

To
The Honble Governor, Govt. of Orissa
Raj Bhawan, Bhubaneswar

**Sub- Complaint against the Chief Orissa Information Commissioner under
Section 17(3) of RTI Act 2005**

Hon'ble Sir,

Right to Food Campaign is a consortium of Civil Society Organisations spearheading the campaign for effective implementation of Right to Information Act 2005 in the State.

1) As you might know, the Section 17(3) of RTI Act 2005 confers the power on Governor to remove the State Chief Information Commissioner or the State Information Commissioner, as the case may be, forthwith from his office on 6 numbers of grounds, including the ground that the Commissioner concerned is 'unfit to continue in office by reason of infirmity of mind or body'. Now the time has come when the Governor should exercise this power in respect of the Chief Orissa Information Commissioner for omissions and commissions of serious nature amounting to his 'infirmity of mind' and thereby save a statutory body like Orissa Information Commission from increasing debility and degradation.

2) Now we do bring to your kind notice the following reasons on account of which the Hon'ble Governor ought to exercise his disciplining authority against the Chief Orissa Information Commissioner as required under Section 17(3) of RTI Act.

(a) Annual Reports or heaps of non-sense:

The Section 25(3) of Act requires a State Commission to prepare an Annual Report on the implementation of the provisions of the Act in the concerned State. It says, "Each report shall state in respect of the year to which the report relates,—

- (a) the number of requests made to each public authority;
- (b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;
- (c) the number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals;
- (d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
- (e) the amount of charges collected by each public authority under this Act;
- (f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;
- (g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or

common law or any other matter relevant for operationalising the right to access information.

The State Commission has so far brought out 3 Annual Reports, each for the years 2005-06, 2006-07 and 2007-08, which are available on the website of the Commission. As required under Section 25(4) these reports might have already been laid before Orissa Legislative Assembly. However, if one scans these Reports, he or she would be simply astonished to find that none of the above mentioned obligatory topics has been given any minimal treatment in any of the Annual Reports. Instead each Annual Report is filled with a huge amount of abominable stuff, which shouldn't under any circumstances enter the Annual Report of a statutory body like State Information Commission, such as big, big photographs of Commissioners inaugurating or addressing ceremonial events, role of Commission as a grant disbursing agency, tie-up with arbitrarily selected band of Government and non-Government agencies and imaginative, inflated figures without any supporting break-up whatsoever. The overall impression about the Commission which one gets after reading its Reports is that the Commission is a mega corporate body lavishly funding this or that activity organized by the chosen government and non-government agencies, the Chief Information Commissioner is the CEO of this corporate body and Commissioners are the celebrities of the first order in the State. Whatever scrappy data relating relevant matters have been mentioned in course of the Report are simply incomprehensible. For instance, the Annual Report for 2006-07 speaking about the mega success of the Commission funded Sookhana Shibirs held during November 2006 across the State says, *"About 61 thousand people visited the "Sookhana Shibirs" held all over the State and 38800 R.T.I. applications were filed during the period mainly on the issues like allotment of houses under Indira Awas Yojana, B.P.L. Card issue, Land matters, Public Distribution System etc. The efforts of the State Commission seemed to have created the initial effect in a positive manner"*. But without there being any break up of the figures like 61,000 visitors or 38800 RTI applications, how can a reader take for granted the authenticity of the same?

Thus, our first contention is that the Commission have conspicuously failed to discharge its statutory obligation to prepare the Annual Reports in the manner as required under Section 25(3) of the Act, and instead produced so-called Reports which are unbecoming and derogatory of the statutory stature of the State Information Commission.

(b) A case of Ominous Silence:

Though not mandated for the purpose the State Information Commission in the Annual Reports prepared by them have made abundant mention of what happened on the front of RTI in other countries of the world, judicial pronouncements by Supreme Court and RTI movements in other parts of the country. But coming home it has utterly failed to report, even in a cursory manner, a legislative milestone like Orissa RTI (Amendment) Rules 2006 which on passed by Orissa Legislative Assembly was duly notified on Orissa Gazette on 29th May 2006. As is well known, under the impact of constant campaign by civil society groups coupled with a strong demand by a section of MLAs the Orissa Assembly had passed the above Amendment Rules which not only drastically reduced the exorbitant fee regime of the initial notification but also mandated the upkeep of a Register for citizens intending to inspect documents under Section 4 of the Act, right of the citizens to inspect the register maintained applications made under Section 6(1) of the Act and operationalisation of email for making application and supplying information under the Act. However, none of the

Annual Reports made public by the Commission has mentioned even barely the Orissa RTI (Amendment) Rules 2006. Not only that. The Application Form, which was amended by the said Amendment Rules by way of incorporation of the provision for email into it, has so far not been recognised, let alone put into use, by the Commission. Despite repeated reminder about this lapse the Commission still continues to display the older application form on its website. Thus the Annual Reports of the Commission have maintained an ominous silence about an important legislative reform brought out by the Orissa Assembly, which is uncharacteristic of statutory body like Orissa Information Commission. Such ominous silence might be due to mala fide motive or ignorance of the Chief State Information Commissioner. Either way it speaks volumes about the ‘infirmity of mind’ of the Chief State Information Commissioner, and therefore his liability to be removed from the office forthwith.

(c) Spread of Misleading and False Information:

According to RTI Act, the dissemination of incomplete, misleading or false information by a public authority is a wrong that attracts penalty clause (Sections 18 and 20). The State Information Commission is supposed to exercise its penal powers against the PIOs who are guilty of the violation of above kind. But on perusal of the Annual Report for 2005-06 prepared by the Commission, one gets convinced that the State Information Commission deserves to be punished first of all on account of misleading and false information spread by it. For instance, on page no.11 the Annual Report for 2005-06 says, *But before this Act was passed by Indian Parliament, manystates had enacted their own legislation enabling citizens to have access to information as a matter of right. Table 2 provides information about various States including Orissa enacting legislation to provide a framework to impart information to citizens*”. Then on Page-13, the following Table has been presented-

RIGHT TO INFORMATION LEGISLATION IN INDIA

Name of the State	Year of passing legislation
GOA	1997
TAMIL NADU	1997
MADHYA PRADESH	1998
KARNATAKA	2000
MAHARASHTRA	2000
RAJASTHAN	2000
ORISSA	2002

Source: Page 13, Annual Report for 2005-06 by Orissa Information Commission

The above Table entitled ‘Right To Information Legislation in India’ mentions inter alia that Orissa had enacted one Orissa Right To Information Act 2002. But as every conscious citizen knows it is a white lie. Since the Report mentions in more than one place about Orissa RTI Act 2002, it is presumed that such a mention was not a typographical error inadvertently committed by the Chief Orissa Information Commissioner, but an article of his conviction. Besides the above Table while giving a false information about non-existent Orissa RTI Act 2002 has, as a matter of fact, missed to mention 3 other States which had really enacted RTI Act at their level, such as Delhi (2001), Assam (2001) and J&K (2004).

After going through the above Report, the undersigned, out of curiosity, applied to the Public Information Officer of Orissa Information Commission for getting a copy of the so-called Orissa RTI Act 2002. Though more than one month has passed, the PIO has not supplied me any information in response. Concurrently the undersigned also applied to the PIO, Dept. of Law, Govt. of Orissa seeking a copy of Orissa RTI Act 2002. The PIO in response informed the undersigned that no such Act had ever been passed in Orissa in 2002. A similar response was also received from PIO, Orissa Legislative Assembly. Thus it is pretty clear that the Commission has published misleading and false information in the Annual Report of 2005-06. Under the circumstances, it is simply blasphemous that a statutory body like Orissa Information Commission indulge in the spread of such outrageously false and misleading information through its mandatory documents like Annual Report.

Since the ultimate destination of the Annual Reports prepared by the State Information Commission is the Orissa Legislative Assembly, it can be safely told that the Commission has also misled the august House and thereby breached its privilege by way of dishing out misleading and false information through its Annual Reports.

The dissemination of false and misleading information by the Commission has led to disastrous consequence for several public authorities too. For instance, following the footsteps of the Commission the State Institute of Rural Development, a training wing of Panchayati Raj Dept. has, in its training manual on "Transparency and Accountability" meant for PRI functionaries, reproduced verbatim the mention about Orissa RTI Act 2002. Thus thousands and thousands of PRI functionaries like Sarpanchs, Ward Members, GP Secretaries and Executive Officers who are the target group of the proposed training programme are all likely to be confused and misled by the patently false information that has already trickled down from the State Information Commission to the SIRD via Dept. of Panchayati Raj. Be that as it may, the Chief State Information Commissioner, who is the principal architect of the ill drafted Annual Reports deserves to be punished for disseminating false and misleading information among both Government agencies and public at large.

3) We have stated above only a few cases of omissions and commissions showing gross inefficiency of the Orissa Information Commission, especially of the Chief State Information Commissioner as revealed from the Annual Reports authored by them. If opportunity is allowed to the undersigned, we can show you many, many instances of such type which unmistakably point to the 'infirmity of mind' the Chief Commissioner suffers from and therefore makes him liable to be removed from his office forthwith as warranted under Section 17(3) of RTI Act 2005.

Looking forward to a judicious act on your part to save the Orissa Information Commission from further disgrace and infamy, which the Chief State Information Commissioner on account of his 'infirmity of mind' is likely to push to.

With regards

Yours faithfully

Pradip Pradhan
State Convener