

केन्द्रीय सूचना आयोग

Central Information Commission

दूसरा तल अगस्त क्रांति भवन / 2nd Floor, August Kranti Bhawan
भीकाजी कामा प्लेस/ Bhikaji cama Place
नई दिल्ली - 110066 / New Delhi - 110066

VIA SPEED POST

Sent on 14/6/16

File No.CIC/YA/C/2015/000246/SB

Dated: 03.06.2016

NOTICE OF HEARING

To,

The Central Public Information Officer MoRD, Deptt. of Land Resources, G - Wing, NBO Building, Nirman Bhawan, New Delhi, 110001 (+ Tfr and RTI)	Mr. Venkatesh Nayak, 55A, 3rd Floor, Siddharth Chambers - 1, Kalu Sarai, New Delhi , 110016
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The appeal/complaint dated 01.05.2015, filed by the above named Appellant/Complainant, has been fixed for hearing by the Commission. You are hereby required to be present with all relevant papers and documents before Shri Sudhir Bhargava, Information Commissioner, at Central Information Commission, Room No. at 329, 2nd Floor, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi on 20.06.2016 at 11.45 AM (Actual time may kindly be confirmed over phone one working day prior to the date of hearing).

Both the parties are also directed to produce before the Commission all relevant papers and documents that they wish to rely on during the hearing. The Appellant/Complainant is also advised to send a copy of the appeal/complaint filed before the commission to the PIO, if not already done.

In case, parties do not wish to attend the hearing, they must ensure that their submissions reach the Commission at least five days in advance, after serving a copy of the same on the opposite party. Please also note that no adjournments will be given under any circumstances and in case of non-appearance, the matter will be heard and decided on the basis of available record, but it may invite action u/s 20(1) of the RTI Act.

If information has been provided by the Public Information Officer, proof of dispatch and copy of the information must be brought to the hearing. Public Information Officer is hereby further directed to communicate the date and time of hearing to any other officer(s), whose assistance has been sought under section 5(4) of the RTI Act and ask him /them to appear.

Given under the order of the Commission.



(V.K.Sharma)

Designated Officer

E-mail: do.icsb-cic@gov.in

Phone No. 011-26105682

RTI Dated: 05.01.2015

CPIO Reply Reference No. NO REPLY

P.S. Copy of Complaint with Annexures & Addendum
are attached.

S.S.Venkatesh Nayak
14/6/16

Sl. No. 13258/13-05-2015

Before the Central Information Commission

2nd Floor, "B" Wing, August Kranti Bhavan, Bhikaiji Cama Place, New Delhi- 110 066

**Complaint submitted under Section 18(1)(e) and (f) of
The Right to Information Act, 2005**

In the matter of

Venkatesh Nayak

Vs

Department of Land Resources, Ministry of Rural Development

Date of submission: 01/05/2015

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Venkatesh Nayak

Before the Central Information Commission

2nd Floor, "B" Wing, August Kranti Bhavan, Bhikaiji Cama Place, New Delhi- 110 066

Complaint submitted under Section 18(1)(e) and (f) of
The Right to Information Act, 2005

Date: 01/05/2015

- 1. Name and address of the Complainant** : Venkatesh Nayak
#55A, 3rd Floor, Siddharth Chambers-1
Kalu Sarai, New Delhi- 110 016
- 2. Name, designation and address of the CPIO to whom the RTI application was sent** : The Central Public Information Officer
President's Secretariat
Rashtrapati Bhawan
New Delhi- 110 001
- 3. Name and address of the Respondent CPIO** : Shri Amit Sahu
CPIO and Assistant Director (LR)
Ministry of Rural Development
Government of India
'G' Wing, NBO Building
Nirman Bhawan
New Delhi- 110 004
- 4. Name and address of other persons who replied to the the RTI application** : **1)** Shri Saurabh Vijay
CPIO, President's Secretariat
Rashtrapati Bhawan
New Delhi- 110 004
- 2)** Shri S. K. Chitkara
CPIO and Deputy Secretary
Legislative Department (RTI Cell)
Ministry of Law and Justice
Government of India
Shastri Bhawan, New Delhi- 110 001

4. Particulars of the RTI application-

- a) No. and date of submission of the RTI application** : No. RTI/GOI/PresSectt /2015/1 dated
05/01/2015
- b) Date of payment of additional fee (if any)** : Not applicable.

S.S. Venkatesh Nayak

5. Particulars of the order(s) including number, if any against which the complaint is preferred

Communication of F. No. 22014/05/2015-LRD dated 18/03/2015

6. Brief facts leading to the complaint :

6.1. On 05/01/2015, this Complainant despatched by Speed Post an RTI application along with the prescribed application fee to the CPIO mentioned at para #2 above stating as follows (**Annexe 1**):

"I would like to obtain from your public authority the following information relating to *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014* (the Ordinance) under the RTI Act:

- 1) A legible photocopy of all materials on the basis of which the Hon'ble President of India was satisfied that circumstances existed for him to take immediate action by promulgating the said Ordinance;
- 2) A legible photocopy of all file-notings available on record in relation to the materials referred to at para #1 above."

6.2. On 13/01/2015 the person named at para #4.1 above sent this Complainant a copy of the communication addressed to an unnamed CPIO of the Respondent public authority stating as follows (**Annexe 2**):

"An RTI application of Shri Venkatesh Nayak dated 05/01/2015 received on 12/01/2015 is being transferred to your office under Section 6(3) of RTI Act 2005 for providing information, as the information asked for pertains to/more closely related to the functions of your office/office under your jurisdiction. You are requested to provide the requisite information to the applicant directly.

2. It is certified that the applicant has paid the requisite fee of Rs. 10/- (Rupees ten only) in the Secretariat."

6.3. Thereafter, on 26/02/2015, after waiting for a reply in vain for more than thirty days from the date of receipt of the communication described at para #6.2 above, this Complainant despatched a first appeal under Section 19(1) of the RTI Act to the designated First Appellate Authority of the Respondent public authority with the following prayers (**Annexe 3**):

"This Appellant humbly prays that this First Appellate Authority be pleased to:

- 1) Admit this appeal and inquire into the matters raised therein;
- 2) Order the CPIO to disclose all the information sought in the instant RTI application, free of charge as is this Appellant's right under Section 7(6) of the RTI Act, in view of the inordinate delay; and

S. Venkatesh Nayak

- 3) Issue an official memorandum to the CPIO mentioned at para #4 above [i.e., the first appeal letter] to discharge his statutory responsibilities under the RTI Act with greater care and diligence in future."

The detailed grounds on which the first appeal was preferred are recorded in **Annexe 3**.

- 6.4.** Thereafter, on 05/03/2015, this Complainant received by Ordinary Post a reply from the CPIO of the Respondent public authority named at para #3 above stating *inter alia* as follows (**Annexe 4**):

"2. In reply to Point No. 1 & 2 (of the RTI application) I say to that [sic] there is no such information available in Department of Land Resources related to Question No. 1 and 2."

- 6.5.** Thereafter, on 21/03/2015, this Complainant received via Speed Post a further communication from the Respondent CPIO containing copies of two OMs of number and date captioned at para #5 above and with substantially identical content, addressed to the Central Assistant Public Information Officer and Under Secretary, Legislative Department and the person named at para #4.1 above stating as follows (**Annexe 5**):

"Please find enclosed herewith a copy of RTI application dated 05/01/2015 received from CPIO, President Secretariat along with a **RTI appeal** dated 26.02.2015 received from Shri Venkatesh Nayak, #55A, 3rd Floor, Siddharth Chambers-1, Kalu Sarai, New Delhi- 110 016 received in this Department on 02.03.2015.

As already a reply has been sent to the applicant (copy enclosed) that the said information is not available in the Department of Land Resources. As per the order issued by an Appellate Authority, the application is being transferred to you under section 6(3) of the RTI Act, 2005 for providing the information directly to the applicant." [emphasis in the original]

- 6.6.** Thereafter, the person named at para #4.2 above sent this Complainant a copy of the communication dated 09/04/2015 and addressed to the CPIO, Department of Land Resources stating as follows (**Annexe 6**):

"With reference to you OM No. 22014/05/2015-LPD dated 18th March, 2015 on the subject mentioned above, in this regard it is stated that, the said OM has been received without enclosure. You are therefore, requested to send the copy of RTI application of Shri Venkatesh Naik and Appellate order to this Department at the earliest to do the needful."

- 6.7.** Thereafter, on 21/04/2015 this Complainant received a copy of a communication bearing the number captioned at para #5 above and dated 16/04/2015 and addressed to the person named at para # 5.2 above stating as follows (**Annexe 7**):

"I am to refer to your letter No. 4(9)/2015-RTI dated 09.04.2015 and received in this Department 13-04-2015 on the above subject and to enclosed herewith a copy of the RTI application of Shri Venkatesh Naik and Appellate order."

S. Venkatesh Nayak

6.8. This Complainant has not received any further communication from any person in relation to the RTI application that is the subject matter of this complaint till date. This Complainant is aggrieved by the actions of the Respondent for the reasons described below.

7. Grounds for the complaint :

This Complainant humbly prays that this Hon'ble Commission be pleased to:

7.1. admit this complaint and inquire into the matters raised herein;

7.2. invoke its powers granted under Section 18(3) of the RTI Act to launch an inquiry into the claims of the Respondent public authority about the non-existence of the information sought in the said RTI application;

7.3. issue a direction to the CPIO of the public authority to make a decision regarding disclosure or otherwise of all the information described in the said RTI application if the inquiry establishes the existence of the said information in the custody or under the control of the Respondent public authority;

7.4. take up this complaint on an urgent basis, out of turn, as the subject matter of the said RTI application has enormous implications for the protection and promotion of the public interest; and

7.5. issue any other order, direction or recommendation it may deem appropriate requiring the Respondent public authority to implement the provisions of the RTI Act in letter and spirit in future.

8. Prayer or relief sought and the grounds thereof :

8.1. According to Section 18(1)(e) of the RTI Act, it shall be the duty of the Central Information Commission to receive and inquire into a complaint from any person, if *inter alia*, he believes that he has been given incomplete, misleading or false information under this Act.

Further, according to Section 18(1)(f) of the RTI Act, it shall be the duty of the Central Information Commission to receive and inquire into a complaint from any person, in respect of any other matter relating to requesting or obtaining access to records under this Act. This Complainant believes that the aforementioned grounds are adequately demonstrated by the facts of the case briefly narrated above and the submissions made below:

8.1.a. This Complainant believes that the CPIO of the Respondent public authority named at para #3 above has **knowingly provided false and misleading information** against the RTI application that is the subject matter of the instant complaint. According to Schedule 2 read with Rule 3 of the *Allocation of Business Rules, 1961* relating to the distribution of subjects among the Departments of the Government of India, Entry #2 in relation to the Respondent public authority reads as follows:

"2. Administration of the Land Acquisition Act, 1894 (1 of 1894) and matters relating to acquisition of land for the purposes of the Union."

S. S. Vinayak Nayak

A bare perusal of Entry #2, cited above, makes it clear that all matters relating to the issue of land acquisition including any amendment contemplated to such law, either wholly or partially, falls squarely within the jurisdiction of the Respondent public authority. By replying in the first instance that the Respondent has no information relating to Points #1-2 of the RTI application that is the subject matter of this complaint, the CPIO has committed the error of providing false and misleading information. It is inconceivable that a Department which plays a central role in relation to the subject matter of 'land acquisition' will have no information whatsoever regarding the materials that were placed before the Hon'ble President of India for him to arrive at the satisfaction that circumstances warranted immediate action in the form of the promulgation of the Ordinance to amend *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* (LARR Act). Further, it is totally inconceivable that the Respondent public authority which on account of the division of government work is the nodal department for the subject - 'land acquisition', will have no file-notings in its custody in relation to the Ordinance that was promulgated to amend the LARR Act. On both counts, the reply of the CPIO of the Respondent public authority is false and misleading and deserves to be challenged. **Hence the submission of this complaint before this Hon'ble Commission.**

8.1.b. Further, the CPIO of the President's Secretariat had rightly transferred the RTI application that is the subject matter of this dispute to the Respondent public authority. As the said Ordinance had already been promulgated, it is reasonable to presume that the relevant file(s) containing all materials and file-notings might have been returned to the Respondent public authority. Further, the said Allocation of Business Rules have been issued by none other than the Hon'ble President of India. So it cannot be said that the CPIO mentioned at para #4.1 above, did not have adequate knowledge of where to transfer the said RTI application. The extract from the Allocation of Business Rules cited at para # 8.1.a above makes it clear that 'land acquisition' is the subject matter allocated to the Respondent public authority and materials relating to the Ordinance to amend the LARR Act are therefore well qualified to fall within the condition mention in Section 6(3) of the RTI Act, namely- "the subject matter of which is more closely connected with the functions of another public authority". This is a valid ground for transferring the RTI application to the Respondent public authority under the terms of Section 6(3) of the RTI Act. By transferring the RTI application back to the CPIO, President's Secretariat, on the one hand and to the CPIO, Legislative Department on the other, the CPIO of the Respondent public authority has simply tried to pass the buck. Further, the CPIO's action of merely communicating the act of transfer to the CPIO of the Legislative Department without annexing a copy of the RTI application or the order of the Appellate Authority amounts to negligent performance of well-defined statutory duties. The actions of the CPIO of the Respondent public authority clearly relate to the matter of obtaining of access to records under the RTI Act and constitute sufficient cause for filing this complaint under Section 18(1)(f) of the Act. **Hence the submission of this complaint before this Hon'ble Commission.**

8.1.c. Further, Section 18(3) of the RTI Act vests with this Hon'ble Commission the powers of a civil court for the purpose of inquiring into any complaint received under Section 18(1). For reasons explained at paras #8.1.a and 8.1.b above, this Complainant believes this is a fit case for this Hon'ble Commission to order an inquiry in order to ascertain the veracity of the claims made by the CPIO of the Respondent public authority about the non-availability of

the information sought in the RTI application that forms the subject matter of this complaint. In the matter of *Union of India vs Vishwas Bhamburkar* [2013 ELT 500n (Del.)] the Hon'ble Delhi High Court was pleased to make the following observation:

"7. Since the Commission has the power to direct disclosure of information provided, it is not exempted from such disclosure, it would also have the jurisdiction to direct an inquiry into the matter wherever it is claimed by the PIO/CPIO that the information sought by the applicant is not traceable/readily traceable/currently traceable. Even in a case where the PIO/CPIO takes a plea that the information sought by the applicant was never available with the government but, the Commission on the basis of the material available to it forms a prima facie opinion that the said information was in fact available with the government, it would be justified in directing an inquiry by a responsible officer of the department/office concerned, to again look into the matter rather deeply and verify whether such an information was actually available in the records of the government at some point of time or not." [emphasis supplied]

Given the clear pronouncement of the Hon'ble Court regarding the nature of powers vested in this Commission and the manner in which it must be exercised, this Complainant believes that this a fit case for conducting an inquiry into the existence of the information described in the RTI application that is the subject matter of this Complaint. Further, according to Section 18(2) of the Act where the Commission is satisfied that there are reasonable grounds for inquiring into a complaint it may initiate an inquiry. This Complainant believes that the grounds described above constitute adequate basis for initiating an inquiry into the existence of the information sought in the RTI application with the Respondent public authority. **Hence the submission of this complaint before this Hon'ble Commission.**

8.1.d. Further, this Complainant wishes to clarify that this complaint is not being filed with the objective of seeking a direction from this Hon'ble Commission for disclosure of any or all information described in the RTI application in question. In the matter of *Chief Information Commissioner & Anr. Vs State of Manipur & Anr.* [AIR 2012 SC 864] the Hon'ble Supreme Court of India has clearly distinguished the purpose of Sections 18 and 19 of the RTI Act. While Section 19 has been held to be the appropriate procedure for the purpose of seeking information when the same is denied by the CPIO, the Hon'ble Court has held that under Section 18 an information Commission does not have the jurisdiction to pass an order providing for access to information. **Being fully conscious of this ratio decidendi, this Complainant humbly points out that the limited point of this complaint is to call upon this Hon'ble Commission make a determination whether the Respondent public authority holds the information sought in the said RTI application or not.** In the aforementioned matter, the Hon'ble Court was pleased point out that the powers granted to the Information Commissions under Section 18 are supervisory in nature. This Complainant humbly seeks the exercise of these very supervisory powers of this Hon'ble Commission to make a determination about the veracity of the reply of the CPIO of the Respondent public authority. **Hence the submission of this complaint before this Hon'ble Commission.**

S. S. Shankar Singh Nayak

8.1.e. Further, this Complainant has not received any order of the Appellate Authority cited by the CPIO of the Respondent public authority in his communication of number and date captioned above at para #5. Nothing in the reply or subsequent communication sent by the CPIO indicates as to the contact details of the first appellate authority before whom to challenge the CPIO's actions upon being aggrieved by the same.

Further, nothing in the RTI Act permits the transfer of a first appeal from one public authority to another in the manner of transfer of an RTI application under Section 6(3) of the Act. Such action has simply no backing under any provision of the RTI Act. Furthermore, due to non-supply of the order of the First Appellate Authority, this Complainant is unable to submit a second appeal before this Hon'ble Commission. In order to be able to draw up a second appeal, an Appellant is required to be aware of the contents of such order. Due to absence of knowledge of the contents of the order, this Complainant is unable to draw up the grounds for the second appeal. Although Section 19(3) of the RTI Act permits a person to submit a second appeal against the order of the CPIO before this Hon'ble Commission the same condition is not applicable to the current case. Therefore this Complainant has no other remedy except to invoke the jurisdiction of this Hon'ble Commission under Section 18 of the RTI Act for the limited purpose of making a determination regarding the existence of records pertaining to the information sought in the RTI application which is the subject matter of this complaint. **Hence the submission of this complaint before this Hon'ble Commission.**

8.1.f. The subject matter of the Ordinance to amend the LARR Act has attracted the public imagination like few other actions of the Government of India have in the recent past. Several farmers and residents of both rural and urban areas are deeply interested to know the reasons behind the Government's efforts to amend the law relating to land acquisition, rehabilitation and resettlement on such urgent basis. The information sought in the RTI application that is the subject matter of this complaint is necessary for the purpose of conducting an informed debate in the public domain as the Bill to regularize the amendment proposals is pending in Parliament. Making a determination of the kind prayed for at para #7 of this complaint by this Hon'ble Commission will assist in the speedy disposal of the said RTI application. **Hence the submission of this complaint before this Hon'ble Commission with a request to hear the matter on an urgent basis and out of turn.**

9. I hereby verify that the facts of my case stated above are true to the best of my knowledge. I affirm that I have transmitted a copy of this complaint along with enclosures to the Respondent.

Signature of the Complainant:

S.S. Venkatesh Nayak

(Name of the Complainant)

05/05/15

भारतीय डाक
भारत सरकार के द्वारा
प्रसारित किया गया है
दस्तावेज को वापस लेने से
व्यतिरिक्त

No. RTI/GoI/PresSectt/2015/1

Date: 05/01/2015

From,
Venkatesh Nayak
#55A, 3rd Floor
Siddharth Chambers-1
Kalu Sarai
New Delhi- 110 016

भारतीय डाक
भारत सरकार के द्वारा
प्रसारित किया गया है
दस्तावेज को वापस लेने से
व्यतिरिक्त

POSTAL ORDER

दस्तावेज का क्रमांक
To which payable Ab

दस्तावेज का प्रकार
At what Office GOI, N. Delhi

क्या इसे वापस लेना है
Whether crossed NO

दस्तावेज की तारीख
Date sent 5/1/15

23F 468185

To,
The Central Public Information Officer —
President's Secretariat
Rashtrapati Bhawan
New Delhi- 110 001

Dear sir,

Sub: Request for information under the *Right to Information Act, 2005*

I would like to obtain from your public authority the following information relating to *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014* (the Ordinance) under the RTI Act:

- 1) A legible photocopy of all materials on the basis of which the Hon'ble President of India was satisfied that circumstances existed for him to take immediate action by promulgating the said Ordinance;
- 2) A legible photocopy of all file-notings available on record in relation to the materials referred to at para #1 above.

I am a citizen of India. I have enclosed an IPO (bearing no. 23F 468185) for Rs. 10/- towards payment of the prescribed application fee. I would like to obtain the information described above by post at my contact address mentioned above. Please inform me of any additional fee payable for obtaining the information described above.

Thanking you,
Yours sincerely,

S. S. Venkatesh Nayak
Venkatesh Nayak 05/1/15



CP 1042 8100 01010
EDS492244519IN
Counter No: 03, CP-Coder: DCK
To: CPID, PRESIDENTS SECRET
NEW DELHI, PIN 110001
From: VENKATESH NAYAK, KALU SARAI DELHI
W: 110001
Amt: 10.00 (LT Fee: Rs. 0.00), 05/01/2015 10:34
Track: Rs. 2.00 (Track on www.indiapost.gov.in)

1 True Copy
S. S. Venkatesh Nayak

(9)

1930/RTI/01/14-15
राष्ट्रपति सचिवालय
PRESIDENT'S SECRETARIAT
R.T.I. SECTION

राष्ट्रपति भवन, नई दिल्ली - 110004
Rashtrapati Bhavan, New Delhi - 110004
13 January 2015

To

Central Public Information Officer
Department of Land Resources
Krishi Bhavan New Delhi

Sir,

An RTI application of Shri Venkatesh Nayak dated 05/01/2015 received on 12/01/2015 is being transferred to your office under section 6(3) of RTI Act 2005 for providing information, as the information asked for pertains to/more closely related to the functions of your office/office under your jurisdiction. You are requested to provide the requisite information to the applicant directly.

2. It is certified that the applicant has paid the requisite fee of Rs. 10/- (Rupees ten only) in this Secretariat.

Yours faithfully


(Saurabh Vijay)

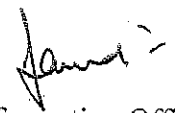
Central Public Information Officer

Copy for Information to:

Shri Venkatesh Nayak
55A, 3rd Floor
Siddharth Chambers-1
Kalu Sarai
Delhi
Delhi (UT) 110016

As the information mentioned above is not available in this office therefore, the application is being transferred to the concerned office. You are requested to contact the above-mentioned authority for further information in the matter.

True copy
S.S. Venkatesh Nayak


Central Public Information Officer

10

Before the Designated First Appellate Authority**Department of Land Resources****Ministry of Rural Development, Government of India****Krishi Bhavan, New Delhi- 110 114****Appeal filed under Section 19(1) of the Right to Information Act, 2005****In the matter of****Venkatesh Nayak v CPIO, Department of Land Resources****Date of submission : 26/02/2015****Table of Contents**

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02 1417 845 01910
 E0581A608491M
 Counter No-4, CP-CoverDK
 To: PAA, MP OF LAND RESO
 KRISHI BHAVAN, PIN-110001
 From: VENKATESH NAYAK, DELHI
 Wt: 20gms,
 April 07, 2015, 15:05
 Telephone: 210001 Track on www.indiapost.gov



True copy

1 S.S. Venkatesh Nayak

(11)

Before the Designated First Appellate Authority

Department of Land Resources

Ministry of Rural Development, Government of India

Krishi Bhavan, New Delhi- 110 114

Date: 26/02/2015

- 1) Name and address of the appellant** : Venkatesh Nayak
#55A, 3rd Floor
Siddharth Chambers
Kalu Sarai, New Delhi- 110 016
- 2) Name and address of the Central Public Information Officer (CPIO) to whom the Application was addressed** : The Central Public Information Officer
President's Secretariat
Rashtrapati Bhawan
New Delhi- 110 001
- 3) Name and address of the Central Public Information Officer (CPIO) who replied to the RTI application** : Shri Saurabh Vijay
Central Public Information Officer
President's Secretariat
Rashtrapati Bhawan
New Delhi- 110 004
- 4) Name and address of the CPIO against whom this appeal is being filed** : The Central Public Information Officer
Department of Land Resources
Krishi Bhavan, New Delhi
- 5) Particulars of the RTI application-**
- a) No. and date of submission of the RTI application** : No. RTI/GOI/PresSectt/2015/1 dated
05/01/2015
- b) Date of payment of additional fee (if any)** : Not applicable.
- 6) Particulars of the order(s) including number, if any against which the appeal is preferred** : NIL
- 7) Brief facts leading to the appeal** :
- 7.1)** On 05/01/2015, this Appellant despatched by Speed Post a request for information along with the prescribed application fee stating as follows (**Annexe 1**):

True copy
S. S. Venkatesh Nayak

(12)

"I would like to obtain from your public authority the following information relating to *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014* (the Ordinance) under the RTI Act:

- 1) *A legible photocopy of all materials on the basis of which the Hon'ble President of India was satisfied that circumstances existed for him to take immediate action by promulgating the said Ordinance;*
- 2) *A legible photocopy of all file-notings available on record in relation to the materials referred to at para #1 above."*

7.2) On 19/01/2015, this Appellant received a communication from the CPIO mentioned at para #3 above indicating that the RTI application had been transferred to the CPIO mentioned at para #4 above.

7.3) This Appellant has not received any reply from the CPIO mentioned at para #4 till date. More than 30 days have lapsed from the date of the transfer of the RTI application to the CPIO mentioned at para #4 above.

8) Prayers or relief sought :

This Appellant humbly prays that this First Appellate Authority be pleased to:

- 1) **admit this appeal and inquire into the matters raised herein;**
- 2) **order the CPIO to disclose all the information sought in the instant RTI application, free of charge, as is this Appellant' right under Section 7(6) of the RTI Act, in view of the inordinate delay; and**
- 3) **issue an official memorandum to the CPIO mentioned at para #4 above to discharge his statutory responsibilities under the RTI Act with greater care and diligence in future.**

9) Grounds for the prayer or relief :

9.1) According to Section 7(1) of the RTI Act, a CPIO has only two courses of action while dealing with an RTI application, namely, either supply the requested information on payment of any additional fee or reject the request for any of the reasons specified in Sections 8 or 9 of the RTI Act. According to Section 7(2) of the RTI Act, where a CPIO fails to give a decision within the time limit specified under Section 7(1), it shall be deemed that the request has been refused. According to Section 19(1) of the RTI Act, any person who does not receive any decision from the CPIO within the time limit specified under Section 7(1) may prefer an appeal with an officer senior in rank to the CPIO within thirty days of the date on which such decision ought to have been made. More than 40 days have lapsed since the date of transfer of the instant RTI application to the CPIO mentioned at para #4 above. This Appellant has not received any reply from the said CPIO whatsoever. Under the circumstances of this case, this Appellant believes that the presumption in law expressed in Section 7(2) of the RTI Act has become applicable, namely the instant RTI application stands rejected. This Appellant is aggrieved by the inaction of the said CPIO resulting in the

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S. S. Venkatesh Nayak

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rejection of the RTI application. **Hence the filing of this first appeal before this Hon'ble First Appellate Authority.**

9.2) This Appellant believes that the Department of Land Resources being the nodal department under the *Allocation of Business Rules, 1961* for the purpose of the Ordinance which is the subject matter of the instant RTI application, ought to have discharged its duty of disclosing all materials that formed the basis of the decision to promulgate the Ordinance under Section 4(1)(c) of the RTI Act. That provision requires every public authority to disclose all relevant facts pertaining to any important decision or policy affecting the larger public while announcing such decision or policy. The amendments to the law sought to be made through the Ordinance pertain to an important decision concerning legislative policy on the issue of transparency in matters relating to land acquisition, the right to fair compensation and rehabilitation and resettlement of persons disposed by the acquisition of lands for any public purpose. Further, Section 4(1)(d) of the RTI Act requires that every public authority furnish reasons for its administrative or quasi-judicial decisions to persons affected by such decisions. The decision to amend the said law through an Ordinance affects the lives of millions of citizens whose lives and livelihoods are closely connected with the lands that governments may acquire under this law. Nevertheless, the text of the Ordinance as published in the Official Gazette on 31 December, 2014, does not disclose any reasons for affecting the changes to the existing law. As this public authority had utterly failed in its statutory duty of proactively disclosing all this information described above, this Appellant was constrained to seek information through a formal request under the RTI Act. The CPIO mentioned at para #4 above, does not seem to have appreciated any of these points of law and practice of transparent and accountable governance and instead elected not to act or make a decision on the instant RTI application. This Appellant is aggrieved by the failure of both this public authority, namely, the Department of Land Resources and the said CPIO to act in accordance with the requirements of the law. **Hence the filing of this first appeal before this Hon'ble First Appellate Authority.**

9.3) Further, this Appellant believes that neither the President's Secretariat nor this public authority has placed information in any degree of detail regarding the circumstances that existed for the Cabinet to recommend to the Hon'ble President of India to take immediate action under Article 123 of the Constitution by promulgating the said Ordinance. This Appellant being a citizen of India has every right to exercise his fundamental right to seek and obtain information from this public authority regarding such matters under Article 19(1)(a) of the Constitution. The said CPIO has failed to appreciate the fact that the information sought is an exercise of a fundamental right guaranteed by the Constitution, instead he/she has elected to remain silent. This Appellant is aggrieved by this inaction of the CPIO mentioned at para #4 above. **Hence the filing of this first appeal before this Hon'ble First Appellate Authority.**

9.4) Further, this Appellant believes that in the tenth year of the implementation of the RTI Act, no CPIO can plead ignorance of the law as an excuse for not acting on an RTI application. Further, no CPIO can plead inadequacy of resources or assistance for the purpose of dealing with an RTI application. Section 5(4) and 5(5) of the RTI Act, empower a CPIO to seek the assistance of any other officer for the purpose of dealing with an RTI application if he/she is unable to dispose the request himself/herself. Given the express requirement in law to deal with an RTI application as expeditiously as possible and in no

4 True Copy
S.S. Vankar at work Niyak

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case later than 30 days from the date of its receipt, every CPIO is duty bound to at least send a response to the RTI applicant within the stipulated timeline. Failure to adhere to the time limits specified under Section 7(1) of the RTI Act, attracts penalty under Section 20(1) of the Act. Without prejudice to his right to approach the Central Information Commission through appropriate proceeding for imposition of penalty on the CPIO mentioned at para #4 above, at a later stage, this Appellant urges this Hon'ble First Appellate Authority to issue an official memorandum to the said CPIO to strictly adhere to the timelines specified under the RTI Act in future. Being an officer senior in rank to the said CPIO, this Hon'ble First Appellate Authority has the power coupled with a duty to ensure that officers subordinate to him/her comply with the requirements of every law applicable to them, including the provisions of the RTI Act. **Hence the filing of this first appeal before this Hon'ble First Appellate Authority.**

10) I hereby verify that the aforementioned facts are true to the best of my knowledge. I also declare that I have authenticated the Annexes to this appeal.

Signature of the Appellant:

S.S. Venkatesh Nayak
(Venkatesh Nayak) 26/2/15

5 True Copy
S.S. Venkatesh Nayak

(15)

ANNEXE-4

RTI MATTER/URGENT

No. 22014/01/2015-LRD
Government of India
Ministry of Rural Development
Department of Land Resources

'G' Wing NBO Building,
Nirman Bhawan, New Delhi
Dated 03/3/2015

To,

Shri Venkatesh Nayak,
55A, 3rd Floor,
Siddharath Chamber-1,
Kalu Sarai
Delhi- 110016

Subject: Request for information under RTI Act, 2005.

Sir,

Kindly refer to your RTI application dated 05-01-2015 transfer by President Secretariat under 6(3) of the RTI Act, 2005.

2. In reply to Point No. 1 & 2 I say to that there is no such information available in Department of Land Resources related to Question No. 1 and 2.

Yours faithfully,



(Amit Sahu)

CPIO & Assistant Director (LR)

Tele: 011-23061788

Copy to : Shri Saurab Vijay, CPIO, President Secretariat, Rashtrapati Bhawan, New Delhi- 110004 w.r.t. their letter no. I-1930/RTI/01/14-15 dated 13.01.2015.

Same copy
S.S. Venkatesh Nayak

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ANNEXE-5

F.No.22014/05/2015-LRD
Government of India
Ministry of Rural development
Department of Land Resources

'G' Wing, NBO Building,
Nirman Bhawan, New Delhi
Dated: 03.03.2015

OFFICE MEMORANDUM

Subject : Information under Right to Information Act, 2005.

Please find enclosed herewith a copy of RTI application dated 05.01.2015 received from CPIO, President Secretariat along with a RTI appeal dated 26.02.2015 received from Shri Venkatesh Nayak, #55A, 3rd Floor, Siddharth Chambers-1, Kalu Sarai, New Delhi-1100016 received in this Department on 02.03.2015.

As already a reply has been sent to the applicant (copy enclosed) that the said information is not available in the Department of Land Resources. As per the order issued by an Appellate Authority, the application is being transferred to you under section 6(3) of the RTI Act, 2005 for providing requisite information directly to the applicant.

Yours faithfully,



(Amit Sahu)

CPIO & Assistant Director (LR)

Tele: 011-23061788

Shri Manmohini Sood
Under Secretary & Central Assistant Public Information Officer
Legislative Department
Ministry of Law and Justice
Shastri Bhawan, New Delhi.
Tel: 23389661

Copy to : Shri Venkatesh Nayak, #55A, 3rd Floor, Siddharth Chambers-1, Kalu Sarai,
New Delhi-1100016

True copy
S.S. Venkatesh Nayak

(17)

F.No.22014/05/2015-LRD
Government of India
Ministry of Rural development
Department of Land Resources

'G' Wing, NBO Building,
Nirman Bhawan, New Delhi
Dated: 03.03.2015

OFFICE MEMORANDUM

Subject : Information under Right to Information Act, 2005.

Please find enclosed herewith a copy of RTI application dated 05.01.2015 received from CPIO, President Secretariat along with a **RTI appeal** dated 26.02.2015 received from Shri Venkatesh Nayak, #55A, 3rd Floor, Siddharth Chambers-1, Kalu Sarai, New Delhi-1100016 received in this Department on 02.03.2015.

As already a reply has been sent to the applicant (copy enclosed) that the said information is not available in the Department of Land Resources. As per the order issued by an Appellate Authority, the application is being transferred to you under section 6(3) of the RTI Act, 2005 for providing requisite information directly to the applicant.

Yours faithfully,



(Amit Sahu)

CPIO & Assistant Director (LR)

Tele: 011-23061788

Shri Saurabh Vijay
Central Public Information Officer
President's Secretariat
Rashtrapati Bhawan
New Delhi-110004

Copy to : Shri Venkatesh Nayak, #55A, 3rd Floor, Siddharth Chambers-1, Kalu Sarai,
New Delhi-1100016

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S.S. Venkatesh Nayak

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ANNEXE-6

F.No. 4(9)/2015 - RTI
Government of India
Ministry of Law and Justice
Legislative Department
RTI Cell

New Delhi, the 9th April, 2015

To
CPIO
Department of Land Resources,
Nirman Bhawan, New Delhi.

Subject: Providing of Information under RTI Act to Shri Venkatesh Naik - reg.

Sir,

With reference to your O.M. No. 22014/05/2015-LPD dated 18th March, 2015 on the subject mentioned above, in this regard it is stated that, the said OM has been received without enclosure. You are therefore, requested to send the copy of RTI application of Shri Venkatesh Naik and Appellate order to this Department at the earliest to do the needful.

Yours faithfully,


(S.K. Chitkara)

Deputy Secretary & CPIO

✓
Copy to:-
Shri Venkatesh Nayak, #55A, 3rd Floor, Siddharth Chambers-1, Kalu Sarai, New Delhi-110016.

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S.S. Venkatesh Nayak

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No. 22014/01/2015-LRD
Government of India
Ministry of Rural Development
Department of Land Resources

'G' Wing NBO Building,
Nirman Bhawan, New Delhi
Dated: 16/4/2015

To,

Shri S.K. Chitkara,
Deputy Secretary & CPIO,
Ministry of Law and Justice,
Legislative Department (RTI Cell),
New Delhi

Subject: Request for information under RTI Act, 2005.

Sir,

I am to refer to your letter No. 4(9)/2015-RTI dated 9.04.2015 and received in this Department 13-04-2015 on the above subject and to enclosed herewith a copy of the RTI application of Shri Venkatesh Naik and Appellate order.

Yours faithfully,

Encl: as above.



(Amit Sahu)
CPIO & Assistant Director (LR)
Tele: 011-23061788

Copy to: Shri Venkatesh Nayak, #55A, 3rd Floor, Siddharth Chambers-1,
Klau Sarai, New Delhi-110016.

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S.S. Venkatesh Nayak

F.No. 4 /9 /2015-RTI
Government of India
Ministry of Law & Justice
Legislative Department
Shastri Bhavan

New Delhi, the 6 May, 2015

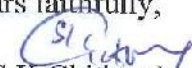
✓
To,
Shri Venkatesh Nayak
55A, 3rd Floor, Siddharth Chambers-I
Kalu Sarai, New Delhi-110016

Sub:- Information sought under the RTI Act, 2005.

Sir,

With reference to your RTI application dated 5.1.2015 received in this Department on 20.4.2015 from Department of Land Resources, it is informed that the subject matter of the information sought by you falls under the administrative ambit of Ministry of Rural Development, Department of Land Resources. Further, the self contained note prepared by the Department of Land Resources in accordance with the procedure prescribed in the Manual of Parliamentary Procedures in the Government of India explaining the circumstances and reasons for promulgation of the said Ordinance was routed through Prime Minister's Office to the President Secretariat for obtaining the assent of the Hon'ble President of India. Therefore, the copy of the said self contained note and other records relating to promulgation of the said Ordinance would be available with the Department of Land Resources. The Legislative Department is concerned only with publication of the Ordinance in the Official Gazette.

Yours faithfully,


(S.K. Chitkara)

Deputy Secretary & CPIO

Note- Dr. Reeta Vasishta, Joint Secretary & Legislative Counsel, Legislative Department, Ministry of Law and Justice, Room No.416 'A; Wing, 4th Floor, Shastri Bhawan, New Delhi-110001 is the First Appellate Authority for filing the first appeal, if any.

Copy to: Shri Amit Sahu, CPIO & Assistant Director(LR), Ministry of Rural Development, Department of Land Resources, G Wing, NBO Building, Nirman Bhawan, New Delhi w.r.t letter no. 22014/1/2015-LRD dated 16.4.2015

Before the Central Information Commission

2nd Floor, "B" Wing, August Kranti Bhavan, Bhikaiji Cama Place, New Delhi- 110 066

**Complaint submitted under Section 18(1)(e) and (f) of
The Right to Information Act, 2005**

In the matter of

Venkatesh Nayak

Vs

Department of Land Resources, Ministry of Rural Development

Addendum to the Complaint submitted on 01/05/2015

Date of submission: 15/05/2015

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<u>No.</u>	<u>Item</u>	<u>Page</u>
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2.	Annexe 1: Self-attested copy of the Complaint submitted on 01/05/2015 along with proof of submission and receipt in the CIC	4ff

S.S. Venkatesh Nayak

Before the Central Information Commission

2nd Floor, "B" Wing, August Kranti Bhavan, Bhikaiji Cama Place, New Delhi- 110 066

Complaint submitted under Section 18(1)(e) and (f) of The Right to Information Act, 2005

In the matter of

Venkatesh Nayak

Vs

Department of Land Resources, Ministry of Rural Development

Addendum to the Complaint submitted on 01/05/2015

Prayer and grounds for urgent hearing in public interest

This Complainant humbly wishes to bring it to the notice of this Hon'ble Commission:

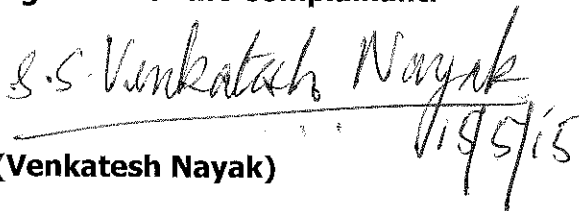
1. that a Complaint under Section 18(1)(e) and 18(1)(f) of *The Right to Information Act, 2005* (RTI Act) along with Annexures has already been submitted in the matter cited above, via Speed Post. A copy of the said complaint along with proof of delivery of the packet at the Registry of this Commission is annexed herewith;
2. that a path-breaking development has taken in place in relation to the matters raised in the said Complaint after the submission of the said Complaint to this Hon'ble Commission which is being brought to its notice through this Addendum. Earlier this week, the Parliament of India has been pleased to constitute a Joint Parliamentary Committee (JPC) to conduct detailed deliberations on the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill* (the Bill) which seeks to replace the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014* which forms the subject matter of this Complaint. The said Ordinance was re-promulgated by the Government as the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015* on 03 April, 2015;
3. that the said JPC has been directed by Parliament to submit its report during the first week of the next monsoon session of Parliament;
4. that this Complainant will be deprived of a reasonable opportunity to make a well-reasoned submission on the said Bill before the said JPC, if access to the information sought in the RTI application dated 05/01/2015, in relation to which this Complaint has been initiated, is not provided in a timely manner as is his right and also the

S.S. Venkatesh Nayak

avowed purpose of the consultative mechanism established by Parliament through the JPC;

5. that it is in the larger public interest that this Hon'ble Commission make a determination as to the existence of the information sought in the RTI application dated 05/01/2015 without any delay;
6. that it is in the larger public interest that this Hon'ble Commission direct the Respondent public authority to disclose all materials that formed the basis for the Hon'ble President to promulgate the said Ordinance which forms the subject matter of the RTI application dated 05/01/2015, including all representations and petitions received on the subject matter of the said Ordinance, the relevant Cabinet Note(s) along with annexures if any, file notings and the text of the related inter-ministerial correspondence, in a voluntary and proactive manner on its official website at the earliest, so that other citizens, farmers groups and associations and other interests groups may make their submissions to the said JPC in an informed manner;
7. that it is this Complainant's firm belief that issuing such a direction will not violate the ratio laid down by the Hon'ble Supreme Court of India in the matter of *Chief Information Commr. & Anr. vs State of Manipur & Anr.* [AIR 2012 SC 864] because such a direction would be in the nature of a recommendation issued in exercise of the supervisory powers vested in this Hon'ble Commission under Section 25(5) of the RTI Act for ensuring timely dissemination of information by every public authority about its activities as is mandated by Section 26(1)(c) of the RTI Act;
8. that it is in the public interest that this Complaint and all other appeals and complaints with similar subject matter, namely transparency of decision-making in relation to the amendment of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* pending before this Hon'ble Commission be heard and disposed of on an urgent basis given the short period of time available for the citizens to submit their views to the JPC in a well-informed manner and that this Complainant has no objection to this Hon'ble Commission taking such a course of action;
9. that this Hon'ble Commission may be pleased to issue any other appropriate recommendation or direction to the Respondent public authority as it may deem fit.

Signature of the Complainant:

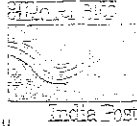

(Venkatesh Nayak)

ANNEXE - 1

SP RAUZ KHAS <110016>

ED562739170IN

Counter No:1, OP-Code:CKV
To:REGISTRAR,CIC



→ CIC

R K PURAM (KATNI), PIN:110066

From:VENKATESH NAYAK, ND

Wt:90grams,

Amt:28.00, 02/05/2015, 10:12

Taxes:Rs.3.00<<Track on www.indiapost.gov.in

SP RAUZ KHAS <110016>

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To:DPID.



→ DOLR/
MORD

RASHTRAPATI SHAWAN, PIN:110004

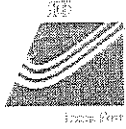
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Wt:90grams,

Amt:28.00, 02/05/2015, 10:12

Taxes:Rs.3.00<<Track on www.indiapost.gov.in

S.S. Venkatesh Nayak



INDIA POST
Ministry of Communications & Information Technology



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Booked at	Booked On	Destination Pincode	Tariff	Article Category	Delivered at	Delivered on
Hauz Khas S.O	02/05/2015	110066	28.00	Domestic	R K Puram (Main) S.O (110066)	05/05/2015

Detailed Track Events For ED562739170IN

Date	Time	Office	Event
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02/05/2015	11:53:57	Hauz Khas S.O	Item bagged for NSH NEW DELHI
02/05/2015	15:51:24	NSH NEW DELHI	Bag Received
02/05/2015	23:49:43	NSH NEW DELHI	Item Received
03/05/2015	16:05:19	NSH NEW DELHI	Item bagged for R K Puram (Main) S.O
05/05/2015	05:38:11	NSH NEW DELHI	Bag Despatched to R K Puram (Main) S.O
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07/05/2015	08:46:19	Hauz Khas S.O	Bag Despatched to NSH NEW DELHI
05/05/2015	15:29:00	R K Puram (Main) S.O	Item Delivered [To: REGISTRAR]

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S.S. Venkatesh Nayak