

Before the Central Information Commission

CIC Bhawan, Baba Gangnath Marg, Munirka, New Delhi – 110 067

Complaint submitted under Section 18(1) of *The Right to Information Act, 2005*
with a prayer for scheduling an urgent hearing

In the matter of

Venkatesh Nayak

vs

*Office of the Chief Labour Commissioner
Ministry of Labour and Employment*

Date of submission: 05/05/2020

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S.S. Venkatesh Nayak

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

with a prayer for scheduling an urgent hearing

Date: 05/05/2020

**1) Name and address
of the Complainant**

: Venkatesh Nayak
#55A, 3rd Floor
Siddharth Chambers-1
Kalu Sarai
New Delhi-110016
Telephone: +91 9871050555
Email: venkateshnayak.ss@gmail.com

**2) Name and address of the Central
Public Information Officer (CPIO) to
whom the RTI application was sent**

: The Central Public Information Officer
Office of the Chief Labour Commissioner
through RTI Online Facility

**3) Name and address of the CPIO
of the Respondent Public Authority**

: **1) Shri V Ravi**
Central Public Information Officer &
AD (Stat)
Office of the Chief Labour Commissioner
Ministry of Labour and Employment
Government of India
Shram Shakti Bhawan
Rafi Marg
New Delhi – 110 001
Tel No.: 011-23389367
Email: ravi60@nic.in

2) Shri Kuldeep Dixit
Nodal Officer
Office of the Chief Labour Commissioner
Ministry of Labour and Employment
Government of India
Shram Shakti Bhawan
Rafi Marg
New Delhi – 110 001
Tel No.: 011-23355655
Email: kuldeepdixit.edu@nic.in


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- 4) Particulars of the RTI application :**
- a) No. and date of submission of the RTI application :** Regn. No. OTCLC/R/E/20/00170 and dated 21/04/2020
- b) Date of payment of additional fee (if any) :** Not applicable
- c) Date of the reply to the RTI application :** 05/05/2020
- 5) Particulars of the reply/order including number, if any against which the appeal is preferred :** No direct reply received from the CPIO Intimation of disposal of request sent by email **through automated RTI Online Facility**

6) Brief facts leading to the appeal :

6.1) On 21/04/2020, this Complainant submitted a request for access to information, to the CPIO mentioned at **para #2 above**, along with the prescribed application fee, through the RTI Online Facility, stating as follows (**Annexe 1 containing RTI application uploaded separately**):

"Apropos the D.O. dated 08 April, 2020 issued by the Chief Labour Commissioner to all Regional Heads regarding urgent collection of data about migrant workers who are stranded and placed in various temporary shelters/relief camps arranged by:

- a) the State Government authorities,
- b) employers IN-SITU/at workplace itself, and
- c) where they are generally clustered in some localities-

I am seeking access to the following information available in your office, as on date, under the RTI Act, 2005:

- 1) the State-wise names of districts from which data about the stranded migrant workers has been received,
- 2) the district-wise numbers of male and female migrant workers belonging to each of the three categories mentioned above as reported from each State,
- 3) the occupation-wise number of male and female migrant workers reported from each State as per the List of Occupations mentioned in Annexure-I of the said D.O.,
- 4) the Sector-wise number of male and female migrant workers reported from each State as per the List of Sectors mentioned in Annexure-II of the said D.O., and

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- 5) the Native State-wise cumulative figures for male and female migrant workers according to each Occupation and Sector mentioned in Annexure-I and Annexure-II, respectively of the said D.O., reported from each State.

Form of access to information sought:

Kindly publish all the information specified above on any government website and inform this RTI Applicant, by email, the exact URL(s) where such information has been uploaded."

- 6.2)** On 05/05/2020, this Complainant received an email from the RTI Online Facility intimating the disposal of the instant RTI application along with a link to check the status of action taken by the CPIO of the Respondent Public Authority (**page 1 of Annexe 2**). Upon checking the said weblink, this Complainant found a cryptic one-line reply entered at the "Online RTI Status" page stating as follows (**page 2 of Annexe 2**):

"As per the stat section is concerned, no such details are available based on requisite information"

This Status page also indicates that the instant RTI application of the said Registration No. has been disposed of (**page 2 of Annexe 2**). The email address and contact number of the Nodal Officer of the Respondent Public Authority has also been specified on the said Status page. No substantive reply under the name and signature of the CPIO of the Respondent Public Authority has either been uploaded on the said Online RTI Facility of been sent to this Complainant by email., till date.

- 6.3)** This Complainant is aggrieved by the action of the CPIO as well the Respondent Public Authority.

7) Prayers or relief sought :

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

- 1) admit this complaint and inquire into the matters raised herein;**
- 2) schedule an urgent hearing into the instant complaint given the fact that it concerns the lives of all individuals residing within the territory of India. Sending the instant Complaint to the back end of the queue of appeals and complaints already pending before this Hon'ble Commission will defeat the very objective of this intervention;**
- 3) direct the Respondent Public Authority to display the information sought in the instant RTI application on an official website for reasons stated at para #8.2 below;**

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- 4) **direct the Respondent Public Authority to update all the information sought in the instant RTI application from time to time as and when changes are made; and**
- 5) **issue any further orders or directions or recommendations that this Hon'ble Commission may deem appropriate given the facts and circumstances of the instant case.**

8) Grounds for the prayer or relief :

8.1) According to Section 18(1)(f) of the RTI Act any person may submit a complaint to this Hon'ble Commission in respect of "any other matter relating to requesting or obtaining access to records under this Act. This Complainant is prevented from submitting an appeal under Section 19(1) of the RTI Act for the following reasons. According to Section 19(1) of the RTI Act an appeal may be submitted to an officer senior in rank to the CPIO by:

- a) any person who does not receive within the time limit specified under Sections 7(1) of 7(3) of the RTI Act, a decision from a CPIO of a public authority to whom an RTI application is submitted; or
- b) any person who is aggrieved by a decision of the CPIO.

However, in the instant case, neither ground for invoking the procedure under Section 19(1) of the RTI Act is satisfied. The CPIO of the Respondent Public Authority has not given any decision on the instant RTI application. Instead, he has uploaded a reply on the RTI Online Facility indicating non-availability of the information. This reply has been uploaded on the RTI Online Facility within the time limit of 30 days specified under the RTI Act. Therefore neither ground specified in Section 19(1) is attracted in the instant case. Nevertheless, this Complainant has not been given access to the information he sought and in the form in which he sought vide the instant RTI application. Therefore this Complainant has no alternative but to seek a remedy directly from this Hon'ble Commission by invoking its complaint jurisdiction under Section 18(1) for the reasons described below.

8.2) The facts and circumstances leading to the instant RTI application are briefly narrated as follows:

- a) on 08/04/2020, Shri Rajan Verma, the Chief labour Commissioner issued a D.O. of No. CLC(C)/Covid-19/Instructions/LS-I (**Annexe 3**) to all Regional heads requiring them to enumerate all migrant workers stranded at different places around the country under the most trying of circumstances due to the enforcement of the strict lockdown imposed by the governments to prevent the spread of the COVID-19 epidemic. According to the said D.O., the Regional heads were required to send detailed information about migrant workers stranded in relief camps or shelters organised by - governments or at the workplace of their employers or generally clustered in any-

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-district. This information was required to be collected from each District as per data fields prescribed in Annexures I and II attached to the said D.O. Information about the stranded migrants was required to be submitted to the Respondent Public Authority within 3 days of the date of the said D.O. The said D.O. came to be circulated widely through the mainstream and social media soon after.

- b) After waiting for almost two weeks and not finding any statistics published in the public domain about the numbers of stranded migrant workers pursuant to the enumeration exercise initiated by the Respondent Public Authority, this Complainant submitted the instant RTI application to the CPIO vide the RTI Online Facility.
- c) It may also please be noted that this Complainant did not seek any personal information about any stranded migrant worker. Instead he merely sought State-wise and district-wise statistics of compliance with the D.O. and statistical information about migrant workers identified during the said enumeration exercise, along with their gender-wise and occupation-wise breakups. Furthermore, extremely distressed by stories of the pain and sufferings of stranded migrant workers circulated widely by the print, electronic and digital mass media, this Complainant initiated this RTI intervention to urge the Respondent Public Authority to place statistical data in the public domain through an official website. He did not seek copies of any records for himself. Instead he only sought intimation of the URL of the webpage where the statistics are posted on an official website.

8.3) Further, this Hon'ble Commission may kindly note that all the Regional Heads to whom the Respondent Public Authority addressed the D.O. of 08/04/2020 are subject by law to its administrative jurisdiction. There is no reason why the Regional Heads would not have complied with the instructions of the Respondent Public Authority to complete the enumeration exercise and send the data within the time period specified in the said D.O. Therefore the reply of the CPIO named at para #3(1) above is difficult to believe. There is no reason why this Respondent Public Authority ought not to have such information in custody when such information has been specifically called for through the D.O. The CPIO does not appear to have paid attention to these matters while uploading his reply on the RTI Online Facility. ***Hence the submission of this Complaint to this Hon'ble Commission.***

8.4) Further, according to Section 7(1) of the RTI Act, a CPIO is required to provide the information sought for in an RTI application upon payment of the additional fees as per the fee Rules notified. If on the other hand, the requested information is exempt from disclosure, such CPIO is required to reject the request for reasons specified in Sections 8 or 9 of the RTI Act. However, if the CPIO perceives that the information sought in an RTI application is available wholly or partially with another public authority, he is required to transfer the RTI application or such part of it to that other public authority within a period of five days under written intimation to such RTI applicant. The CPIO of the Respondent Public Authority has not opted for any of these permissible courses of action under the RTI Act. Instead he has caused to be uploaded a cryptic reply on the RTI Online Facility about-

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the alleged non-availability of the requested information. He has not even bothered to send a substantive reply under his name and signature as is required under the RTI Act. As this Complainant seeks information from other public authorities also, he is privy to the practice adopted by many other CPIOs of uploading a scanned copy of their replies on the RTI Online Facility which is then intimated to the RTI applicant by email generated by the said Online RTI Facility. However the CPIO of the Respondent Public Authority has acted in a cavalier manner as explained above already and not bothered to send a substantive reply to this Complainant. This Complainant is aggrieved by the said actions and omissions of the CPIO of the Respondent Public Authority. **Hence the submission of this Complaint to this Hon'ble Commission.**

8.5) Further, the information sought concerns the lives of not just one person but all migrant workers residing within the territory of India due to the widespread effect of COVID-19. This Complainant searched the website of the Respondent Public Authority for information sought in the instant RTI application before submitting this Complaint. After finding that none of the information is disclosed *suo motu* on the said website, he felt constrained to seek access to such information formally, not for himself alone, but for the benefit of the taxpaying citizenry at large who are dependent on such migrant workers directly or indirectly in a myriad ways. **Hence the submission of this Complaint to this Hon'ble Commission.**

8.6) Further, all the information sought in the instant RTI application is in the nature of information that ought to have been disclosed *suo motu* by the Respondent Public Authority under Sections 4(1)(c) and 4(1)(d) of the RTI Act. As the same was not done, this Complainant felt constrained to seek access to such information formally. Nevertheless the Respondent Public Authority has not bothered to publish even statistical information about compliance with its own D. O. and about migrant workers in India on its website. **Hence the submission of this Complaint to this Hon'ble Commission.**

8.7) Further, this Complainant believes, the instant RTI application is in tune with the spirit of Section 4(2) of the RTI Act which requires every public authority to endeavour to disclose *suo motu* as much information as possible so that the public has minimum resort to the use of the RTI act for seeking information formally. This is the reason why this Complainant requested the Respondent Public Authority to make the information accessible on an official website. Nevertheless, it is this Complainant's firm belief that the CPIO has acted in a manner that reveals an inadequate understanding of the import of the instant RTI application or the provisions regarding *suo motu* disclosure under the RTI Act. **Hence the submission of this Complaint to this Hon'ble Commission.**

8.8) Further, this Hon'ble Commission has stated in its COVID Guidelines circular of F. No. CIC/Legal/CORON/2020/32 dated 16 March, 2020 that it will hear urgent matters through audio conferencing during that month. This Hon'ble Commission has commendably resumed its mandated task of hearing appeals and complaints 20th April, 2020 onwards.



In this Complainant's humble opinion, there is no reason why the instant Complaint must also not be fast-tracked for disposal given the nature of information sought in the instant RTI application. **Hence the submission of this Complaint to this Hon'ble Commission.**

8.9) Further, this Complainant firmly believes, for multiple reasons, the instant Complaint does not fall foul of the ruling of the Hon'ble Supreme Court of India in the matter of **Chief Information Commissioner & Anr. Vs State of Manipur & Anr.** [AIR 2012 SC 864] with regard to the difference between the appeals procedures given under Section 19 and the complaint procedure provided under Section 18(1) of the RTI Act. **First**, given the language of Section 18(1)(f) of the RTI Act this Complainant firmly believes this procedure may be invoked in the context of seeking information for oneself and seeking access to information in a general manner along with other members of the citizenry. The phrase- "seeking and obtaining access to records under this Act" in Section 18(1)(f) of the RTI Act seems to indicate the clear distinction made between the formal request and *suo motu* information disclosure procedures provided respectively in Sections 6 and 4 of the RTI Act. **Second**, in the same case, the Hon'ble Apex Court stated that the complaint procedure was available for exercising the supervisory jurisdiction of this Hon'ble Information Commission. As the mode of access to all the information sought in the instant RTI application is through website-based disclosure, this Complainant firmly believes, the instant Complaint does not fall within the restriction on the utility of the Complaint procedure provided for in Section 18 of the RTI Act, by the Apex Court. **Third**, for reasons stated at **paras #8.1 to 8.5 above**, this Complainant is prevented from submitting an appeal under Section 19(1) of the RTI Act. So this Complainant has no effective remedy before any forum other than this Hon'ble Commission in the instant case. **Hence the submission of this Complaint to this Hon'ble Commission.**

9) I hereby verify that the aforementioned facts are true to the best of my knowledge. I also affirm that I have transmitted a copy of this Complaint along with Annexures to the CPIO and the Nodal Officer of the Respondent Public Authority, by email.

Signature of the Complainant:



(Venkatesh Nayak)