

CENTRAL INFORMATION COMMISSION

(Room No.313, CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi-110067)

Before Prof. M. SridharAcharyulu (Madabhushi Sridhar), CIC

CIC/IMETD/A/2017/180724

Chetan Kothari v. PIO, Indian Meteorological Department

Order Sheet: RTI filed on 09.09.2017, CPIO replied on 2.10.2017, FAA filed on 17.10.2017. FAO on 15.11.2017, Second appeal filed on 27.11.2017, Hearing scheduled on 31.01.2018;

Proceedings on 31.01.2018: Appellant present, Public Authority represented by CPIO. Mr Bishwombhar. Directions for compliance and Show-cause issued.

Proceedings on 27.03.2018: Appellant present, Public Authority represented by CPIO. Mr Aditya Shankar, in person:

Date of Decision – 08.05.2018: Penalty imposed, compensation awarded, with directions

ORDER

FACTS:

1. Appellant on 09.09.2017 sought the list of dates and details of all warnings/red-alerts issued by the department, the reason of warning/red alert ex. Heavy rain, earthquake, cyclone, storm, etc., the place for which it was issued, and whether it turned to be true or false. Mr. Bishwombhar, CPIO, RTI cell, Mumbai replied on 02.10.2017 that the RTI application was incomplete and the appellant is required to specify the area/region, for which information is demanded. The CPIO also mentioned that earlier the appellant was communicated through office letter no. 4422/F-14012/VI/2016-17/RTI/dt.21.09.2017. Subsequently, the Meteorological Department, Mumbai requested the appellant again on 02.11.2017 to deposit Rs. 5808 (inclusive of Rs. 886 as GST) in advance in response to earlier RTI application against which also he filed an appeal that is being heard together today. They also demanded a certificate of undertaking, in a given Performa (or Xerox copy of the same) duly signed, Formal letter duly signed by the party requesting for Meteorological data giving complete details of purpose for which the data is required along with complete address, E-mail and contact number for correspondence. FAA held on 15.11.2017 that the CPIO had asked the appellant to deposit additional charges and transferred the application to Pune for remaining information.

2. The Commission's order dated 05.02.2018:

2. Mr. Bishwombhar, CPIO submitted that the appellant's RTI was received on 11.09.2017 and they sought clarification regarding the specific area and period pertaining to which the appellant wanted the warning/red alerts related information and also demanded Rs **300** for providing 150 pages of information. Subsequently, Rs **5808/-** including GST Rs. **886/-** charges; as the information originally sought in RTI was voluminous in nature. He also stated that according to the Indian Meteorological Department Norms, the weather warning/alert related information is only provided to a research student/ scholar, University, hence, they demanded an undertaking from the appellant seeking the purpose for which such information was required. He also filed to justify the imposition of GST of Rs. 886/- along with cost of copying. Such an imposition of tax was not legally supported. Public Authority cannot quote a price for the information treating it as goods or service of sellable nature. Besides, giving information is not even service, being transparent is the inherent duty of Public Authority and CPIO can only collect the cost of copying charges so that the government exchequer is not affected. Therefore, the demand of GST charges made by the CPIO is illegal and unreasonable.

3. The CPIO gave contradictory responses to the applicant and also the Commission. On one hand he says he has asked for Rs 300 and Rs 5808 for giving information and on the other, he says unless appellant gives an undertaking that he does not misuse the furnished information, he would not be given any information. He said because he has not given that undertaking, the information was not given. How could the information like how many weather warnings turned out to be true be **misused** by anybody? Then, what is the basis and validity of demanding an undertaking that applicant would not misuse the information given under RTI Act? It is absolutely baseless and illegal. Assuming that there was a practice in respondent public authority to demand an undertaking, it is overridden by Section 22 of RTI Act in 2005. The senior officer of the department designated as CPIO does not have an understanding of the effect of enactment of Parliament in comparison with an office practice. According to him, the CPIO need not follow the RTI Act as the practice in department has to be continued.

4. The work of the public authority is of universal requirement and information needs to be disseminated without any lapse of time. They should also disclose their working methods, how they prepare warnings, how effective those warnings are, why some warnings worked and why some did not. If they find the demand for information is voluminous, they should have given the latest years' information and took some time for furnishing the rest later. The CPIO was silent and no piece of information was given till today. Demanding an undertaking that applicant will not misuse the information given indicates anti-RTI mechanics and abdication of legal duty under RTI Act.

5. The appellant stated that he wanted the basic procedure following which warning/red-alerts regarding weather conditions is issued by the Department and how many warnings turned out to be true or false. The CPIO is directed to provide a detailed report to the appellant explaining the procedure through which such alerts are issued by the Department, and how many such warnings issued in calendar year of 2017 turned out to be true or how many failed, free of cost, within 15 days of receipt of this order.

6. The Commission directs Mr.Bishwombhor, CPIO to show-cause why maximum penalty should not be imposed upon him for not furnishing the information within prescribed timelines, rejecting the request on illegal grounds mentioned above; and for demanding GST charges from the appellant for the information sought.

7. The responses must reach this Commission, before 05.03.2018 and the matter is posted for hearing on 05.03.2018.

Decision:

3. Shri Bishwombhar, Scientist E & CPIO vide their submissions dated 22.02.2018, stated as under:-

"Shri Chetan Kothari (appellant) vide his RTI application dated 09.09.2017, inter alia sought the information about the details of all warning/ red alerts issued by the India Meteorological Department during the previous three years. The application of Shri Chetan Kothari was acknowledged to applicant on 15.09.2017 and sent to Regional Weather Forecasting Centre (RWFC) on the same day i.e. 15.09.2017 for obtaining weather warning/alerts. RWFC was having some doubt about the area of warning/alerts. Hence RWFC asked to specify the area of weather warning/ alters on 18.09.2017. The CPIO of RTI Cell (RMC Mumbai) asked to Shri Chetan Kothari for specifying the area of weather warning on 21.09.2017. Shri Chetan Kothari specified the area of weather warning/alerts as Mumbai on 28.09.2017. His reply dated 28.09.2017 was received in local RTI cell on 03.10.2017. The local RTI cell requested RWFC on 05.10.2017 for supply warning/alerts for Mumbai from September 2015 to August 2017. The RWFC unit replied to local RTI cell that asked data is not available as per the requested format & synoptic condition (cause/reason/of heavy rainfall may be collected from IMD Pune office and realised rainfall may be collected from Technical section near Bamanvada Andheri (East) Mumbai on 18.10.2017 for verification of weather warning. RWFC also intimated to local RTI Cell to collect Rs. 300/- as charge of Xerox of copies from RTI Applicant on 18/10/2017. Hence the local RTI Cell forwarded the instruction of RWFC I/C to IMD Pune office & Technical Section (TS) Andheri (East) Mumbai on 25/10/2017 for receiving rest of information. Here I would like to add that Technical Sections in IMD all over the India are responsible for meteorological data supply to different agencies, for various purposes as per the stipulated guidelines of the IMD HQ, based upon the area of responsibility of that TS office. Shri Chetan Kothari RTI applicant was also requested to deposit Rs 300/- as charge of 150 Xerox copies of (available in RWFC Mumbai) weather warning on 25/10/2017. Shri Chetan Kothari appealed to 1st Appellate Authority on 17/10/2017. The Appellate Authority replied to Shri Chetan Kothari on 13/11/2017 to deposit Rs 300/- as charge of 150 Xerox copies of warning. The IMD Pune office replied to local RTI cell, which was received in RTI Cell on 17/11/2017 that Daily weather summary prepared by Pune office contains sub divisional scale description of weather. It does not contain information about specific city. Hence RMC Mumbai may provide localized specific special information to applicant on 13/11/2017. The local RTI cell forwarded Pune's reply dated 13/11/2017 to RWFC on 21/11/2017. RWFC I/c asked to collect Rs 300/- Xerox charges of 150 pages of warning. The local RTI Cell again requested to Shri Chetan Kothari RTI Applicant to deposit Rs 300/- charges of 150 Xerox pages of

weather warning on 08/12/2017. The aforesaid chronology shows that there is no delay in communication from RTI Cell Mumbai. But local Technical section Incharge quoted the cost of realized data from September 2015 to August 2017 amounting to Rs. 5808/- plus Rs. 886/- as GST on 02/11/2017 as the IMD HQ's guidelines available in its office for weather data supply.

Shri Chetan Kothari applicant did not raise the matter of Rs. 5808, plus 886/- as cost of data with GST respectively before honourable Sir (Your good self) at the time of hearing held on 31.01.2018. He raised this matter before Honourable sir in the hearing on 5/02/2018 in absence of CPIO. Further Honourable Sir, I would like to convey that You gave an order/instruction to Shri Chetan Kothari RTI applicant to collect weather warning within week by paying Rs. 300/- Xerox charge of 150 copies to India Meteorological Department, Mumbai during hearing (Through Video Conference) held on 31/01/2018. Shri Chetan Kothari agreed/accepted your order during hearing. Sir, Honouring your order, the CPIO immediately requested to Shri Chetan Kothari to pay Rs. 300/- for collecting the weather warning from IMD Mumbai vide this office letter No 708/F-14012/VII/2017/18/RTI Dated 01.02.2018.

Further, I hereby humbly want to draw your kind attention sir, this department supply the weather **data** on payment basis and its cost is much higher than the prescribed RTI Application fee i.e. Rs. 10/- providing data under the provisions of RTI Act may cause huge loss not only to this Department but the Government of India also, only because it is the main source of contributing fund to the Revenue of Government of India. In this context, please refer the Central Information Commissioner (Your Honour) decision dated 15.09.2017 (hearing took place on 07.09.2017) in case of Satbir Singh vs. PIO India Meteorological Department New Delhi wherein Hon. CIC observed no reason to interfere in such matter. Sir the copy of the FOR SUPPLY OF METEOROLOGICAL DATA AND PERIODICAL WEATHER manual "INSTRUCTIONS REPORTS OF INDIA METEOROLOGICAL DEPARTMENT" containing the data supply procedure, rates of data, obtaining undertaking from users and levy of service tax (now GST) issued by our HQ New Delhi is attached here with for your kind perusal.

EXPLANATION

(1). Honourable Sir, I BISHWOMBHAR as CPIO of RTI Cell Regional Meteorological centre (RMC) Colaba Mumbai truly says that the letter was sent to TS Mumbai by RTI Cell Mumbai stating for directly supplying of the required weather data to the party and there was NO specific instruction to TS for data at free of cost to be give to the party. Also TS had sent copy of letter addressed to Mr. Kothari, demanding cost of the data as per its stipulated guidelines.

(2) Honourable Sir, I BISHWOMBHAR truly says that I as CPIO of RTI Cell RMC Colaba Mumbai only requested to Shri Chetan Kothari RTI applicant to deposit Rs. 300/- as Xerox charges of 150 copy of weather Warning under RTI Act 2005.

(3) Honourable Sir, I BISHWOMBHAR accept my mistake that I as CPIO should not ask to RTI Applicant Shri Chetan Kothari for furnishing an undertaking of weather information/warning/Alerts under RTI Act 2005 (Parliament Act) and should not speak for undertaking before Honourable Sir on hearing on 31/01/2018. Honourable Sir, I respect your decision taken by your Honour. I was totally

unaware of this fact. Hence I tender unconditional apology from honourable CIC Professor Shri M. Sridhar Acharyulu.

In addition to this, I am a firm believer in the values of Constitution of India and the RTI Act for that it was legislative and committed to comply on your decision in this case and also in future. I accepted your decision in this matter with honour and the true spirit of RTI Act and therefore, the information comprising of 150 pages of documents as mentioned above has been supplied to appellant free of cost vide this office letter no. 1245/F-14012/VII/2017-19, RTI, dated 20/02/2018.

Furthermore, I would like to inform in your kind honour sir, I am in the cadre of Scientist and my area of responsibility based on Scientific Research and Analysis and hence, I am lacking knowledge in dealing legal/RTI cases therefore I may please be forgiven for the things which have unfortunately gone wrong in the course of providing information."

4. The CPIO gave a letter on 25.10.2017 asking for Rs 300 to furnish 150 Photostat copies of information. Then subsequently on 2-11-2017 another communication was sent from Ms. Vrushali Kulkarni, Mousam Scientist A, seeking payment of Rs 5808 plus GST on it Rs 886, on condition that he would inform purpose for which information was demanded and an undertaking not to use the information for other purposes or shared with others etc. As per the instruction the certificate of undertaking should contain the following sentences:

1. The data supplied by India Meteorological Department will be used only for the purpose for which it has been asked and supplied.
2. The data are meant exclusively for own use and shall not be passed on to any other party or agency (Indian or foreign) either in part or in full. If so needed, prior approval in writing will be taken from India Meteorological Department for the same.
3. The data shall not be used for commercial purpose or to earn consultancy fees, honorarium etc.
4. Due acknowledgement shall be given to India Meteorological Department for the source of data in all reports/publications etc. brought out by us.
5. The data supplied by this office will not be put on Internet or Nicenet or will not be transmitted through any electronic media.

5. Pointing out that response was delayed, appellant demanded information to be given to him free of cost. Then, he has filed a first appeal on same ground. First appellate authority Shri K S Hosalikar ordered on 5.11.2017 the appellant to pay Rs 300 and collect the information. After filing second appeal and the direction of CIC on 5.2.2018, the public authority furnished on 20.2.2018, basic procedure for issuing weather alerts (1 page), forecast verification data for station Mumbai for 2017 (4 pages), Alert/warning issued from Sept 2015 to Aug 2017 (150 pages) and

rainfall data for verification of above mentioned alerts and warnings from Sept 2014 to August 2017 (9 pages) free of cost. A book of 149 pages containing instructions for supply of meteorological data and periodical weather reports was also given. This book is not placed in public domain by the public authority and on the title page of the book it was notified that 'Restricted for Official Use". In this book, it was stated that the rates for the data was revised and would be in force for three years (from 2014) and beyond three years there will be escalation of rate by 10 per cent per annum. Since these rates are not in public domain, there is no possibility for the appellant to know about this.

6. The CPIO has explained that data was different from the information about weather forecasts. While weather forecast related information and other general information sought under RTI Act is not being charged for more than Rs 2 per page, the data collected by the scientific department using its infrastructure and energy is more valuable for further research. This meteorological department being not a revenue generating department and what all the Centre gives as per budget is supposed to be like a grant. However, a policy was decided to fix a price for the data, though that could be shared with students and researchers or academic institutions for research. The appellant does not fall under any category that could be given data free of cost.

7. The Commission finds that the public authority did not clarify about the information to be furnished under RTI Act and the Data which is being sold as priced product. They also have a duty to publish the rates of the data they are willing to share with the willing purchasers instead of limiting the booklet of rates to official use only. In the absence of any such public information about possibility of purchasing the data from the public authority, people generally will use the RTI route to obtain information as sought in this application.

8. Insisting that the appellant shall disclose the purpose for the demand of information is against the specific provision of RTI Act. Section 6(2) of RTI Act says;

"An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him".

9. Forcing appellant to file an undertaking that he would not use it for the purposes other than approved, etc as explained above is in breach of the right to information guaranteed under Right to Information Act, 2005 and hence not acceptable. It is not proper and legal for the public authority to charge a price (Rs 5808) higher than what is prescribed under RTI Rules plus the GST (Rs.886) in addition to already charged Rs 300 for 150 pages, without information or clarification on the difference between accessible

information and saleable Data. This difference was explained only after the show cause notice was given.

10. When the appellant wanted to know how many forecasts were proved to be true, the public authority should have given that information in the first instance itself. To that extent Commission considers that the public authority did not give complete information. The appellant did not ask for a huge data. If there is any clarification needed, the CPIO should have contacted the appellant, instead of considering it as a demand for data and asking him to pay huge charges along with GST.

11. The Commission requires the public authority to clearly publish on its website what data would be available for price under what conditions. When the public authority has decided to sell certain data at a high cost, besides seeking an undertaking against the misuse does not appear to be practically workable. The Commission advises the public authority to review the policy of insisting on an undertaking as mentioned above.

12. The Commission also requires the public authority to comply with the section 4(1)(b) of RTI Act, especially on clauses:

- (vi) a statement of the categories of documents that are held by it or under its control;
- (xiv) details in respect of the information, available to or held by it, reduced in an electronic form;
- (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- (xvii) such other information as may be prescribed and thereafter update these publications every year;

13. Under clause vi, and xvii, the public authority has to distinctly explain which data is under sale and what information is accessible under RTI Act.

14. For the reasons mentioned above, the Commission holds the CPIO has illegally denied substantive part of the information and illegally attempted to charge GST on information. However taking a lenient view the Commission imposes a penalty of Rs 1000/- on the CPIO.

15. Taking notice of harassment meted out to the applicant with various kinds of demands for purpose, huge amount, GST and denial of information, the Commission directs the public authority to pay a token compensation of Rs 500/- to the appellant within 15 days.

16. Hence, the Commission holds Shri Bishwombhar, CPIO liable under section 20 of RTI Act and imposes penalty of Rs. 1,000/- against him. The penalty amount should reach to this Commission on or before 10.07.2018. The Appellate Authority is directed to recover the amount of Rs.1,000/- from the salary payable to, Shri Bishwombhar, the CPIO by way of Demand Draft drawn in favour of 'PAO CAT' New Delhi. The Demand Draft should be sent to Shri S.P. Beck, Joint Secretary & Addl. Registrar, Room No. 505,

Central Information Commission, CIC Bhawan, Baba Gangnath Marg,
Munirka, New Delhi-110067.

SD/-

(M.Sridhar Acharyulu)
Central Information Commissioner