



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 05th OCTOBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 7865/2023**

PRASHANT REDDY T

..... Petitioner

Through: Mr. N. Sai Vinod, Advocate

versus

CPIO, UNIQUE IDENTIFICATION AUTHORITY OF INDIA

..... Respondent

Through: Mr. Purushottam Sharma Tripathi and
Mr. Ravi Chandra Prakash,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner seeks to challenge the Order dated 20.03.2023 passed by the Central Information Commission (CIC) to the extent that it has denied the access to the copy of agreements entered into by Unique Identification Authority of India (UIDAI) with the external organization for handling grievance redressal on its behalf.
2. The Petitioner filed an application under Right to Information Act, 2005 (*hereinafter referred to as 'RTI, Act'*) seeking the following information:

"1. Please state whether the UIDAI has formulated any policies or regulations regarding grievance redressal. If so, please provide a copy of the same.

2. Please state whether the UIDAI has hired an external organisation to handle grievance redressal on its behalf. If so please provide a copy of the contract



with such external organisation.

3. If the UIDAI is handling grievance redressal internally, please state the number of personnel who have been assigned to the job, along with their ranks.

4. Please state the number of complaints handled by the grievance redressal mechanism over since January 1, 2016."

3. The information sought for and the reply given to the Petitioner by the Public Information Officer reads as under:

<i>Information Required</i>	<i>Reply</i>
<i>1. Please state whether the UIDAI has formulated any policies or regulations regarding grievance redressal. If so, please provide a copy of the same</i>	<i>1. It is confirmed that relevant information is available in the public domain. Please visit UIDAI website www.uidai.gov.in.</i>
<i>2. Please state whether the UIDAI has hired an external organisation to handle grievance redressal on its behalf. If so please provide a copy of the contract with such external organisation</i>	<i>2. Yes, Further copy of contract can not be provided under section 8(1)(d) of the RTI Act, 2005.</i>
<i>3. If the UIDAI is handling grievance redressal internally, please state the number of personnel who have been assigned to the job, along with their ranks.</i>	<i>3. Information pertaining to the handling grievance redressal internally cannot be provided under section 8 (1)(d) of the RTI Act, 2005. Further, for more information you may visit UIDAI website www.uidai.gov.in.</i>
<i>4. Please state the number of complaints handled by the grievance redressal mechanism over since January 1, 2016."</i>	<i>4. It is intimated that queries in your RTI application does not fall under the purview of information as defined in Section 2(f) of the RTI Act, 2005.</i>



4. A perusal of the above table reveals that the Public information Officer denied information to query Nos.2, 3 and 4. Aggrieved by the denial of information, the Petitioner filed an appeal under Section 19 of the RTI Act before the First Appellate Authority. The First Appellate Authority rejected the appeal filed by the Petitioner *vide* Order dated 29.04.2022. The Petitioner, thereafter, filed a second appeal before the Central Information Commission (CIC) under Section 19(3) of the RTI Act. *Vide* the Order impugned herein in the present writ petition, the CIC had directed as under:

"Observations:

*Having perused the contents of the RTI application dated 07/03/2022, the Commission at the outset observed that the queries of the appellant were interrogative and inquisitive in nature. In such cases, the CPIO is not under the obligation to provide any clarification or opinion under the RTI Act, 2005 as it is in the nature of eliciting a clarification or opinion and does not get covered as information under section 2(f) of the RTI Act, 2005. In this context a reference was also made to the Hon'ble Supreme Court of India's observations in **CBSE v. Aditya Bandopadhyay, 2011 (8) SCC 497** wherein it was held as under:*

35..... "It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI



Act.”

Therefore, the Commission advised the appellant’s legal counsel to seek specific information duly conforming to section 2(f) of the RTI Act, 2005, in the future.

Apropos, the query no. 1, the legal counsel of the appellant sought for the specific web link of the relevant regulations/policies, therefore, the CPIO was directed to provide the same.

*Regarding query no. 2, the Commission noted that the CPIO ought to have provided the name of the external organizations handling its grievance redressal work as per the official records. It was further noted that the copy of contract entered into by the public authority with a private firm can only be provided once the contract is completed. If the contract is subsisting and has not been discharged, the bar of Section-8(1)(d) of the RTI Act, 2005 is attracted. Reliance in this regard was placed on the observations of the Division Bench of the Hon’ble Jharkhand High Court in **State of Jharkhand v. Navin Kumar Sinha and Anr., AIR 2008 Jhar 19**. The appellant has not specified the period for which this information was sought for in his main RTI application, therefore, it is deemed that the information is being sought for the current organization handling the grievance redressal work of UIDAI. Since the contract with the current external organization is subsisting and has not been discharged, the copy of the same cannot be provided to the appellant in view of the bar of Section-8(1)(d) of the RTI Act, 2005. Therefore, the CPIO is directed to provide only the name of the external organization handling the grievance redressal work.*

The Commission also opined that giving the figures of the staff handling the grievance redressal and no. of



complaints disposed of, as sought for in points no. 3 and 4 respectively is disclosable as per the RTI Act, 2005. The application of exemption clause Section-8(1)(e) of the RTI Act, 2005 to deny these figures has no merit and basis. Therefore, the CPIO is directed to give a revised reply on these points. The CPIO has indicated during the hearing that the data was retained only for a period of three years, therefore, the Commission directed him to provide the information as available in the records for the three year period and the total number of complaints as per the record.

Decision:

In view of the above, the Commission directs the CPIO to provide the specific web-link as sought for in query no. 1, name of the external organizations handling its grievance redressal work for query no. 2, the number of staff handling the grievance redressal work internally for query no. 3 and the number of complaints disposed of for query no. 4, to the appellant. While providing the said information, the CPIO shall ensure that the personal information of employees and sensitive information, if any, is redacted and masked as per Section-10 of the RTI Act, 2005. The directions of the Commission shall be complied with by the CPIO within 10 days of the receipt of this order."

5. The CIC held that the query No.1 stood answered as the website link of UIDAI i.e., www.uidai.gov.in had been duly provided to the Petitioner. In so far as query No.2 was concerned, the CIC held that the CPIO ought to have provided the name of the external organisation handling its grievance redressal work as per the official records. However, the CPIO denied provision of a copy of the contract entered into by UIDAI with a private firm to the Petitioner on the ground that the contract was subsisting. The CIC was of the opinion that since the contract was subsisting and had not



been discharged, the bar of Section 8(1)(d) of the RTI Act was attracted. The CIC placed reliance on a Judgment of the Division Bench of High Court of Jharkhand in the case of State of Jharkhand v. Navin Kumar Sinha and Anr., **AIR 2008 Jhar 19**. The CIC also observed that the Petitioner has not specified the period for which the information was sought in his main RTI application, therefore, it has to be presumed that the information is being sought by the Petitioner for the current organization handling the grievance redressal work of UIDAI. The CIC, therefore, held that since the contract with the current external organization is subsisting and has not been discharged, the copy of the contract cannot be provided to the Petitioner in view of the bar of Section 8(1)(d) of the RTI Act, 2005.

6. As far as query Nos.3 and 4 are concerned, the CIC set aside the opinion of the CPIO and directed the CPIO to furnish a revised reply on these points. The CPIO was directed to disclose the figures of the staff handling the grievance redressal work and the number of complaints that had been disposed of. The CPIO was directed to ensure that personal information of employees and sensitive information must be redacted, and redacted appropriately as per Section 10 of the RTI Act, 2005.

7. The portion of the Impugned Order dated 20.03.2023 passed by the Central Information Commission (CIC) refusing to disclose the copy of the contract entered into by the UIDAI with an external organization for handling grievance redressal on behalf of UIDAI is under challenge in the present writ petition.

8. Learned Counsel for the Petitioner contends that Section 23(2)(s) of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (*hereinafter referred to as 'Aadhaar Act'*) provides



for setting up facilitation centres and a grievance redressal mechanism for redressal of grievances of individuals, Registrars, enrolling agencies and other service providers. He states that these mechanisms are in the nature of public-private partnership agreements and these agreements fall within the definition of “information” under Section 2(f) of the RTI Act. He further contends that the copy of the agreement cannot come under exemption as per Section 8(1)(d) of the RTI Act because it does not include any commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party.

9. Reliance has been placed by the Petitioner on a decision of a Bench of three members of Central Information Commission (CIC) dated 03.09.2009 passed in **Appeal No. CIC/AT/A/2009/000964** in the case of Shri Navroz Mody vs. Mumbai Port Trust wherein the private-partnership agreement entered into between the Mumbai Port Trust and an external agency was directed to be disclosed.

10. *Per contra*, Learned Counsel for the Respondent contends that Section 23(2)(m) of the Aadhaar Act provides that the authority can specify by regulations, various processes relating to data management, security protocols and other technology safeguards under this Act. He places reliance on Section 54(2)(p) which gives power to the authority to make regulations regarding various processes relating to data management, security protocol and other technology safeguards under clause (m) of sub-section (2) of section 23.

11. Learned Counsel for the Respondent further draws attention of this Court to the Aadhaar (Data Security) Regulations, 2016 (*hereinafter referred to as ('Regulations, 2016')*) and more particularly to Regulations



3(1), 3(2)(m) and 3(2)(q) and contends that the authority may specify an information security policy setting out the technical and organizational measures to be adopted by the Authority and its personnel, as well as security measures to be adopted by the agencies, advisors, consultants and other service providers engaged by the Authority, Registrar, enrolling agency, requesting entities and authentication service agencies and the security policy may provide for measures for fraud prevention and effective remedies in case of fraud. He, therefore, states that the contract entered into by UIDAI with an external agency provides for such clauses which cannot be revealed. He also draws attention of this Court to Regulation 5(e) of the 2016 Regulations to contend that the agency and other service providers have to ensure that confidentiality obligations are maintained during the terms and on termination of the agreement. He, therefore, states that the information will come within the purview of Section 8(d) of the RTI Act, 2005 and the contract would come under the exemption clause.

12. Heard learned Counsel appearing for the Parties and perused the material on record.

13. Sections 2(f), 8(1)(d) and 8(1)(e) of the RTI Act, 2005, Sections 23(1), 23(2)(m), 23(2)(s) and 54(2)(p) of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 and Regulations 3(1), 3(2)(m), 3(2)(q) and 5(e) of the Aadhaar (Data Security) Regulations, 2016 read as under:

Sections 2(f), 8(1)(d) and 8(1)(e) of the RTI Act, 2005

2(f) information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models,



data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

8(1)(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.

8(1)(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.

Sections 23(1), 23(2)(m), 23(2)(s) and 54(2)(p) of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016

23(1) The Authority shall develop the policy, procedure and systems for issuing Aadhaar numbers to individuals and perform authentication thereof under this Act.

23(2)(m) specifying, by regulations, various processes relating to data management, security protocols and other technology safeguards under this Act.

23(2)(s) setting up facilitation centres and grievance redressal mechanism for redressal of grievances of individuals, Registrars, enrolling agencies and other service providers.

54(2)(p) various processes relating to data management, security protocol and other technology safeguards under clause (m) of sub-section (2) of section 23.



Regulations 3(1), 3(2)(m), 3(2)(q) and 5(e) of the Aadhaar (Data Security) Regulations, 2016

3(1) The authority may specify an information security policy setting out inter alia the technical and organisational measures to be adopted by the Authority and its personnel, and also security measures to be adopted by the agencies, advisors, consultants and other service providers engaged by the Authority, Registrar, enrolling agency, requesting entities and authentication service agencies.

3(2)(m) measures for fraud prevention and effective remedies in case of fraud.

3(2)(q) inclusion of security and confidentiality obligations in the agreements or arrangements with the agencies, consultants, advisors or other persons engaged by the Authority.

5(e) ensure confidentiality obligations are maintained during the term and on termination of the agreement.

14. A perusal of the abovementioned Section 2(f) of the RTI Act provides that “information” means any material in any form, including contracts relating to any private body which can be accessed by a public authority under any other law for the time being in force. It is not in dispute that the UIDAI is a public authority from whom the information is sought and, therefore, UIDAI evidently comes within the ambit of the RTI Act.

15. The contract entered into by the UIDAI with an external organization shall also, therefore, be considered as “information” which will come within the ambit of RTI Act. The contract which has been entered into by the UIDAI with an external organization for the purpose of handling grievance



redressal on its behalf is, therefore, information which can be, and should be, provided under the RTI Act, as long as this information does not fall under any of the exceptions given in Section 8 of the RTI Act.

16. Section 8(1)(d) of the RTI Act provides that information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party is exempted from the purview of the definition of information given under Section 2(f) of the RTI Act. If the competent authority is satisfied that larger public interest warrants the disclosure of such information, then such information can be disclosed, provided that it does not include trade secrets or intellectual property which can have the impact of harming the competitive position of a third party.

17. Section 23 of the Aadhaar Act stipulates that the UIDAI, which is the authority under the Aadhaar Act, shall develop the policy, procedure and systems for issuing Aadhaar numbers to individuals and perform authentication thereof under this Act and, for this purpose, it can specify, by way of regulations, various processes relating to data management, security protocols and other technology safeguards. It has also to set up facilitation centres and grievance redressal mechanism for redressal of grievances of individuals, Registrars, enrolling agencies and other service providers. The power to make regulations for the abovementioned purposes is given under Section 54 of the Aadhaar Act.

18. The 2016 Regulations mandate that UIDAI must specify an information security policy setting out the technical and organizational measures to be adopted by the Authority and its personnel, as well as the security measures to be adopted by the agencies, advisors, consultants and



other service providers engaged by the UIDAI. Regulation 3(2)(m) provides that security policy should provide for measures for fraud prevention and effective remedies in case of fraud.

19. Having laid down the above, the short issue which arises for consideration before this Court is whether directing the UIDAI to disclose the contract will lead to revelation of certain information which may harm commercial confidence, trade secrets or intellectual property and the competitive position of a third party.

20. The Central Information Commission has directed UIDAI to provide the name of the external organization handling the grievance redressal work for UIDAI. This Court does not see any reason as to why the contracts entered into between the Respondent and the third party cannot be given under the Right to Information Act, 2005. The contracts have been entered into pursuant to the tenders and, therefore, it is necessary that there is a complete transparency regarding the way these contracts are awarded. The Petitioner has not sought for the details of the individuals which the external organization would be handling. However, a reading of Regulation 3(2)(m) mandates that the security policy may provide for the requirement for entering into information disclosure agreements with the personnel.

21. This Court is of the opinion that all the agreements entered into between the UIDAI and the external organisations which were engaged in handling grievance redressal mechanism of the UIDAI can be provided excepting the non-disclosure agreements entered into with the personnel and also the details of individuals who will be covered under the agreement. The confidentiality is to be maintained by the agencies only for the purpose of ensuring that the details of the individuals are not revealed to a third party.



22. The entire contract need not be kept a secret and there is nothing inappropriate in disclosing of the agreements more so when the recent trend is to encourage public participation in such ventures. Further, transparency forms the core of good governance, and promotes efficiency and effectiveness in the functioning of the government. The abovesaid details can be redacted from the agreement and the copies of the agreement, after redacting such portions, can be provided to the Petitioner.

23. In view of the above, the Impugned Order stands modified accordingly.

24. The writ petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 05, 2023

S. Zakir