

An Orchestrated Interview with Prof. Radhamohan, Retd. Orissa Information Commissioner – A Rejoinder by Chitta Behera

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To

Sri Pradeep Baisakh, Journalist

Dear Sri Baisakh,

With deep interest I went through the interview made by you on 5th May 08 with Prof. Radhamohan, the Retd. Orissa Information Commissioner, published in Orissa Diary. I thought I should write a rejoinder to this interview, which may help the readers grasp more clearly the issues raised in course of this interview. Hopefully you and other readers shall respond to this rejoinder to carry forward the debate around the Orissa Information Commission further to a new high.

With regards,

Chitta Behera, 10th May, 2008

An Orchestrated Interview with Prof. Radhamohan, Retd. Orissa Information Commissioner – A Rejoinder by Chitta Behera

1) Commission to maintain a reasoned distance from the State Government:

Prof. Radhamohan says that 'the act nowhere prevents the Commission to do so' (*awareness generation on RTI- Italic mine*). But the Act clearly and categorically says who should do it. The Section-26 of the Act elaborates on how the 'appropriate Government', not the Commission should carry out the entire range of extension activities such as awareness generation, training and orientation and publication etc on the Act and Rules. And to my mind, there seems to be ample justification as to why the Act has entrusted this crucial responsibility on the 'appropriate Government', and not on the Commission. It is the appropriate Government, which frames the Rules and therefore it is they who should popularise it among the people. Ideally and as per the Act, the Commission should ever remain a judge of the situation, not getting identified with the appropriate Government, be it with regard to the rationale of the Rules or implementation thereof. If the Commission itself gets engaged in popularising a set of faulty Rules framed by the 'appropriate Government', how can they take to task the latter and instruct them to set aright the faulty Rules, a role which is very much expected on the part of the Commission under Section 25(5) of the Act. In any judicial or quasi-judicial process in a democracy as in case of Information Commissions, the judge is a judge and is never identified with any party, be it the high profile Union of India or Government of Orissa. But here in the case of Orissa we found that the Information Commission got itself fully identified with the State Rules from the day one and lost its legitimacy and face to critique the latter, which was and is still very much required even today.

In an effort to rationalise over the hijacking by the Commission of the Government's job on awareness generation, Prof. Radhamohan quipped, which I quote again, "the act nowhere prevents the Commission to do so" (*awareness generation- Italics mine*). Does such cerebral acrobatics lead to any positive conclusion? Suppose I say, the Business Rules of Orissa Legislative Assembly nowhere prevents the CM to preside over the sessions of the Assembly; does it mean that a CM can do that? Or take another such example; suppose a teacher doesn't turn up to the class at the appointed hour and a student comes forth and says 'I shall teach you since the School Rules nowhere prevents a student to teach in absence of a teacher'. Does it absolve the teacher of the responsibility to teach?

In this respect, Orissa Commission should learn from the Central Commission, which in spite of its failings on other counts has stucked on to a healthy position, expected of an independent and autonomous body. To exemplify, since the day the Ministry of Personnel, GOI the nodal agency for RTI at national level stipulated in its FAQ that 'the notings on a file' are not covered under the RTI Act the CIC has been waging a relentless battle against them using its powers conferred under Section 25(5) of the Act. Why could the CIC perform this role? Precisely because it didn't get itself identified with the Ministry or the appropriate Government in any manner. In a similar way we want Orissa Commission to maintain a reasoned distance from the Government of Orissa and Rules framed by it.

2) **Needless to quote Ms.Aruna Roy:**

The interviewer of Orissadiary mentions, 'Even Ms Aruna Roy has spoken in various places about Orissa Commission's exemplary role in spreading awareness on the legislation'. Can the interviewer quote the exact statement of Ms.Roy in this respect? Because there are on record several written statements of Ms.Roy where she has not only made a drastic criticism of Orissa RTI Rules but also of the role of the Orissa Commission in acting as a funding agency for NGOs to spread the awareness of the Act, a role which legitimately belongs to the appropriate Government. In a National Convention of RTI Crusaders held at Delhi last year where Sri Pradip Pradhan of Orissa Right to Food Campaign made a presentation on Orissa situation, Ms.Roy who happened to be present there listening to the deliberations had made the above observation on the role of Orissa Commission.

Again, the interviewer at several places says, the Commission has been widely praised by many for undertaking awareness activities on RTI. But can he say who are those 'many' other than the very NGOs and their associates, which were funded by the Commission to organise the same at different levels?

3) **Commission's failure to invoke Orissa Rule-13 to recover the unpaid penalties:**

Prof. Radhamohan says, *'the Commission has even imposed highest penalty of 25,000 to the erring PIOs in several cases. The Commission has decided for giving compensation to the aggrieved citizens, who has suffered loss during the process of seeking information under RTI act and such compensation is to be recovered form the erring public authority. Orissa Commission is the first in the country to take such step'*. Professor is factually wrong. The Central Information Commission has already imposed both highest penalty against the erring officials and compensation in favour of the aggrieved applicant long ago. But the moot point lies, whether the penalty or compensation so imposed by the Commission is being realised from them? From the admission by the Commission on its website it is amply clear that the overwhelming bulk of the penalised officers keep on refusing to pay up their penalty. Whether and how far the Commission has invoked Rule-9 (recovery from the salary) and Rule-13 (recovery by way of auctioning off the fixed and other assets of the defaulter) for realisation of the said dues?

4) **Commission should blame itself, rather than the Constitution or Official Secrets Act:**

Prof.Radhamohan is again factually wrong in saying, *'Even now the MLAs and MPs are taking the oath of secrecy of office! This practicality has to be kept in mind while disposing the cases'*. In fact it is not MLAs or MPs who take the oath of secrecy, but the Ministers of the Union or of a State as enjoined under the 'Third Schedule of the Constitution'. Any way, while the Oath of Secrecy is itself an obnoxious and anachronistic feature in our Constitution and deserves to be abolished at the first instance as recommended by the National Commission to Review the Working of the Constitution (2002), it is in no way an obstacle to the full exercise of the RTI Act by any appropriate Government or Information Commission. In fact the common people have little to do with Ministers as such; they are instead mostly concerned with the Ministries and Departments and their branches down below, which technically called public authorities are all obligated to disclose both 17 categories of suo motu information and other application-based information in the manner provided under the Act. Thus technically speaking, the Indian State has already gone beyond a regime characterised by either Oath of Secrecy or Official Secrets Act. If at all the old mindset still prevails among the officials, as Prof.Radhamohan bemoans, who is responsible for it, if not their boss the appropriate Government and the super-boss the Information Commission? Specifically speaking, Prof.Radhamohan should have informed us, what the Commission, for instance, has done to advise the State Government to amend an old manual like 'Orissa Secretariate Instructions 1961' which contains explicit provisions for withholding official information from the public on the ground of Official Secrets Act?

5) **Commission shouldn't misquote Supreme Court:**

Prof.Radhamohan explaining the low incidence of imposing penalty against the erring officials has observed, *"According to the Supreme Court's definition of reasonable opportunity, a person should be given at least two chances to prove his/her innocence before being punished"*. But to do justice to his assertion he should have quoted the particulars of the concerned judgement. Has the apex court observed it in connection with RTI Act? Certainly not. Because, the RTI Act itself provides for 'reasonable opportunity' to be given to the respondent before any penalty is served on him(Section-20). How does 'the reasonable opportunity' actually mean? When a notice for hearing over a complaint or appeal is issued by the Commission to the respondent (Section-18), the latter should come prepared with his statement on the alleged denial or delay in giving the information, which he/she is as such obligated to do as per the 'burden of proof' mentioned in Sections 19(5) and 20. And that is the

'reasonable opportunity'. If in course of the hearing the Commission is not satisfied with the contention of the respondent, then it can order fine, disciplinary action, compensation or whatsoever. Thus to quote Supreme Court un-authoritatively and especially in a context where the text of the prime law i.e. RTI Act is abundantly clear is just a wild excuse to escape the explicit mandate of the Act.

6) **Muddle-headedness on fees for BPL families:**

Here I ought to take a dig at the interviewer from Orissa Diary for asking an uninformed question. The interviewer mentions, *"The act clearly say that BPL category of people will not pay any fee for getting information, whereas the state rules exempts them only from paying application fees but not from the cost of information to be provided"*. To me the first part of the statement is fully correct. But as regards the second part the interviewer seems to be confused himself. I want to ask him, show me where *"the state rules exempts them only from paying application fees but not from the cost of information to be provided"*. If you go through the entire text of the Orissa RTI Rules-2005 coupled with the Amendment of 2006, nowhere it is said that the BPL families shall be exempted only from application fees but have to pay the fees towards costs of information. In fact, about the BPL case, the proviso to Rule-4(1) says, *"Provided that the application fee shall not be payable in case of a person whose name appears in the latest list of persons below poverty line for which he has to produce BPL Card"*. This provision means that a BPL person shall not have to pay the application fee. But now let the interviewer say, where it is written that he shall have to pay other fees. Yes, if the above quoted provision should have contained a word 'only' occurring before the words 'application fee', then it would have meant that the fees except only the application fee are chargeable from BPL persons. To exemplify my contention, suppose, a class teacher in a residential Ashram School meant for ST/SC children tells his students at the first session in the year, "You are exempted from tuition fees". Does it mean that they have to pay other fees meant for food and accommodation etc? Again in the evening the Hostel Superintendent tells those very children, "You shall not have to pay fees for food or accommodation." Does it mean that those students have to pay tuition fees? So I dare say, the State Rules of Orissa has nowhere told that the BPL persons have to pay the fees towards cost of information. Rather one should read the Orissa RTI Rules holistically, and make a concurrent reading of Rule-2(2) that says, *'Words and expressions used but not defined in these rules shall have the meaning as assigned to them in the Act'*. It is a small but pregnant sentence filled with overarching meaning and implications for those matters on which the Orissa RTI Rules hasn't made any explicit provision. To conclude the discussion on this point, since the Orissa Rules hasn't made any explicit provision for BPL's exemption from fees towards cost of information, the reading of its Rule-2(2) mandates that whatever the Act has provided for in the relevant Section 7(5) i.e. State Government's obligation to exempt BPL families from 3 kinds of fees, that will hold good in the context of Orissa. So the way the OSIC has made a skewed interpretation of Orissa RTI Rules to the disadvantage of the BPL families, does only reflect the deeply embedded anti-poor, elitistic sub-conscious of the Commissioners themselves.

7) **Confused and Confusing rumblings on other matters:**

Appeal Matters As if the Commission is doing an extra favour to BPL persons, Prof. Radhamohan enthusiastically says, *"On BPL case, the Commission has extended the exemption from the application fee to the first and second appeal fees for the BPL category"*. First of all, the statement as such is factually incorrect. It is not the Commission, but the Govt of Orissa vide the State Rule-7 has exempted the BPL families from any appeal fee. But the moot point lies elsewhere. Both the interviewer and interviewee should have first clarified, whether the appeal fees as such are legal in the eyes of the Act. The Sections 27 and 28 of the Act that lists the names of the fees for which rules may be prescribed by the appropriate Government and competent authorities respectively don't keep any space for imposing an appeal fee. The Central Rules in obedience to the said mandate of the Act has not prescribed any fee or form for appeal. Now the question arises, has the Commission taken to task the State Rules that prescribed the appeal fees in contravention to the law? Moreover, as per the Orissa RTI Rules, the appeal fees (Rs.20/- for first appeal and Rs.25/- for second appeal) can be submitted only through Court Fee Stamps to be pasted on the body of the appeal. It means that a person intending to make an appeal has to come to a town on a working day first to purchase the necessary court fees. Secondly, the forms for making first and second appeal are also made compulsory in Orissa unlike under the Rules made by the Centre and many State Governments. The interview could have been more enlightening if the peculiar problem of fees and forms for making an appeal in Orissa should have figured in the dialogue.

Prof. Radhamohan says, the Commission has suggested to the government to provide information upto 150 rupees (for 75 pages) free of cost to the BPL persons. Though a partial and truncated concession, the recommendation of the Commission should find display on its website. As regards misuse of the exemptions for BPL families Prof.Radhamohan takes the names of Aruna Roy and Arvind Kejriwal to buttress his pious wish that the Commission is against the misuse of the exemption. But the question arises, misuse needs certainly to be

checked, but taking the pretext of misuse can a genuine dispensation for the people be curtailed or abolished? Do the Ministers, Commissioners and Judges not misuse their posts? But do we propose an abolition of such posts just because these are misused? And as per the RTI Act, the misuse if any by the public is to be checked by the appropriate Government; misuse by the latter is to be checked by the Information Commission; and misuse if any by the Commissioners is to be checked by the Governor in case of a State and by President in case of the Centre and that too on the complaint by the common citizen. This is in nutshell the organogram of the check-and-balance system provided for in the RTI Act.

Prof. Radhamohan then says, *"on suo motu disclosure issue, it is incorrect to say that the Commission has not pursued. Whenever the Commissioners have gone to any district head quarters, we have first seen whether the district offices have adhered to section 4 of the act or not. The Commissioners have discussed this with the Chief Secretary, who in turn has discussed in various official meetings for follow up"*. In fact the frequent criticism against the Commission on this score arises because there is no record or report on display in the website of Information Commission or otherwise to corroborate that the Commission has really done all this to operationalise the suo motu disclosures under Section-4 of the Act. The facts relating to all these matters should inter alia form a part of the annual report to be prepared by the Commission for tabling in the State Assembly (Section-25). Two financial years have already passed by without a single such report emerging from the Commission to see the light of the day. For all said and done when the whole Commission has conspicuously failed to discharge a statutory duty binding on it under the Act, how can a common citizen believe the oral statements of Prof. Radhamohan issued post retirement?

8) Manual or Manhandling of the RTI Act?

Prof. Radhamohan waxes eloquent on the Commission funded awareness programmes, *"Therefore the Commission felt that proper awareness on the act is the key to its success. So it undertook various initiatives to spread awareness among the community, PRI representatives, government officials, etc. It has come up with user manual and posters on RTI"*. But if one goes through the RTI manual developed by the Commission, he/she shall be more confused about the Act than otherwise. In the name of popularising the RTI Act, the Commission has only spoken about the Orissa's RTI Rules keeping in dark the readers about the Central Rules. The author himself has come across umpteen number of cases where a person seeking information from a Central Govt office located either in Orissa or outside has used Form-A (including pasting of voter identity card) for application and treasury challan of Rs.10/- towards application fee, which were unnecessary in the eyes of the Central Rules and resulted in quite many instances in the rejection of the application itself. Similarly, this author has also noticed several cases where the persons of Orissa making appeal before the Central Information Commission have unnecessarily used Form-E and court fee stamps worth Rs.25/-, which are completely useless in the eyes of the Central Rules. In fact, the root of such confusion among the RTI users of Orissa lay in the very manual developed by Orissa Information Commission. In this manual, the Commission says that the BPL families are exempt only from application fees and have to pay the fees towards the cost of information, which is an illegal statement in the eyes of the Act or Central Rules. As regards the mode of payment, the Commission's manual prescribes treasury challan, cash payment and court fee stamps as the case may be, and refrains from mentioning such easier modes of payment as IPO and Demand Draft, which are acceptable by the Central public authorities. Thus to call the manual of Orissa Information Commission a brochure for awareness on RTI Act is a misnomer; rather it should be called a manual on Orissa RTI Rules. Even to call it by that name is short of the justification. The Orissa RTI (Amended) Rules-2006 has provided for maintenance of a Register in every office for recording the name and address of every person whosoever visits the office for inspecting the suo motu information covered under Section-4 of the Act. The OSIC's manual is conspicuously silent about this register. Moreover the said manual elaborates on how to use Form-D and Form—E along with requisite court fee stamps for making 1st and 2nd appeal under Section-19 of the Act, but refrains from mentioning how to make a complaint under Section-18 of the Act for which no form or fee is required. Thus the OSIC's manual is a shrewd device to popularise and legitimise the inherently defective Orissa RTI Rules, just as an Oriya proverb says, three persons shouting in unison can make a goat appear as a dog.

Under the circumstances, the common people in Orissa need to be exposed to a systematic and rigorous process of de-schooling about what the Orissa Information Commission has rumored about RTI Act through the funding of NGOs using a highly skewed and prejudiced manual.

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