

To
The Chairman,
2nd Administrative Reforms Commission,
Govt. of India,
New Delhi

SUB: A Memorandum on suggestions for reforms in the manner of implementation of RTI Act in the State of Orissa, presented before the Public Hearing organized by 2nd Administrative Reforms Commission at Jayadev Bhawan, Bhubaneswar on 12th April '07

Dear Sir,

Right to Food Campaign, Orissa, a network of Civil Society Groups is spearheading the campaign on effective implementation of Right to Information Act 2005 in the State ever since the Act came into existence. During this period of more than one and half years, the organization has been constantly and meticulously pointing out the provisions of Orissa RTI Rules framed by the State, which in our opinion are not only anti-people but ultra vires the parent Act and demanding their complete withdrawal. Moreover, in a constructive spirit, the organization has also presented on a number of occasions what should be the alternative, model RTI Rules under the Act in the context of a typically poor and backward society of Orissa. Besides we have also critiqued the manner of functioning of State Information Commission ever since it started operating w.e.f. 20th Nov. 2005, which, in our opinion is equally questionable and which stands in a dire need of drastic reform, if at all the RTI Act is to be translated into reality in its letter and spirit.

A. Why Orissa RTI Rules are ultra vires the parent law?

1). The Section 27 of RTI 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 electronic medium under Section 7(5)], beyond which no appropriate Government or competent authority can impose any other. But the Orissa RTI Rules-2005 have prescribed certain extraneous fees which lie outside the scope of the parent Act, such as fees for 1st and 2nd appeals under its Rule-7. **Thus the appeal fees, which are extraneous in nature need to be struck off from the Orissa RTI Rules so as bring its schedule on costs and fees in harmony with the Sections 27 of the RTI Act 2005.**

2). The Rule-10 (Calculation of cost of Damage) of Orissa RTI Rules-2005 is out and out a draconian provision which has no parallel anywhere in the world. It says that if a citizen applied for a piece of sample of any material structure and if 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], **the Rule 10 of Orissa RTI Rules is simply reminiscent of colonial days of East India Company and must therefore be immediately abolished.**

3). The Rule-12 (Deposit of Expenditure) of Orissa RTI Rules is another detestable provision, which is ultra vires the parent Act. 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. The contradictory provision made under **the Rule 12 of Orissa RTI Rules 2005 should therefore be removed immediately.**

4). The Rule-13 (Realisation of penalties and damage) of the Orissa RTI Rules, is another draconian provision seemingly a spill-over 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 without any delay.**

5). The provision made under **Sub-Rule 2 of Rule-4 under Orissa RTI Rules** that the Applicant has to satisfy the PIO about his/her identity before his/her application is considered, is ultra vires the parent Act, since 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.’ **Sub-Rule 2 of Rule-4 under Orissa RTI Rules should therefore be struck off.**

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, which in its Section 6(1b) allows the citizens to make even oral requests for information and in its 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. Thus the Application Form, if at all to be prescribed, should be made optional, simple to fill up, and user-friendly one.

The Central Information Commission also in their Decision dated 30th Jan 6 [Vide Review Application No.CIC/C/1/2006 of the Applicant MsMadhu 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 for, **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 squarely, but also ultra vires the mother law. 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' 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 in stead 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. 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 kms to Patnagarh, the sub-divisional head quarters to get the Challan. The 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 deprive them of their legitimate right to pay the fees in a most user friendly manner. While the central Govt. and other state Govts. have made provision for Bank Draft, Money Order or IPO etc, the Govt. of Orissa has not made any such provision. **Thus the present mode of payment of application fee in Orissa is not at all beneficial to the overwhelming bulk of Orissa's poor population.**

12) Similarly absurd is the provision for the single medium for payment of remaining fees 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 amount in cash. 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. Because, for getting the information from any office, 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 have not made any such provision.**

B. The objectionable style of functioning of State Information Commission

1) Looking at the way the Orissa Information Commission has functioned so far, we see that its role is not only utterly confusing, but also violative of both letter and spirit of the RTI Act. The more-than-a-year-long practice of Orissa Information Commission points in no uncertain terms to their lack of understanding of the RTI Act or even of the Orissa RTI Rules made thereunder. This fact has been evident from a series of decisions pronounced by them after disposing of the appeals and complaints made by the aggrieved citizens from different parts of the State. **We cite below a few examples of such objectionable decisions.**

a) The first example relates to Section-4 of the RTI Act. According to Orissa RTI (Amendment) Rules-2006, “each public authority shall maintain a register for day to day record of the members of public who visit its office in connection with accessing or inspecting suo motu information proactively disclosed by the said authority under Section-4 of the RTI Act”. In keeping with such a provision, a group of social activists working with Deogarh Pressure Group (Deogarh is a small, underdeveloped district in Orissa) had visited on 7.2.2006 the offices of Tahasildar, Forest Ranger (Kendu leaf) and Police Station located at Pallahada in adjacent Anugul district for inspecting certain suo motu information as permissible under Section 4 of the Act. But they were denied access to such information by the officers of the said offices. Being deprived of their legitimate right, the groups lodged their complaints before the State Information Commission under Section-18 of the RTI Act. But without giving any opportunity for personal hearing to the complainants, both the Commissioners rejected the said complaints (complaint nos.-3, 4, 5, 6 and 7 of 2006) on 20.6.06 on the ground that **“the violation alleged in the complaint petition relates to the provisions of Section 4 of Right to Information Act, 2005 dealing with the obligation of the Public Authority about voluntary disclosure of certain information. The above can only be monitored by the State Commission u/s 25(5) of the Right to Information Act, 2005 the above will be taken care of in the Administrative wing. As the complaint petition does not come within the legal purview of Section-18 of the RTI Act, 2005, the same is rejected.”** *It shows that the most important provision of the RTI Act i.e. Section 4 has been given a good-bye by the Commission.*

b) The second example relates to the verdict of State Information Commission on fees applicable to BPL families. After hearing the case of a BPL person Mr. Rabindra Nath Dash of Mayurbhanj district (Case Nos. 11 and 12) in July 2006 the Commissioner ruled that the BPL persons would have to pay all kinds of fees except the application fee. In its verdict, the Commission stated, **“the complainant was of the wrong notion that he being a BPL card holder is not supposed to pay any fee for copies of the information needed by him. Law is clear that no application fee shall be charged to an information seeker belonging to BPL category.”** But the Section-7(5) of the Act in contrast clearly says that the fees prescribed under Sub-section-1 of section-6 (application fee), Sub-section-1 of Section 7 (fee for information) and Subsection- 5 of Section 7 (cost of information in printed or electronics format) shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Govt. Even in the FAQ (Frequent Asked Question) put on the website of the Govt. of Orissa, it is mentioned that **“no fee will be charged from the people below the poverty line”**. **But the Commission has not bothered at all about all these provisions and explanations before delivering the above verdict directed against the BPL families, which is patently false and arbitrary.**

c) **The third example relates to the onus of proof.** After hearing a case on 6.7.2006 in Mr. Albis Minj vs Sundaragarh District Cooperative Bank, the two Commissioners have stated, **“The burden of proof to establish the fact of refusal is on the complainant”**. But the Section 19(5) of the Act says, *“in any appeal proceedings, the onus to prove that a denial of request was justified shall be on the Central Public Information Office or State Public Information Officer as the case may be who denied the request.”* Again the same principle is reiterated in the proviso to Section 20(1) of the Act, *“The burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public information Officer as the case may be.”*

d) **The fourth example relates to the Commission’s violation of the Orissa Information Commission (procedure of appeal) Rules 2006,** notified by the State Government itself. **Its Rule-6 says that the Commission can never reject any complaint or appeal without giving the opportunity for personal hearing to the complainant.** Moreover, the Resolution adopted in the National Conference on Right to Information organized by Central Information Commission in New Delhi in October last underlined inter alia the principle that the Information Commissions must give opportunity for personal hearing to the complainant and appellant before rejecting their case. But as already shown in our first example, the Commission rejected the complaints made under Section 18 by the activists of Deogarh Pressure Group without giving any opportunity of hearing to the complainants. Another such instance is the weird decision of the Commission in CC No.8/2006 lodged by Mr.Rabi Ramesh Mohanty. Mr.Mohanty had applied under RTI Act to the Registrar of Orissa High Court to know the deadline within which his case would be disposed of,

and having got no response from the Registrar of the High Court he lodged a complaint under Section 18 against the latter before the Commission. But the Commission in their two-line decision on 7.6.06 rejected the complaint giving the plea that it didn't come under their jurisdiction. **The point worth noting is that the Commission didn't afford any opportunity of hearing to the complainant while rejecting the complaint.** Thus the Orissa Information Commission is making an arbitrary interpretation of a crucial provision of the RTI Act, which not only violates the Act and State Rules but goes diametrically opposite to the consensus of the RTI bodies articulated at national level. **And at a practical level we notice that the Commission is simply throwing into the dustbin numbers of complaints without even acknowledging their receipt to the senders.**

2) Lack of transparency in functioning of State Information Commission:

As indicated already, each public authority is obligated under Section 4 of the Act to maintain and voluntarily disclose 17 categories of records held by them in a duly catalogued and indexed manner and such records pertain among others to the particulars of its organization, functions and duties, the powers and duties of its officers and employees, the procedures followed by them in the decision-making process, their monthly remuneration and allowances, the names, designations and other particulars of PIOs etc. And such proactive disclosures need to be placed on the website of the concerned public authority and as well be made available in the form of printed manuals, which any interested citizen can inspect and ask for the copy of an extract there-from. Faced with raging public protest in the State, after one year and four months **the State Information Commission has made some suo moto disclosure of information in the last week of March'07 on its website. But if some body takes a close look at the said information, it would be found that the Commission has not given detailed information in some cases where necessary, while it has given false and misleading information in some other matters.**

3) State Information Commission behaving as a fraudulent Funding Agency:

Contrary to its role as a quasi-judicial body as defined by the RTI Act, the Orissa Information Commission during the past year turned itself into a funding agency of typical sort, engaged in collection of money from different sources and distribution of the same in the form of grant-in-aid to their pet agencies and NGOs in the name of awareness campaign. Ironically enough, the Commission did all this in a clandestine manner and even violating the common minimum norms of financial transaction by a public authority that are in place in the State. Not only that. Shamelessly enough, both the Commissioners were found inaugurating with much pomp and ceremony the so-called awareness events like RTI camps, workshops and seminars funded by them. Moreover, through these so-called awareness events, the Commission ensured that only a skewed and truncated version of RTI Act that suited their prejudices was disseminated to the public in place of a comprehensive understanding. It is worth mentioning here that the Act nowhere entrusts the Commission with the job of conducting any awareness campaign by itself and get thereby involved in financial transactions related to it. Rather the Section 26 of the RTI Act has entrusted the Central Govt. or a State Government as the case may be to conduct all sorts of awareness and sensitisation programmes to spread the message of RTI among the public at large. Once the State Commission got bogged down in the financial deals and petty organizational miscellany, the Commission lost its basic character as a quasi-judicial body to dispense justice to the complainants and appellants, and took on the nefarious role of a fund-raiser and a fund-giver. And this singular fact explains why the State Commission has spectacularly failed in performing its due role as a civil court on one hand and a monitor of the implementation of the Act at various levels of governance on the other.

You are requested to take up the above matters with the State Government of Orissa and State Information Commission so as to ensure a drastic amendment of anti-people and illegitimate Orissa RTI Rules 2005 and a thoroughgoing overhaul of the current style of malfunctioning of Orissa Information Commission in keeping with the letter and spirit of the RTI Act 2005.

Thanking you,

Yours sincerely

Pradip Pradhan

Convener

Right to Food Campaign, Orissa

Bhubaneswar