

From: Chitta Behera <chittabehera1@yahoo.co.in>

Date: Jan 23, 2007 12:53 PM

Subject: Re: [HumJanenge] People in State (Orissa) satisfied with functioning of RTI Act

To: prakash.kardaley@gmail.com

Dear Mr.Kardalay,

Sensing that my response might prove too long to find a space on Hum Janenge I am sending it by attachment for your perusal and necessary action.

Regards,

Chitta Behera

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Dear Mr.Kardalay,

Thanks a lot for your straight talk on Orissa RTI Rules. This again reinforces our hope that Hum Janenge, though based in Maharashtra has its live concern for the state of affairs in other parts of the country. I think, yours is the maiden effort on Hum Janenge platform to attempt a comprehensive critique of Orissa RTI Rules from the standpoint of citizen-friendliness and as well of the mandates of the parent Act.

**A)** Before I respond to your well-thought observations, of course, by way of supplementation, let me suggest a factual correction in regard to the opening para of your note. In fact, the Orissa RTI Rules 2005 including the Schedule of fees has been amended once so far (<http://orissagov.nic.in/rti/index.htm>). As you would see from its notification dated 29<sup>th</sup> May 2006, the quantum of various fees was reduced almost by half. For instance, the application fee came down from 20/- to 10/-, the cost of information fee from 5/- to 2/- per page, 1<sup>st</sup> appeal from 40/- to 20/-, 2<sup>nd</sup> appeal from 50/- to 25/-, inspection fee from 15/- per hour to first hour free and 20/- for the next hour and onwards, and cost of CD/floppy from 100/- to 50/-. Except such fee reduction, the amendment didn't touch on any of the major deviations that the original Rules suffered from vis-à-vis the parent Act, and your note to our pleasant surprise has pointedly laid bare each of them.

And please note further, this fee-slashing amendment was also not a self-prompted dispensation of the State Govt either. A strong wave of protest by the civil society groups from across the State coupled with rejoinders from eminent RTI ideologues like Mrs.Aruna Roy, Mrs.Maja Daruwala and Mr.Shailesh Gandhi led to a rethinking among the intelligentsia of the State and also on a large segment of its MLAs, who assembled in a State level Consultation at Bhubaneswar convened by Orissa Right to Food Campaign and decided to raise the issue on the floor of the Assembly. (The stream of events before and after this event is documented on the website [www.orissarti.com](http://www.orissarti.com)). In fact, on 3<sup>rd</sup> April 2006 several MLAs all belonging to ruling coalition (since the opposition had then boycotted the Assembly for other reasons) vehemently opposed the Orissa Rules not only for its exorbitant fees, but also for its user-unfriendly and out-of-law provisions. The MLAs had also provided a draft alternative to the then existing Rules. But in a house where the opposition had no presence, the controversy boiled down to a fight between two factions of the ruling coalition. Then in the voice vote that was taken to decide the fate of Orissa RTI Rules 2005 (perhaps the first tradition of its kind in the country), the move for a comprehensive amendment was defeated, and just to assuage the injured sentiments of the defeated camp, the Minister of State for Information and Public Relations (nodal agency for RTI in the State) announced the Govt's decision to cut down the fees. And that is how the so-called Amendment of 29<sup>th</sup> May 2006 had come about.

**B)** Now coming to your observations on Orissa RTI Rules, please look at what you have said at Point 7 of your note. You have quoted only the Col-4 of the Application Form (Particulars in respect of Identity of the applicant) holding it objectionable. Absolutely correct. But what about the Col-2 (Father/Spouse name), and Col-3 (Permanent address), especially in view of the categorical injunction of Section 6(2) of the Act that prohibits disclosure of 'personal details except those that may be necessary for contacting him'? Is there any additional need purely from an operational point of view for asking for 'permanent address' of the applicant at Col-3, when the Col-6 of Application Form asks for 'Address and Email ID, to which information will be sent and in which form'?

C) At Point 2 of your note, Orissa Rules' mode of payment, such as of the application fee (i.e. by cash or treasury challan) has been adequately treated. But the most horrendous of all is Orissa's provision regarding the mode of payment towards the cost of information as required under Section 7(1) of the Act. If you look at the Schedule of Fees appended to the original or amended Rules and its corresponding provision in Rule 4(2), you shall be surprised to know that it is exclusively by cash. No money order, no IPO, no Bank Draft, no Court fee stamp, no treasury challan and nothing of the sort is allowed. This provision simply means that the applicant immaterial where he/she might be stationed at has to physically traverse all the way to the office of PIO just to hand over the amount of cash towards the cost of information to the latter and that too, within 15 days of the receipt of first letter from PIO in Form-B (letter of intimation). Let it be said by way of parenthesis, what you have mentioned at Point-5 in your note on the compulsion of fee to be paid within 15 days as ultra vires the parent Act is absolutely correct and has further illumined our inquest into the nature and consequences of Orissa Rules. In fact, principally because of the queer provisions relating to mode of payment, the series of bilingual booklets (Oriya and English) critiquing the Orissa RTI Rules, which were brought out by Orissa Right to Food Campaign have been justly titled, 'Orissa RTI Rules 2005: why absurd and illegitimate?'. It is of course a matter of self-pity that our fellow Oriyas including the sophisticated and articulate ones, still keep reticently silent over such a heinous mischief, allowing thereby the Government to stick to its guns.

D) At point 2 again, you have enquired about the latest position of Orissa Rules in regard to mode of payment of various fees. Till date there has occurred no change in this matter despite the above mentioned Amendment of Orissa RTI Rules notified on 29<sup>th</sup> May 2006. But due to persistent campaign of protest in the media, the Orissa Information Commission has announced a clarification under its new FAQs (<http://www.orissasoochanacommission.nic.in/newfaq.htm>) saying:

*"1- As per RTI Rules,2005(with amendments) framed by State Govt., is it possible to pay by Money Order or Bank Draft where cash is required?"*

*Money Order or Bank Draft is as good as cash . So to pay for the application fee (as applicable) and/or cost of obtaining information, one can pay cash (by himself or through a messenger) or by Money Order or Bank Draft, where cash deposit is necessary. Cheques and Indian Postal Orders will not be acceptable."*

Without entering into any discussion about the wisdom of the above announcement, it is worth mentioning here that the said announcement has not been notified on the Gazette, and as such lacks in the force of the Rules proper. Since the Rules-making is the domain of the appropriate Govt (Section 27) and not that of the Information Commission, the public authorities are not obliged as such to abide by the above clarification given by the SIC. It would have been better if SIC would have put forth its suggestion for additional modes of payment by way of a recommendation to the State Government, just as the CIC did to the Central Government in the matter of file-noting. But again, it is a matter of pity that our SIC has ever since been behaving more as a protector of the petty interest of the double-standard bureaucrats of the State than as a protector of the larger interest of the citizenry.

E) Now I need to add that your note has conspicuously omitted two very obnoxious provisions of Orissa RTI Rules from the purview of its treatment. The first one relates to Rule-13, which says "**13. Realisation of penalties or damages.** – Any penalty or damage or any other sum payable under the Act, if not paid within thirty days of the date of receipt of the order for realization of the same or cannot be recovered, it can be realized from such person as arrears of land revenue". Apparently it may look that such a provision is meant for only the PIOs or the concerned officers, who might default in depositing the amount of penalty imposed by the Commission in time. But it is not so. The Rule-9 is actually, exclusively and explicitly meant for the PIOs, as it reads, "**9. Penalties.** – In the event of imposition of penalty under section 20 on the Public Information Officer concerned, such penalty may be deposited by the said officer by Treasury Challan under the appropriate receipt Head of the State Budget within a period of thirty days, failing which the amount shall be recovered from the salary of the officer concerned". Thus by implication, the Rule-12 is targeted at all the citizens else than the PIO. And further, do you know what is meant by the pregnant sub-sentence occurring in Col-12- 'it can be realized from such person as arrears of land revenue'. There is a law called Orissa Public Demands Recovery Act 1962, which defines the method of realization of arrears of land revenue and which states that if any person fails to pay up his/her dues to the State within the stipulated time as notified by the concerned certificate officer, then the said dues can be realized from him/her by way of confiscation and consequent auction-sale of his movable/immovable property and further, if the arrears couldn't be realized by such

confiscation and auction-sale, then the concerned person is to undergo the civil imprisonment for a period ranging from 6 weeks to 6 months, depending upon the magnitude of unrealized arrears. To illustrate the case in the concrete situation of RTI, let us say, for instance, a person applied for a sample of the newly constructed bridge, and the PIO as per Rule-10 reported that the whole bridge worth Rs.5 lakh collapsed while he was collecting the requested sample. Then the PIO shall intimate the applicant to pay up Rs.5 lakh as damage cost plus the actual cost of sample, say Rs.50/- within 15 days. If the applicant fails to pay up the whole amount in time, then the arrears so calculated due to him shall be recovered by way of recovery of arrears of land revenue. Thus to sum up the discussion of this sub-theme, Rule-9 exists for defaulter PIOs (realization of penalty from their salary) and Rule-12 for the citizens (as arrears of land revenue). Just imagine the fate of a common citizen that he or she shall be willy-nilly drawn into, once he or she starts exercising the RTI.

F) The next omission of your note that deserves some elaborate treatment here relates to the Orissa Rules' dispensation towards the BPL families. Though the Section 7(5) of the Act and FAQs put up by both State Government and SIC loudly say that none of the 3 fees shall be charged from BPL families, the apparently innocuous proviso to Orissa Rule 4(1) is the source of a hotly contentious muddle. It reads, "*Provided that **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*". Taking the cue from this proviso, both State Government and SIC have trained the officials all across the State, through oral communications of course, to charge all other fees from the BPL families except the application fee. Further the SIC in a nefarious bid to drill this deliberately skewed norm into the ears of the trainee-officials has circulated an illegal Oriya booklet (a sort of elaborate FAQs on RTI Act) among them; illegal, because the said booklet doesn't mention such essential information as the name of author, publisher or printer or date of its publication. And the ground reality as on today is that the officials of the State Government continue to collect the fees other than application fee from the BPL families. Not only that. The State Information Commission also in two of their judgments (Complaint case No.11 and 12 of 2006) has wrongly interpreted the law in saying that the BPL families are exempted only from application fee and are therefore liable to pay other kinds of fees.

G) Please look at Point-C occurring in the last part of your note, where you have held the remittance through court fee stamp as such as 'a people-friendly mode', and wondered why such provision was limited to 'appeals' (appeal fee being itself illegal) only. My question is- granting that the appeal fee is absolutely illegal which it is, how far the court fee stamp is in general a more enabling provision than other modes of payment such as money order or postal order? In the specific context of Orissa, the court fee stamp being the only mode of remittance for making appeals, a person has to come all the way from the place of her residence to an urban centre just to fetch court fee stamps; otherwise he/she can't make any appeal. Thus hundreds of applicants, who are otherwise interested to make an appeal, get simply discouraged to proceed further because of the anticipated hassles involved in visiting an urban centre to fetch the required court fee stamps.

It is true of course that the mode of remittance through court fee stamp is more people-friendly than the mode of remittance through treasury challan. But is it so when we compare it to money order or postal order? The court fee stamps are available only in big or small urban centres, where stamp vendors sit in the vicinity of courts or quasi-judicial administrative offices like Tahsil and Land Registration. But a post office can be found even in a remote village, at least one in every Gram Panchayat. It costs much less time and money for a person to come to the post office than to come to an urban centre to fetch court fee stamps. Anyway, it is desirable that as the Resolution of the National Conference on RTI held at Delhi in October last said inter alia, the Rules should provide for a variety of modes of remittance (money order, postal order, court fee stamp, Cheque, Demand Draft or treasury challan etc.) for payment on any count, and leave the choice to the citizen to pick up one out of them simply on the consideration of convenience in transaction.

H) Last but not the least, your well-argued mail appeared to be a befitting response to Mr.Pradeep Baisakh's recent dispatch titled 'People in State (Orissa) satisfied with functioning of RTI Act' (published in Pioneer, Bhubaneswar). But what you and me are saying about Orissa RTI Rules in so many words now, Mr.Baisakh himself articulated it last year, and ironically in the columns of the self-same newspaper 'Pioneer'. For the unique quality of brevity that his write-up possessed, it is worth reproducing below:

## Orissa RTI Rules: Amendments fail to make them citizen-friendly

By **Pradeep Baisakh**, Bhubaneswar  
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 Source: *Daily Pioneer, Bhubaneswar*

A cursory glance at the Right to Information (RTI) rules formulated by the Orissa Government to put it into effect would suggest how blatantly they violate the letter and spirit of the Act. Concerned citizens are reminded of the colonial era when laws and rules were framed arbitrarily shedding all pretences to democracy.

Regrettably, even today in a State like Orissa rules are framed by a handful of bureaucrats who either lack the understanding of the basics of democracy and rule of law, or knowingly ignore them with all impunity. More importantly, the rules, before being finalised, should have been circulated for public opinion; but in the case of Orissa they were framed clandestinely. Various civil society organisations, activists, intellectuals and concerned citizens of the State have been holding seminars, workshops in different corners of the State discussing the character of the Orissa RTI (ORTI) rules and demanding that the Government remove discrepancies between the Central act and the State rules by suitably amending the latter. On December 23, 2005 Aruna Roy, the chief architect of the central RTI Act, along with some enlightened citizens of the State submitted a memorandum to Chief Minister Naveen Patnaik demanding the amendment of the ORTI rules. The Chief Minister promised that the Orissa RTI rules would be revised by making them citizen-friendly and consistent with the Act, However, the CM failed if the recent amendment to the rules by the Assembly on April 2, 2006 is taken into account. In the amendment, only the fee structure has been reduced broadly by 50 per cent. The application fee has been reduced from Rs 20 to Rs10; the first hour inspection of the public records by the public is now free which was earlier Rs 15. The per-page information in A4 and A5 sized pages has been reduced to Rs two from Rs five earlier. The cost of floppy and CD carrying information is now Rs 50 each in place of Rs 100. Fees for first appeal and second appeal were changed to Rs 20 and Rs 25 respectively instead of Rs 40 and Rs 50 earlier. But Form A of the ORTI Rules, which is designed to be filled up by the applicant to ask for information is unnecessarily complex and lengthy and has all the potential to discourage the applicant from seeking information. It asks for information such as permanent address and proof of identity which are not necessary under the Act. Rule 4(2) says the applicant has to satisfy the Public Information Officer (PIO) about his identity, and only then would his application be entertained. This is wrong as Section 6(2) of the Central Act says an applicant shall not mention any personal detail except the contact address. Similarly in Form C, there are some ill-conceived, extraneous and abstract grounds for rejecting an application, such as 'Your application is not complete in all respects,' 'Your identity is not clear,' 'The information is available in the published material' and 'For any other reason...' etc. These give enough scope to the PIO to deny information. Under Rule 4(1) BPL persons are exempted only from paying the application fee; they are required to pay for the fee of the information sought, and fee for appeals etc. But Sec-7 (5) of the Act exempts the BPL persons from any fee. Under Rule-10, the cost of damage caused to public property during sample collection is to be collected from the applicant. But there is no such provision in the parent Act. Moreover collecting the sample of material is the responsibility of the PIO, but here the rule says the applicant is liable to pay for this. Under Rule 12, the applicant is supposed to deposit the projected expenditure to be incurred on production of witness/evidence in case of appeal made to the IC. But sections 19(5) and 20(1) of the Act clearly say that the burden of proving that denial of a request of an applicant was justified shall be on the public authority who denied the request. Rule 13 says any penalty or damage caused to public property in course of collecting the information will be realised from the applicant as arrears of land revenue if he fails to pay the same. In fact there is no parallel to this section in the whole country. Both Rule 12 and Rule 13 are thoroughly archaic. They not only grossly violate the letter and spirit of the Act but also disregard all the norms of democracy. The fees for the first and second appeal have been fixed at Rs 20 and Rs 25 respectively (they were rupees 40 and 50 before the recent amendment). But Sections 27 and 28 of RTI Act have categorically specified the four kinds of fees only, beyond which no appropriate Government or competent authority can impose any other.

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