

केन्द्रीय सूचना आयोग
Central Information Commission
बाबा गंगनाथ मार्ग, मुनिरका
Baba Gangnath Marg, Munirka
नईदिल्ली, New Delhi – 110067

द्वितीय अपील संख्या / Second Appeal No. CIC/RBIND/A/2017/167309

Shri Neeraj Sharma

... अपीलकर्ता/Appellant

VERSUS

बनाम

CPIO, Reserve Bank of India,
Colaba, Mumbai.

...प्रतिवादीगण /Respondents

Relevant dates emerging from the appeal:

RTI : 23.05.2017	FA : 16.06.2017	SA : 25.09.2017
CPIO : 13.06.2017	FAO : 24.07.2017	Hearing : 20.03.2019

ORDER

(15.05.2019)

1. The issues under consideration arising out of **second appeal dated 25.09.2017** include non-receipt of the following information sought by the appellant through his RTI application dated 23.05.2017 and first appeal dated 16.06.2017 :

- (i) When Finance Ministry became aware on the case of 32 lakhs debit cards compromised.
- (ii) Is any internal enquiry done on this case, Please provide the enquiry report on Case of 32 lakh debit cards compromised.

- (iii) Please provide copy of all letters/Memo/Emails sent or received by finance ministry on Case of 32 lakh debit card compromised.
- (iv) How many FIRs registered on the Case of 32 lakh debit cards compromised and provide all FIR Numbers.
- (v) Which investigating agency investigated this Case of 32 lakh debit card compromised please provide the name of the agency and investigation officer names.
- (vi) Is Investigation completed on the above case.
- (vii) Is any Commission formed by the govt. to investigate the case. If yes, please provide the commission members details. And copy of commission report.
- (viii) Please provide total loss in Rupees due to 32 lakh debit card compromised with their bank details.
- (ix) Please provide loss of amount by Bank.
- (x) Please provide loss of amount by Bank's Customers.
- (xi) Please provide the compensation details given to customers by Bank by Govt. of India.

2. Succinctly facts of the case are that the appellant filed an application dated 23.05.2017 under the Right to Information Act, 2005 (hereinafter called the RTI Act) before the Central Public Information Officer (CPIO), Reserve Bank of India, Colaba, Mumbai, seeking the aforesaid information. The CPIO replied on 13.06.2017. Not satisfied with the response of the CPIO, the appellant filed first appeal dated 16.06.2017. The First Appellate Authority disposed of the first appeal

vide order dated 24.07.2017. Aggrieved by this, the appellant has filed the second appeal dated 25.09.2017 before this Commission which is under consideration.

3. The appellant has filed the instant appeal dated 25.09.2017 *inter alia* on the grounds that the information has been wrongfully denied by the CPIO whereas in this case disclosure of the information outweighs the protected interest of wrong doers who have conspired in compromising the financial data of huge number of citizens. He requested the Commission to direct the concerned CPIO to supply complete information sought by the appellant and impose penalty as per section 20 of RTI Act. He also requested the Commission to direct the public authority to make entry in service book/annual performance appraisal report of the CPIO for defying the provisions of the Act.

4. The CPIO denied the information vide his reply dated 13.06.2017 on point no. 2 and 3 of the RTI application by taking recourse to the provisions of section 8 (1) (a) and (d) of the RTI Act. The CPIO stated that the information relating to point no. 1 of the RTI application is available at their web portal and information on point no. 4 and 5 of the RTI application is not available with them. The FAA furnished revised response on all points of the RTI application.

5. The appellant and the respondent Ms. Leela Ramesh, Assistant Legal Advisor, Reserve Bank of India, Bandra, attended the hearing through Video Conferencing.

5.1. The appellant submitted that the respondent is misusing the provision of section 8 (1) of the RTI Act to deny information. He alleged that the public authority took cognizance of the matter relating to fraudulent transactions carried out in case of 32 lakh debit cards only when it was highlighted through news channels. He stated that the public authority either omitted to respond or provided misleading information with respect to point no. 2, 3, 4, 5, 7, 8, and 11 of the RTI application.

5.2. The Appellant contended that the Appellate Authority wrongly relied upon the CIC case- *Shri Ashok Jain, New Delhi v. Securities & Exchange Board of India, Mumbai* (Appeal No. CIC/MP/A/2016/001266 dated December 10, 2016). He further submitted that in the said decision, the Hon'ble Commission dealt with individual concern wherein the information was denied as the same was held in fiduciary capacity. Whereas the present case involves an overriding concern of public interest wherein financial wealth of millions of fraudulent acts of certain unknown individuals/groups, hence, the exemption carved out under section 8 of the Act has no applicability in denying the information. The appellant stated that the Hon'ble Supreme Court in a batch of petitions titled as *Reserve Bank of India & Ors. v Jayantilal N. Mistry & Ors* dated 16.12.2015 held that:

“61. The baseless and unsubstantiated argument of the RBI that the disclosure would hurt the economic interest of the country is totally misconceived. In the impugned order, the CIC has given several reasons to state why the disclosure of the information sought by the Respondents would hugely serve public interest, and non-disclosure would be significantly detrimental to public interest and not in the economic interest of India. RBI's argument that if people, who are sovereign, are made aware of the irregularities being committed by the banks then the country's economic security would be endangered, is not only absurd but is equally misconceived and baseless.

62. The exemption contained in Section 8(1) (e) applies to exceptional cases and only with regard to certain pieces of information, for which disclosure is unwarranted or undesirable. If information is available with a regulatory agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship. As in the instant case, the financial institutions have an obligation to provide all the information to the RBI and such an information shared under an obligation/duty cannot be considered to come under the purview of being

shared in fiduciary relationship. One of the main characteristic of a Fiduciary relationship is "Trust and Confidence". Something that RBI and the Banks lack between them."

The appellant further stated that the Appellate Authority had directed the CPIO to revisit the query and provide a supplementary reply to the appellant with respect to bank-wise details of losses caused in the matter. He requested the Commission to set aside the order of the First Appellate Authority dated 24.07.2017 and direct the concerned CPIO to supply the complete information sought by him.

5.3. The respondent submitted that forensic investigation was conducted by ATM service provider M/s Hitachi and a copy of the report was received by the Reserve Bank of India (hereinafter called the RBI). However, the report is confidential in nature and contains information about how the hackers entered the infrastructure, the patterns that were hacked, the future measures that may be formulated for security purposes. The disclosure of the above mentioned report would leak crucial information risking possibility of misuse of such information by hackers for illegal activities. The security strategies of the RBI and other bank would be compromised upon disclosure of details of the report. Therefore, the information was denied under section 8 (1) (a) and (d) of the RTI Act. The respondent stated that the disclosure of the names of the banks wherein the cards were misused would cause panic within the customers and the general public.

5.4. The Commission has observed that the respondent furnished reply to the appellant vide letter dated 13.06.2017. The appellant stated that he is aggrieved by the response given by the respondent. As per the appellant, the respondent has prioritized economic interest over the larger public interest. However, it is only in public interest that the security strategies and measures are safeguarded by the RBI. The risk involved in disclosure of the report overrides the requirement of its

availability in the public domain. The case relied upon by the appellant is distinguishable as the exemption is claimed u/s 8(1) (a) & (d) and not u/s 8(1)(e).

5.5. The appellant has alleged inaction on the part of the respondent in the matter. The respondent took cognizance of the matter and investigation was conducted by the ATM service provider. The press release pertaining to details how the cyber security incident came into the notice of the RBI was issued on 24.10.2016 and the same is placed on their web portal.

5.6. In *Manohar Lal Sharma v Union of India* [(2016) 13 SCC 710], the Supreme Court declined to entertain a PIL seeking the Court's directions to restrain the union government from incurring security and other expenses with respect to certain individuals in the state of Jammu and Kashmir, holding that "*nationally sensitive issues concerning the security of the nation ...should be left to the executive ... and that these writs are judicially unmanageable.*" It is relevant to quote the landmark judgment given by the Constitution Bench in *Re: Special Reference No 1 of 2012*, [(2012), 10 SCC 1]:

"The Supreme Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds viz (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety"

5.7. The RBI has taken cognizance of the matter and is taking all measures to safeguard the economic security.

5.8. The Hon'ble Apex Court in the case of *Central Board of Secondary Education and another v. Aditya Bandopadhyay and Others*, [(2011) 8 SCC 497] has held:

"67. Indiscriminate and impractical demands or directions under the RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace; tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty."

6. The respondent has revisited the RTI application and reiterated its earlier stand after the directions of the First Appellate Authority with respect to point no. 8 of the RTI application. The respondent has provided information as available with them. The Commission agrees with the contentions of the respondent that the disclosure of the names of the banks where such fraudulent transactions had occurred along with amounts of losses would create a state of panic within their customers.

The authorities have claimed exemption by virtue of the provisions under section 8(1) (a) and (d) of the RTI Act. The presumption that the legislature understands the needs of its people and that even its discrimination and classifications are based on adequate grounds has been acknowledged by the Supreme Court itself (*in special reference No 1 of 2012, [(2012), 10 SCC 1]*). The logic of balance exercise of judicial power has an assurance of institutional stability and re-organization of boundary of power is implicit in the Constitutional arrangement. It is contended that the failings of democracy and inadequacies of the democratic process cannot be

invoked to negate the core of the democratic principle, namely that ultimate sovereignty vests in the people. Thus, arrangements of governance embodied in the Constitution resulting from the exercise of their free will cannot be used to deprive the ultimate masters of the right of final decision over their destiny. It is argued that “juridification of politics and politization of the judiciary” would be a loss for both the legislature and judiciary and that judiciary cannot act as a “censor of all governmental action”. There have been plethora of judicial orders highlighting the issue of restraint by judicial bodies in substituting their wisdom over those who have been assigned the function of implementation of Laws. The Commission after advertent to the facts and circumstances of the case, hearing both the parties and perusal of records, feels that due reply has been given by the respondent. Accordingly, the appeal is dismissed.

Copy of the decision be provided free of cost to the parties.

Sd/-
(Suresh Chandra) (सुरेश चंद्रा)
Information Commissioner (सूचना आयुक्त)
दिनांक/ Date: 15.05.2019