the orders of the Public Information Officer and the Appellate Authority and the lack of application of mind in relation to the nature of information sought. **The materials on record clearly show the lackadaisical approach of the second and third respondent in releasing the information sought. However, the Petitioner has not been able to demonstrate that they malafidely denied the information sought.** Therefore, a direction to the Central Information Commission to initiate action under Section 20 of the Act, cannot be issued."

The Commission also observed that the Hon'ble High Court of Delhi in the matter of R.K. Jain v. V.P. Pandey, CPIO, CESTAT, New Delhi in W.P. (C) No. 4785/ 2017 dated 10.10.2017 adjudicated an order of the Commission dated 17.04.2017 whereby the Respondent was cautioned to exercise due care in future and to ensure that correct and complete information is furnished to the RTI applicants. It was decided that:

"2. The grievance of the petitioner is that although the CIC had accepted that there was a delay in providing the necessary information to the petitioner, the CIC had not imposed the penalty as required under Section 20(1) of the Right to Information Act, 2005. It is well settled that imposing of the penalty is a discretionary measure. In Anand Bhushan v. R.A. Haritash: ILR (2012) 4 Delhi 657 a division bench of this Court had considered the question whether the levy of penalty was discretionary and held as under.....

3. In this case it is apparent that the CIC had in its discretion considered that a order cautioning the CPIO would be sufficient. This Court is not inclined to interfere with such exercise of discretion."

Decision:

Keeping in view the detailed reply to the show cause notice furnished by the CPIOs and the lengthy explanation given by the present CPIO during the hearing, the Commission accepts the apology of all concerned officers and cautions them to be careful in future while replying to RTI applications as well as the need to come well prepared for the Commission's hearings. This is all the more important when there was sufficient information regarding the app in public domain which unfortunately was not conveyed to the complainant in reply to his RTI application nor to the Commission during the first hearing. Since no malafide or intention to conceal information has been found in the CPIOs' oral and written replies, the Commission is not inclined to impose any penalty on them. As the present case is a complaint u/s 18 no direction for disclosure can be given, however the CPIO volunteered to provide the hard copies of the documents/relevant enclosures submitted to the Commission as well the hyperlink wherever applicable, to the appellant within 7 days from the date of issue of order in the spirit of the RTI Act.

The Commission issues an advisory u/s 25(5) of the RTI Act, 2005 to the Secretary, Ministry of Electronics and Information Technology to ensure that the Aarogya Setu website is robust and maintained uptodate at all times

so as to be able to satisfy the citizens queries on the subject without having to resort to filing of RTI applications and in this manner promote suo moto disclosure of information.

The show cause notice proceedings are dropped and the complaint too is disposed of accordingly .

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

Authenticated true copy
(अभिप्रमाणित सत्यापित प्रति)

A.K. Assija (ऐ.के. असीजा)
Dy. Registrar (उप-पंजीयक)
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