

Orissa Information Commission and its weird verdicts

As laid down in Sections 18, 19 and 20 of the RTI Act, the Information Commission on receiving the complaints or appeals from the aggrieved citizens may initiate enquiry into the necessary matters and issue summons thereafter to the concerned Public Information Officer and Public Authority for hearing. The Commission just like a Civil Court has the power to penalize the concerned PIO by way of imposing monetary fine to the extent of Rs.25,000/- and suitable disciplinary action affecting the service career of the concerned PIO and moreover to direct the concerned public authority to compensate for the loss or detriment, if any suffered by the applicant-citizen.

According to Section 15 of the RTI Act, the Information Commissioners shall discharge their duties independently without being subjected to directions from any other authority, whosoever that may be. The Section 25 of the Act has entrusted the Commission with the authority to monitor and thereby to ensure proper implementation of the Act at various levels. As per the said Section, the Commission may direct any public authority to amend its practice, if found to be contravening the letter or spirit of the Act. Thus the Information Commission, as conceived by the RTI Act, is to function as a superior quasi-judicial body to act independently and autonomously, without any fear or favour, just to defend to the last nail the inviolable right of the public to know about how and whether their salaried servants are performing the duties assigned to them.

But the year-long practice of Orissa Information Commission speaks eloquently of their lack of understanding of the Act or even of Orissa Rules, which has been manifested in a series of verdicts pronounced by them after hearing the appeals and complaints of the aggrieved citizens in the State. Citing a few examples can help us understand the confused mindset of the both the information commissioners of Orissa.

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". Keeping in view the suo motu disclosure of information by the public authority, a group of social activists working with Deogarh Pressure Group(Deogarh is an underdeveloped district in Orissa) had gone to the offices of Tahasildar, Forest Ranger (Kendu leaf) and Police Station located at Pallahada for inspection of the documents on 7.2.06. But they were denied to access the information by the said offices. Being deprived of their legitimate rights, they made complaints to the State Information Commissioner under Section-18 of the RTI Act. But without giving any opportunity for personal hearing to the complainants, both the commissioners rejected the complaints(complaint no.-3,4,5,6 and 7) on 20.6.06 stating 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. Such a verdict coupled with the Commission's reluctance to publicise the suo motu information about itself as warranted under Section

4 has encouraged all the public authorities of the State to bypass their obligation to make themselves transparent by way of suo motu disclosure about themselves.

Secondly, let us look at 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 has ruled that the BPL persons would have to pay all kinds of fees except the application fee. In its verdict, the commission stated that **“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) and 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 the 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 before delivering the above verdict directed against the BPL families, which is patently false and arbitrary.

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, *“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 as per 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.”*

Next, the Commission has also violated the Orissa Information Commission (procedure of appeal) Rules 2006, notified by the State Government. **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. 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 as and when their wisdom of make-believe prompts them to do so.

The above examples are just a tip of iceberg of folly, arbitrariness and mishandling, with which the Commission has treated the cases of the aggrieved citizens in the past. Thus the single greatest killer of the RTI Act in Orissa albeit in the guise of a full fledged legal authority is none other than the Orissa Information Commission itself.

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