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From: TheHumanity Humanity <thehumanity@rediffmail.com>
To: agamiorissa@yahoogroups.com; focusorissa@yahoogroups.com
Sent: Thu, 28 June, 2007 11:20:43 AM
Subject: [focusorissa] memo to CM

Dear friends

Below is the memorandum submitted to the Chief Minister for effective implementation of RTI Act. I may request you to download the same and send it to the CM.

Regards

Pradip

To

**Mr. Nabin pattanaik
Hon'ble Chief Minister
Govt. of Orissa
Bhubaneswar**

Sub- Memorandum demanding a drastic overhaul of the provisions of Orissa RTI Rules-2005 ultra vires the parent law along with necessary administrative measures to be taken by the Govt. for effective implementation of RTI Act in the State.

Hon'ble Sir,

You might know, Right to Food Campaign is a consortium of civil society organisations which has ever since been spearheading the campaign for effective implementation of Right to Information Act in the State. As a part of this ongoing campaign we had organized a State level Convention of RTI Crusaders of Orissa at Red Cross Bhawan, Bhubaneswar on last 18th and 19th June'07 for a stock-taking of progress of RTI in Orissa, with special focus on how the State RTI Rules-2005 was faring and how the State Information Commission was functioning. The participants of this event hailed from cross sections of Orissa's civil society, such as conscious citizens, people's representatives, Govt. officials, Panchayatiraj leaders and women activists, and also hailed from different districts like Bolangir, Nuapara, Koraput, Jagatsinghpur, Kendrapara, Cuttack, Puri, Balasore and Khurda. The prominent speakers who placed their views in course of Convention's deliberations were Mr. Panchanan Kanungo former Minister of State for Finance, Mr. Gopal Nanda, Director State Vigilance, Mr. Brundaban Majhi MLA, Justice Choudhury Sri Pratap K. Mishra, Prof. Pradeep Sarkar of Law Faculty of Utkal University, Mrs. Sulata Deo Zilla Parishad Member Jajpur and Mr.D.K.Ray former Income Tax Commissioner. Prof. Radha Mohan State Information Commissioner who was present in the post-lunch session on the 2nd day spoke about his views on the agenda and also took a copy of the draft on the suggestions made by the house for the reform of Orissa RTI Rules and conduct of State Information Commission in keeping with the letter and spirit of the parent law.

Based upon the consensus of the house arrived at following the two-day long deliberations, we put forward the following two sets of suggestions for your kind perusal and necessary action; (A) the first set relates to what should be done to bring about the desirable reform in the Orissa RTI

Rules 2005, and (B) the second set relates to how the public authorities of the State should change their mode of behaviour as required of them in the new information regime.

A. Demands on the need for reform of Orissa RTI Rules:

1. The prescription of appeal fees (1st Appeal and 2nd Appeal) in Orissa RTI Rules which are extraneous in nature and lie outside the scope of the parent Act need to be struck off from the Orissa RTI Rules so as to bring the schedule on costs and fees in harmony with the Section 27 of RTI Act 2005. The said section of the Act has categorically specified only four kinds of fees [such as towards the cost of information on suo motu disclosures under Section 4(4), application fee under Section 6(1), cost of providing information under Section 7(1) and cost of print or electronic medium under Section 7(5)], beyond which no appropriate Government or competent authority can impose any other fee.

2. The Rule-10 (Calculation of cost of Damage) of Orissa RTI Rules-2005 which is out and out a draconian provision needs to be withdrawn. According to this queer provision, if a citizen applied for a piece of sample of any material structure and consequently any damage occurs to the said structure in the process of collection of its sample by the concerned PIO, then the resultant damage would have to be compensated by the applicant citizen. While the RTI Act stipulates the matter relating to compensation just in an opposite vein [for instance, the Section 19(8b) of the RTI Act obliges the concerned public authority to compensate for any loss or detriment which a complainant- citizen might have suffered due to mishandling by them of his/her request for information] , it is quite strange the Orissa RTI Rules still bears this outrageously illegal and anti-people provision.

3. The Rule-12 (Deposit of Expenditure) of Orissa RTI Rules is ultra vires the parent Act and needs to be removed. Because it says that an appellant while submitting his/her appeal before the State Information Commission has to deposit in advance the expenditures that may be required for production of evidence/witness in course of the adjudication of his/her appeal. This provision flagrantly violates the categorical injunction given under the Section 19(5) and Section 20(1) of the RTI Act, which says that in any appeal proceedings the onus or burden of proof shall lie on PIO only.

4. The Rule-13 (Realisation of penalties and damage) of the Orissa RTI Rules is another draconian provision, seemingly a spillover from the colonial regime of British raj. It provides for the recovery of any pending dues from an applicant-citizen just in the manner in which the arrears of land revenue are realized by the revenue administration of the Government from the defaulter citizens. The concerned law i.e. Orissa Public Demands Recovery Act 1962 says that the Government can auction off the landed property of a defaulter citizen or alternatively put him under civil imprisonment extending from 6 weeks to 6 months, to recover the arrears, if any, if the concerned citizen fails to pay the dues within 30 days of the notice made to him. As a matter of fact, the RTI Act nowhere provides any room for charging any penalty or compensation against the citizen. Rather as mentioned already, the law upholds just the opposite principle i.e. penalty or compensation if any shall have to be paid by the PIO or public authority, as the case may be [Vide Sections 19 and 20]. Thus the obnoxious provision made under the Rule-13 of Orissa RTI Rules 2005, which is so to say an outrageous rape on the sanctity of the mother law should therefore be torn off.

5. The provision made under the Orissa Rules-2005 (Vide- Rule 4) that the Applicant has to satisfy the PIO about his/her identity before his/her application is considered, is ultra vires the

parent Act and needs to be withdrawn immediately. The Section 6(2) of the RTI Act categorically says that an applicant 'shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.'

6). The provision made under Sub-Rule 2(e) on the "identity" of an applicant defined as "an evidence to show the citizenship like an electoral photo identity card/passport or any other document which can satisfy the authority about the citizenship of the person" is ultra vires the Section 6(2) of the RTI Act for the aforesaid reason and should therefore be struck off.

7). The Form-A (Application for Information) under Orissa Rules is too long, complex and over-demanding one, which would not only frighten away the ordinary members of the public from applying for information under the Act, but is also ultra vires the mother law. The Column-2 asking for Father/Spouse name, Column-3 asking for permanent address and Column-4 asking for particulars in respect of identity of an Applicant are by nature very much the personal details, the disclosure of which by an applicant before the PIO has been forbidden under the Section 6(2) of the RTI Act. The Form A (Application Form), if at all one such form is necessary, should therefore be drastically revised into a much shorter one containing only the name and contact details of the applicant along with the kind of the information wanted.

8). Any attempt to prescribe a compulsory, written application form, as is imposed by the Orissa RTI Rules is ultra vires the RTI Act and should therefore be immediately removed. Because the Section 6(1b) of the Act allows the citizens to make even oral requests for information and Section 7(9) obliges a PIO to provide the information to the applicant in the very form in which it has been asked for. Moreover, as is well-known, the Central Government has not prescribed any Application Form at all, and there seems to be no problem due to its absence.

The Central Information Commission also in their Decision dated 30th Jan'06 [Vide Review Application No.CIC/C/1/2006 of the Applicant Ms.Madhu Bhaduri vs. Public Authority-Director (LM), DDA, Delhi] has affirmed the view, "In the RTI Act, no Department is proscribed from designing an application form that facilitates identification and therefore ease of access to information sought. It cannot be treated as a substitute for a simple application as laid down in Sec 6(1). . Its absence cannot be grounds for rejection of an application" . Thus the Application Form, if at all to be prescribed, should be made optional, simple to fill up, and user-friendly one. Therefore no application for information should be rejected on the ground as provided currently under Form-C of Orissa Rules that the Application Form has not been filled up "complete in all respects".

9). The RTI Act in its section-7(5) has categorically said that no fee shall be charged from the BPL persons for application, cost of providing the information and cost of the print or electronic medium. But Orissa Rules have allowed the exemption of application fee only {vide Rule-4(1)}, while depriving the BPL families of their lawful right to avail the exemption of other two fees. Since any State Rule can not take away a people's right which the Central Act has provided, the Orissa Rules as it stands today is not only out and out ultra vires but also anti-poor.

10). The Form-C (Intimation of Rejection) as it stands now is not only prohibitive of people's right to information, but also ultra vires the mother law. It needs to be struck off. The Section 7(1) of the RTI Act says that a request for information can be rejected 'for any of the reasons specified in Sections 8 and 9' only. But the Form-C in its column (i) without specifying the particular reasons under the said Sections, mentions just in a blanket, roughshod manner that 'it comes under exempted category covered under Sections 8 and 9 of the Act'. Similarly, the

Col.(iv) spaciouly saying that 'The information is contained in published material available to public' and quoting it as a ground for rejection carries no meaning for the citizen at all. Again, the Column (vi) saying, 'The information sought for is prohibited as per section 24(4) of the Act' is negatively slanted against the citizen's quest for information, since the said Section permits the information relating to cases of corruption and human rights violation to be disclosed albeit after getting the approval of the Information Commission. So instead of saying just 'no', the said column might say, 'Your application has been forwarded to the Information Commission for their opinion'. The Column (vii) saying that 'The information would cause unwarranted invasion of privacy of any person' is absolutely redundant, since this factor is covered under Section 8(1j), already taken care of by the Column (i) mentioned above. Thus the Form C is ultra vires the mother Act for the reasons already shown above.

11) The mode of payment for application Fee under Orissa RTI Rules is either by cash or Treasury Challan only. Making treasury challan is a very difficult task in any State. Treasury offices are basically situated in urban areas or semi township area or at sub-divisional head quarters. For example, a person residing in remote area of Khaprakhol Block of Bolangir district has to come all the way covering around 40 km to Patnagarh, the sub-divisional head quarters to prepare the Challan. The job of filling up the challan form also requires the applicant to know the details about the account head to be mentioned but no citizen has any knowledge about it. This provision is meant to harass the common citizens and deprives them of their legitimate right to pay the fees in a user-friendly manner. So we demand that the provision for mode of payment for application fee should be through multiple options, such as Bank Draft, Money Order or Postal Order etc. in addition to treasury challan.

12) Similarly absurd is the provision for the single medium for payment of fees for cost of information i.e. only by cash. This provision is not only absurd but also anti-people. For Example, a person residing in Kerala sought an information from Orissa Secretariat through application Form-A. Then a letter from PIO will be sent to him to get the information after depositing the necessary amount in cash only. That person has to come all the way spending thousands of rupees to get the information the cost of which might be, say only ten rupees, since for getting the information from any office under the State Govt of Orissa one has to deposit the required amount by cash only. While the Central Govt. and other State Govts. have made several alternative provisions like bank Draft, Postal order and Money Order as the mode of payment, the Orissa RTI Rules has not made any such provisions. So we urge upon the State Govt. to make provision for a variety of modes of payment of the fees in connection with RTI Act.

B. Demands for attitudinal and behavioral change of the Public Information Officers and Public Authorities of the State Govt

13) The State Govt. should organize awareness, training and workshops etc. and publish IEC materials with a view to educating the people about the Act involving the civil society organisations as per Section 26 of the Act in stead of passing the burden of it to the State Information Commission, whose job is not to organize such extension programmes but to act as the adjudicating, monitoring and reporting authority vis-à-vis the public authorities of the State.

14) Information provided under the Act by the public authorities must be authenticated with the seal of the office.

15) The cost of information as currently prevalent should be further subsidized in order to enable the bulk of the citizens of the State who are poor and backward to avail their right to information.

In this context, we demand that the price of photocopy and floppy and CD should be reduced to 50 paise, Rs.10/- and Rs. 10/- per piece respectively. Presently, the price of photocopy per piece is Re.2/- , while the price of CD and Floopy is Rs. 50/- each.

16) The Govt should bring out afresh a training curriculum on RTI for the officers of the State in tune with Right to Information Act and latter's thrust on recognizing the citizens as the sovereign authority.

17) Each Public Authority should be directed to make suo moto disclosure of all the relevant information and that too in a detail manner as required under Section 4 of the Act at the earliest.

18) The Govt. should direct all the PIOs to behave properly to the citizens seeking information.

Under the circumstances, you are requested to take necessary steps to address to the above demands so as to ensure an effective implementation of the RTI Act 2005 in the State.

Thanking you

Yours sincerely,

Pradip Pradhan

State Convener