

BY EMAIL/SPEED POST

To,

1. The Chief Information Commissioner,
Uttar Pradesh State Information Commission,
7/7A, RTI Bhawan, Vibhuti Khand,
Gomti Nagar, Lucknow -226010

2. The Principal Secretary,
Department of Administrative Reforms,
Government of Uttar Pradesh, Civil Secretariat
Lucknow-226001.

Sub: Request for an urgent intervention and issuance of directions under Section 25(5) of the RTI Act 2005 to all the Departments of the State of Uttar Pradesh, more particularly those dealing with life and personal liberty of individuals for strict implementation of timelines as mandated in proviso to Section 7(1) of the RTI Act 2005, warranting dissemination of information within 48 hours in matters relating to the life or liberty of a person.

Reference : My earlier representation on the subject Dated 23.09.2019.

Dear Sir/s,

This refers to and is in continuation of my earlier representation Dated 23.09.2019 on the above mentioned subject. In this regards, it is submitted that the applicant herein is a post graduate in Laws and Management , having secured two Gold Medals in Laws at Masters Level (LL.M.) besides being the topper of Laws (LL.B.) of the 1998 batch of Faculty of Law, Jamia Millia Islamia, New Delhi. The applicant has been a practicing Lawyer of the Lucknow Bench of the Allahabad High Court and is presently associated with a leading telecom infrastructure provider of the country as their In-House counsel, saddled with the responsibility of taking care of its legal issues in the States of Uttar Pradesh and Uttarakhand. The applicant is a conscientious individual who tries to perform his fundamental duties , and to serve the ailing society by making relentless efforts , which he believes , are a part of every Individual's Social Responsibility.

The applicant, on earlier occasions, being perturbed by the apathy and neglect of the powers that be, in maintaining the historic protected monuments of Lucknow

had been constrained to seek indulgence of the Hon'ble High Court by filing a Public Interest Litigation , which was numbered as PIL No. 3173(MB)of 2013. Lot of action has been ensured thereafter, and the monuments which were encroached/ vandalized/ unkempt are on a roadmap to a proper restoration. A series of far reaching orders have since been passed in the said PIL which is proving to be a boon for the protection of the cultural heritage of Lucknow, a city known for its culture, traditions and values. Besides the above, the applicant herein had also filed a PIL in the Hon'ble Supreme Court, successfully challenging the draconian 10 days' bail rule of Allahabad High Court Rules mandating a compulsory wait of 10 days before the bail application of a detenu came up for hearing before the Bench of the Hon'ble High Court. As a result of the consistent efforts of the undersigned , the said rule has now been amended and the compulsory period of wait of 10 days has now been reduced to 2 days and a notification to this effect has since been issued by the Hon'ble High Court on 19th September 2018.

Coming on to the issue at hand, it is submitted that your kindself is aware that since Right to Information is a **deemed fundamental right** within the meaning and scope of Article 19(1)(a) (freedom of speech and expression) and Article 21 of the Constitution (right to life and liberty), all citizens automatically become stakeholders of RTI. The Right to Information Act 2005 was envisaged to empower a common man, and also to ensure accountability and transparency in governance, which include adherence to timelines in administrative decision leaving no scope for favoritism, nepotism and delays in administrative decisions. The Act, while making a provision for the dispensation of information within 30 days of the receipt of a request by a public authority(PIO) , it also envisaged situations may which relate to an individual's life and personal liberty, which mandated dispensation of information within 48 hours.

The RTI Act 2005, your kindself is aware, has a proviso to Section 7(1) of the RTI Act, which is an exception to the general rule of dispensation of information in 30 days, and it recognizes the right of a citizen to seek and obtain information concerning any **person's life and liberty within 48 hours**. The said provision reads as under:-

Section 7(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of

such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

This rule, it is evident, is an exception to the general rule of providing information or rejecting a request for information within a period of thirty days. The intention of the Act in coming up with this provision is that **where matters involve an urgency involving the life or liberty of a person, the provision of information should not be delayed.** However, the Act is silent about the timelines for hearing and deciding a complaint under Section 18 and First appeal under Section 19(1) by the First Appellate Authority (FAA) and the Second Appeal under Section 19(3) of the Act before the State Information Commission.

Speaking on the significance of the said Proviso, the Central Information Commission in the case of **Mr. Pooran Chand v. Directorate of Health Services, Govt. of NCT of Delhi, (CIC/SG/C/2009/001628)**, vide its order Dated 20.08.2010 directed the public authority to pay compensation of Rs. 50,000 to a patient suffering from serious illness for not providing information within 48 hours under Section 7(1) of the RTI Act. The Hon'ble Commission was constrained to note that ***“Keeping in view the deplorable manner in which the PIO processed the said RTI application, the Commission recommends that cases where information sought pertains to 'life or liberty' of the individual, the PIO should ensure that information sought is provided within 48 hours. The instant case is reflective of the incompetence and callousness of the public authority, which was incapable of responding to the RTI application concerning the life of the Complainant within 48 hours. This case represents how the delivery systems to the poor fail. Unless all officers and systems can respond in time-bound manner, governance cannot deliver to those who need it most. The Commission hereby directs the public authority to pay a compensation of Rs. 50,000 to the Complainant on account of the suffering and detriment that he had to undergo due to the delay caused by the Department in providing him timely information.”*** The Commission, thereafter, exercising its powers under Section 25(5) of the RTI Act, made a recommendation to the Principal Secretary, Delhi Health Services that **it should devise processes/mechanisms by which it must provide information within 48 hours when required.**

It is submitted that the said proviso, i.e. the proviso that was carved out is becoming almost redundant on account of the bellicose attitude of the officers manning the RTI Wing of the State Government departments, dealing with the life and personal liberty of the Individuals, with the Law Enforcement Agencies topping the Chart of violators. I can say with conviction that in the preceding 5 years, the Hon'ble State Information Commission would have hardly come across a hand receipted copy of an application filed by a bonafide applicant under the RTI seeking information from the Law Enforcement Agencies (Police/ Police Organizations), seeking information within 48 hours, as it is an unwritten rule in a public department to receive the request by post, and preferably a speed post, which reaches as per its own timelines, which, most of the time is beyond 48 hours for a resident seeking an urgent information, though satisfying the criteria as laid down. In a state, like the State of Uttar Pradesh where the instances of Human Rights Violations galore, this provision is required to be strictly enforced.

This practical aspect of the issue needs to be taken care of by your good office, and I submit, with a sense of responsibility that I have seen innocent and bonafide individuals running from pillar to post to get the information and on account of no accountability and no timelines, in case of a violation, the said salutary provision is becoming a farce, a misnomer.

Your kindself is aware that the Government of Uttar Pradesh vide its notification No. **No. 544/43-2-2015-Su.Aa.Ni. 2015(1)2015 Dated 03.12.2015**, which was later on published into the official gazette and came into operation thereafter does not contain any provision to this effect which, in fact, is resulting in making this salutary provision of law nugatory. This is not only in contravention to the spirit of the RTI Act, but, in effect is highly irrational as despite the salutary provision of law in place, an applicant cannot take recourse to further timely legal action, till the mandatory period/timeline of **15 days** as envisaged in Rule 6(8) (For Complaint under Section 18) and Rule 7(6) (For Second Appeal under Section 19) the said Rules of 2015, is met. The Said Rules Read as under:-

Rule 6 (8) The Commission shall issue notices to the complainant and the State Public Information Officer concerned at least 15 days before the date fixed for the hearing. A copy of the complaint shall also be sent to the State Public Information Officer directing him to submit his written statement in two copies by the date fixed.

Rule 7(6) The Commission shall issue notices to the appellant, the State Public Information Officer and the First Appellate Authority concerned at least 15 days before the date fixed for the hearing. A copy of the appeal shall also be sent to the State Public Information Officer and the First Appellate Authority directing them to submit their written statements in two copies by the date fixed.

It is submitted that while the **Right to Information Act 2005** has recognized this specific right mandating a timeline of 48 hours in providing information concerning “right to life and personal liberty” of individuals, but it is silent about what must be done when that right is in dispute, or when the information is not provided, as is the case with the individual applicants who seek information, for example, from the law enforcement agencies, where majority of their applications are not even acknowledged, what to speak of the dispensation of information and that too, within 48 hours. It is nobody’s case and more of a matter of fact that the allegations of atrocities and illegalities which include the deprivation of most basic of human rights are made primarily against the various law enforcement agencies, with the State police wings heading the list of the violators.

It is submitted that in the absence of statutory timelines for addressing this contentious and critical issue in the event of a Complaint under Section 18 or a First/ Second Appeal under Section 19(1) or 19(3) of the Act, on account of the failure of the PIO/FAA in providing the required information, the Rules for the implementation and operation of the Act must be so envisaged so as to take care of this lacuna and step in to remove this inconsistency or else the most needed right of the citizens, impacting their personal liberties will be rendered nugatory at the appellate stage. It is strongly recommended that a provision be included in the proposed Rules to decide first and second level of appeals in life and liberty matters within specified deadlines, say 48 hours with stringent penalties in case the concerned PIO/FAA is unable to explain the reason for not disposing the application within the stipulated timelines.

The proviso underlying Section 7(1) of the RTI Act, it is evident, recognizes the right of a citizen to seek and obtain information concerning any person’s life and liberty within 48 hours. This is an exception to the general rule of providing information or rejecting a request for information within a period of thirty days. The intention of the Act is that where matters involve an urgency involving the life or liberty of a person, the provision of information should not be delayed.

However, there is no procedure either in the RTI Act 2005 or in the Rules of 2015 for FAAs/ SIC about the promptitude/timelines with which such matters must be

handled and decided. While the Act has recognized this specific right but is silent about its implementation, it is all the more necessary to decide a process, more particularly by making an amendment in the Rules of 2015 as detailed in the preceding paragraphs, by providing timeline, lets say, of 24/48 hours for the FAAs and the SIC for handling such cases relating to the right to life and personal liberty of individuals where the information is denied/not provided by the PIOs.

From the perusal of the above, it becomes evident that on account of lack of a defined process for the handling of cases falling under the proviso to Section 7(1) inasmuch as they relate to information concerning “life and personal liberty” of a person , the said provision , intended to secure the most significant of fundamental right of a person is being rendered nugatory, which indeed is a matter of extreme concern.

It is therefore requested to kindly give this matter your personal thought and attention and moot a proposal for amending the Uttar Pradesh Right to Information Rules 2015 to incorporate a separate process for handling the Complaints and Second Appeals in a timebound manner not exceeding 48 hours for the matters to be taken up before the FAA/ State Information Commission, besides issuing directions / instructions under **Section 25(5) of the RTI Act 2005**, to the departments which are responsible for ensuring the “life and personal liberty” of individuals , more particularly the Health and the Home Department (Including the various wings of the Police Organizations) of the Uttar Pradesh Government, inter alia, providing for:-

- a. Prescribing parameters for seeking information under the proviso to section 7(1) of the RTI Act 2005.(Do's and Don't's) to be widely circulated amongst the concerned State Government departments ensuring that the parameters / instructions which the ground level for a strict implementation.
- b. Prescribing for an online submission of **First Appeals** after due identification and enlistment of FAAs in case the application under proviso to Section 7(1) is not honoured by the Department.
- c. Formulating a procedure for accepting the **Complaints and Second Appeals** for all these matters **online**.
- d. Issuance of advisories and public notices using media / social media as forum informing the public at large about the procedure and methodology for handling such cases by the State Information Commission.

Since the matter relates to life and personal liberty of scores of individuals, a prompt action in the matter is highly desirable.

Submitted for your kind and immediate consideration and action please.

Very truly yours,

Dated : 06.03.2021

(Syed Mohammad Haider Rizvi)

Copy Forwarded for information and issuance of necessary directions to:-

1. Secretary, Department of Personnel and Training, Government of India, North Block, Central Secretariat, New Delhi 110001
2. Secretary, Department of Administrative Reforms and Public Grievances, Government of India, North Block, Central Secretariat, New Delhi 110001