

Orissa Notification on NGOs as Public Authorities under RTI Act- Absurd & Illegal !

(Download Oriya article at <http://www.box.net/shared/t8sot3mqi9>)

On 28th Aug. last, the sudden notification by the Government of Orissa in the newspapers that a section of NGOs need to appoint PIOs, APIOs & 1st Appellate Officers in compliance to RTI Act must have surprised many. Not necessarily because it portended additional and exacting load on their portfolio and resources, but surely because it gave rise to so many perplexing questions the answer to which still eludes them. The said notification, though premised on Section 2(h)(d-ii) of the Act, has conspicuously skipped the urgency of defining and explicating such critical expressions found therein as 'substantially financed' and 'directly or indirectly by funds provided by the appropriate Government', as a result of which the whole gamut of NGOs (be they Societies, Companies, Trusts, Political Parties, Trade Unions, Officers' Clubs, Professional Associations of CAs, lawyers, physicians, and the like) are simply left off in a quandary as to who shall be considered as 'Public Authorities' under the Act, obligated to discharge the same duties as the Governmental Public Authorities do. Again, in absence of any such kindred notification by the Central Government, the NGOs operating in Orissa but financed/funded by the Central Government got obviously confused as to whether they shall too be booked under the recent Notification made by the Government of Orissa. This question assumes added significance in view of their anxiety to know which Rules they shall have to abide by, since the RTI Rules of the Centre are much simpler, user-friendly and inexpensive (no form, no citizen identity proof, no treasury challan, no court fee stamps, no appeal fee and no fee for BPL families etc.) than that of Orissa.

It is further disconcerting to find that while the then Chief Secretary Dr.Subas Pani had promised to put in place suitable guidelines before asking the NGOs to appoint PIOs, APIOs and 1st Appellate Officers under the Act (vide Para 2(viii) of Proceedings of Core Committee Meeting held at Secretariat on 22.08.2005 <http://www.orissa.gov.in/i&pr/corecom.htm>), the outgoing Chief Secretary Sri Ajit Kumar Tripathy, just 3 days before his retirement, brought out the above notification in a hot hurry, that too in the manner of an administrative fiat, without bothering at all to comply with his predecessor's spacious commitment in this regard. Besides the present notification for all its pretence to serve as an obligatory instrumentality under the RTI Act has not been framed, as it should have been, following the pre-publication of its draft in the media for inviting views on and objections thereto from among the members of the public prior to its finalization, a time-worn mandate of Section-23 of General Clauses Act 1897 (<http://www.indianrailways.gov.in/RPF/Files/law/BareActs/Generalclausact.doc#a23>). Let it parenthetically be noted that the notification of Orissa RTI Rules 2005 (<http://orissagov.nic.in/rti/index.htm>) had also followed such an illegal course, on account of which not only Right to Food Campaign, Orissa but also a veteran national level RTI protagonist Mrs.Aruna Roy in her Memorandum to Orissa CM dated 23rd Dec. 2005 (<http://www.orissarti.com/articles/WhyORulesunjust/arunamemo.htm>) had brandished the above dispensation illegal besides being anti-people.

Conceding that there is a glaring vacuity in the RTI Act surrounding the meaning of such critical expression as 'substantially financed directly or indirectly', the Central Information Commission has passed so far a fair number of decisions on the issue of NGOs to act as public authorities, taking the cue from Section 14(1&2) of CAG Act 1971

http://cag.gov.in/html/about_legal_dpc.htm#ch3). However, the said decisions of CIC, if scanned closely and in perspective, don't offer us any standard set of consistent or uniform criteria, capable of being applied objectively across the entire multi-verse NGO spectrum of our country. For all the honest and laborious efforts of the CIC in the past to help evolve a standard, all-weather set of norms to determine the public authority status of an NGO, what emerges as its prime tool oft-used so far is to decide case by case and each case on the merit germane to it. It is a plain truth there exists no consensus at national level on this nagging issue. While Goa Information Commission went to the extent of saying that there appeared no need for a separate notification to be made declaring NGOs as public authorities under Section 2(h)(d-II) of the Act (<http://www.rti.org.in/Documents/NGOs%20under%20the%20RTI%20Act.pdf>), the Karnataka Government took a diametrically opposite stance by declaring, for example, all the Cooperative Societies as public authorities under RTI Act. The latter notification was, however, held objectionable by the Karnataka Information Commission following an appeal by an affected society (<http://www.kic.gov.in/nov/06-11-06/KIC%20232%20APL%202006.pdf>). The Gujarat High Court did also issue a stay against the State Government's order declaring all Cooperative Societies obligated to abide by the provisions of RTI Act (<http://www.rtiindia.org/forum/674-co-ops-now-under-right-information.html>). While 2nd Administrative Reforms Commission, keeping in line with CIC's direction has entrusted the responsibility of identifying public authorities among the NGOs to the concerned Ministries & Departments of the Government (<http://arc.gov.in/rtifinalreport.pdf>), it however recommended a lower percentage (50% of the total yearly expenditure of an NGO contributed by the Government) but a higher amount (Rupees 1 received by an NGO in a year from the Government) than the CAG stipulated and CIC upheld norms on respective heads (as much as 75% and only Rs.25 lakh) as minimum eligibility criteria for declaring NGOs as public authorities under RTI Act.

At a moment when the whole nation is debating aloud the thorny, but all too inescapable issue of hammering out a reliable mechanism for notifying NGOs as public authorities, the diktat like notification by Government of Orissa as made on 28th Aug. last is not only illegal in view of its abject failure to comply with the pre-publication requirements of General Clauses Act 1897, but also pathetically out of joint with the heuristic ethos that marks the mainstream RTI discourse around this issue across the whole country.

Under the circumstances, the 4-page Oriya article entitled 'Government of Orissa's Notification on NGOs as Public Authorities under RTI Act – Absurd and Illegitimate' suggest a 3-point course of action as mentioned below:

- Ensuring that the Governmental public authorities at every level be beefed up to provide information to the applicant citizens on all manner of private bodies whether funded by Govt or not, in compliance to Section 2(f) of the RTI Act;
- Withdrawal of absurd and illegitimate notification by Government of Orissa dated 28.8.2009 on NGOs as public authorities under RTI Act; and
- The Government of Orissa to hold extensive consultation with all manner of private bodies or NGOs (Societies, Companies, Political Parties, Trade Unions, SHGs, Clubs, Literary and Cultural Associations etc.) to evolve a consensus on how the NGOs intended by law can serve as Public Authorities under the RTI Act.

Chitta Behera, dated 4th Sept. 2009