

--- On Wed, 7/10/09, Pradip Pradhan <pradippradhan63@gmail.com> wrote:

From: Pradip Pradhan <pradippradhan63@gmail.com>  
Subject: Orissa Information Commissioner goes beyond his statutory Laxmanrekha  
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Date: Wednesday, 7 October, 2009, 8:43 PM

### **Mr.Jagadanand must remember that he represents a quasi-judicial authority 'Orissa Information Commission'**

The news item 'Tata Steel teams up with Orissa Information Commission on RTI awareness' that appeared in 'The Economic Times' dated 4.10.09 has already been critically responded to by quite some friends, who basically questioned the ethicality of Mr.Jagadanand's 'teaming up' with a corporate giant, which has a dubious record of pushing forward its pet projects through the behind-the-scene deals in league with a nexus of corrupt politicians and bureaucrats, that led each time to blood spills of common people, be it at Singur in WB, or at Chilika, Gopalpur and Kalinganagar in Orissa.

But a couple of questions more fundamental than the one just mentioned need to be raised concerning the open association and identification of Mr.Jagadanand in the capacity of Orissa Information Commissioner with Tata Steel, which is but a 'private

body' (Section 2-f) or a 'Non-Government Organisation' (Section 2-h-d-ii) as per the lexicon of RTI Act 2005. As is well known, such corporate bodies are well within the ambit of RTI Act owing to their enjoyment of a 'substantial' 'indirect funding' (for instance, provision of cheap Government land) by the State. In all likelihood, any day such a Company may perforce have to appear before the Commission as a respondent (opposite party) vis-a-vis the complaint or appeal lodged by a common citizen denied of access to the Company's information under RTI Act. And as the law expects, the Commission has to adjudicate the said case in a non-partisan and impartial manner and pronounce its decision accordingly. And mind it, the RTI law unlike other mainstream laws, presumes the innocence of the citizen seeking information and liability of the public authority denying information, and that is why it puts the 'onus to prove' (Section 19-5) or 'burden of proving' (Section 20-1) on the PIO of the concerned public authority. Not only that. As both Central and State Rules on appeal proceedings stipulate, the complainant or appellant may pretty well decide to abstain from the proceedings of a case being taken up before the Commission, and in that eventuality, the latter is expected to fight for his case in absentia against the respondent public authority and punish the said authority as and when it deserves so.

Thus in the eyes of RTI Act, the Tata Steel or for that matter any major corporate entity is a public authority and therefore a potential culprit like any governmental entity, which has one day or the other to comply with the 'burden of proof' before the Commission in regard to alleged denial of information to the complainant citizen. Thus, so far the RTI Act goes, the ideal relation between the Commission and a Public Authority (be it a GO or an NGO) is the same as the one between a judge and a potential criminal. It goes without saying, if the judge be found to be in the close company of a criminal, the people start losing confidence in the judge, and never dare to approach his court even when severe cruelty is inflicted on them by the said criminal in broad daylight. Therefore Mr.Jagadanand in the capacity of Orissa Information Commissioner, before consenting to join in the public event organised by Tata Steel and pouring words of appreciation in favour of the Company should have reckoned with the quasi-judicial position, similar to that of a judge in the mainstream judiciary, which he holds and for which he is sumptuously paid.

The next fundamental question that needs to be raised is, whether Mr.Jagadanand as the State Information Commissioner is legally competent to 'launch' and 'laud' the RTI Awareness Campaign of the Tata Steel, or for that matter any private body? As a matter of fact, the RTI Act has clearly laid down a division of functions between the Government and Commission as to who shall do what. All the activities that relate to awareness, training, publication of Rules and guidelines and monitoring etc. shall be performed by the appropriate Government (Section 26), while two major functions, namely disposal of complaints/appeals (Sections 18-20) and drafting of Annual Reports (Section 25) shall be performed by the Commission. And mind you, the domains of Government and Commission are strictly exclusive of each other i.e. the Government can't encroach on the quasi-judicial territory of the Commission just as the Commission can't and shouldn't meddle into awareness related activities of the Government. To make things more explicit by way of an analogy, the RTI Act has entrusted the Government with all sorts of out-door activities and the Commission with indoor

activities. And such a division of labour seems to be well-intentioned one too. Otherwise, if the Commissioners go out to launch and address this or that campaign of private bodies leaving their prime job of adjudication and preparation of annual reports, for which they are paid, will not the public interest suffer? Moreover, if the Commissioners usurp the business of awareness campaign, what shall the Government or its nodal agency I&PR Dept do? Will they not sit idle with folded hands? In the instant case, it won't have created any ripple, if the Minister I&PR himself or for that matter any top official of the State would have launched and lauded the RTI Awareness Campaign of Tata Steel.

It is worthwhile to recollect that precisely for the reason of Orissa Information Commission grabbing to itself all the functions the State Government ought to perform, the Commission is not only a visible defaulter in respect of its obligatory, adjudicatory functions (for instance, lingering and delayed hearings, poor outturn, flawed decisions, silly errors of grammar and arithmetic), but also a grand fiasco in respect of its so-called awareness initiatives (for instance, erratic translation of RTI Act, faulty FAQs and grossly misinformed Annual Reports). And mind you, the Annual Report on RTI in Orissa to be drafted by the Commission for 2008-09 is already long overdue. Shouldn't Mr.Jagadanand the Commissioner along with the elder Commissioner Mr.D.N.Padhi exert themselves to ensure its release at the earliest instead of frittering away their highly precious time and energy after this or that Company, which is again not their concern at all?

To sum up-

- Mr.Jagadanand Orissa Information Commissioner by his act of 'launching' and 'lauding' the so-called RTI Awareness Campaign of Tata Steel and Mr.D.N.Padhi Chief Orissa Information Commissioner by his act of allowing him to do so have despoiled the august office of the Commission of its sanctity and legitimacy in the eyes of all and should therefore come forth with an immediate apology before the public along with a solemn undertaking that they won't repeat such a legally indefensible act ever in future; and

- In keeping with the demarcation of functions between the Government and Commission as laid down in RTI Act, the Commission should immediately keep its hands off from the awareness activities of any sort, the legitimate domain of the Government, and instead devote itself exclusively to its own domain i.e. disposal of complaints/appeals and drafting of annual reports.

Thanks

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