

**Resolution passed by the State level Convention of RTI Crusaders held
at Red Cross Bhawan, Bhubaneswar on 18th and 19th June'07
on the functioning of Orissa Information Commission**

A two-day State level Convention of RTI Crusaders of Orissa was organized by **Right to Food Campaign, Orissa (a consortium of civil society groups)** at **Red Cross Bhawan, Bhubaneswar on 18th and 19th June' 07**. Around 150 participants comprising social activists, NGO representatives, journalists, advocates, MLAs, representatives of political parties, Govt. officials, women activists and Panchayat representatives who hailed from different districts of Orissa like Bolangir, Nuapara, Koraput, Jagatsinghpur, Kalahandi, Sundararh, Baragarh, Deogarh, Kendrapara, Cuttack, Puri, Balasore and Khurda had participated and deliberated on the issues relating Orissa RTI Rules and functioning of Orissa Information Commission in the Convention. Prominent speakers among them were Mr. Panchanan Kanungo, former Finance Minister Govt. of Orissa, Mr. Gopal Nanda Director State Vigilance, Mr. Brundaban Majhi MLA, Justice Choudhury Pratap K. Mishra, Prof. Pradeep Sarkar of Utkal University Law Faculty, Mr.D.K.Ray, former Income Tax Commissioner and Mrs. Sulata Deo Member Zilla Parishad Jajpur. On the 2nd day the house debated and discussed in depth the way the State Information Commission has been so far functioning. Overall the members took the view that the role of the Information Commission in the State is not only utterly confusing but also violative of both letter and spirit of the RTI Act. The house then arrived at the following Resolution, the sole objective of which is to ensure that the Commission function effectively, independently and pro-actively to deliver justice to the citizens of the State in general and to the complainants and appellants in particular. Prof Radhamohan, State Information Commissioner was present in the post lunch session on the 2nd day to receive the recommendations from the participants.

The Resolution demands that –

1. The following verdict which was given by State Information Commission in the complaint case (complaint nos.-3, 4, 5, 6 and 7 of 2006) on 20.6.06 in respect of the complaints against violation of Section 4 of the Act should be withdrawn: **“The above can only be monitored by the State Commission u/s 25(5) of the Right to Information Act, 2005 the above will be taken care of in the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.”** As is well known, each citizen has the right to make inspection of the office of the public authority under Section 4 of the RTI Act. Each Public Authority is legally duty bound to make suo moto disclosure of information under the Section-4 of the Act. The Commission should make hearing of all the cases relating to violation of Section 4 and allow the right of citizens to access the suo motu information which might be illegally denied to them.

2. The verdict given by the Commission in the case of a BPL person Mr. Rabindra Nath Dash of Mayurbhanj district (Case Nos. 11 and 12) in July 2006 that the BPL persons would have to pay all kinds of fees except the application fee should be immediately withdrawn. In its verdict, the Commission stated, **“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.”** This judgement shows the utter lack of understanding of the Commission about the provisions of the Act. The Act has clearly stipulated under Section-7(5) that the fees prescribed under Sub-section-1 of Section-6 (application fee), Sub-section-1 of Section 7 (fee for cost of 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 below poverty line as may be determined by the appropriate Govt.

3) The following verdict given by the Commission in the case on 6.7.2006 in Mr. Albis Minj vs Sundaragarh District Cooperative Bank should be withdrawn, **“The burden of proof to establish the fact of refusal is on the complainant.”** This verdict is contrary to the RTI Act. The Section 19(5) of the Act says, *“in 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 the same principle is reiterated in the proviso to 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.”*

4) **The Commission’s suo moto rejection of any complaint or appeal without giving the opportunity for personal hearing violates the Orissa Information Commission (procedure of appeal) Rules 2006, notified by the State Government itself.** We urge upon the Commission to abide by the Act and Orissa Rules and provide the opportunity for personal hearing to all the appellants and complainants.

5) **The Commission has not made any disclosure of information on the entire corpus of fund transaction and distribution to the NGOs for organizing the awareness campaign on RTI in the state.** A lot of complaints on financial irregularities by the Commission funded NGOs has come to the public notice in the State. To make the activities of Commission transparent and accountable in respect of its functioning, we demand that the Commission should refrain from making further such transactions in future and to publicise all the facts and circumstances in which it made the monetary transactions with the public in the past.

6) **The Commission should monitor and make timely recommendation to the State Govt. to remove the difficulties and problems faced by the public in accessing the information under the Act.** The Commission can exercise this authority under Section-25 of the RTI Act.

We pass the following resolution suggesting the commission to work pro actively for effective implementation of the Act.

The Resolution further suggests that –

1. If any public authority does not receive the RTI application or the fee meant for it or harasses the citizen in any other manner including his refusal to provide the receipt or acknowledgement, the complaints relating to all these matters should be directly accepted by the Commission under Section 18 of the RTI Act.
2. For every second violation by any PIO, the Information Commission should invoke Section 20 (2) in addition to Section 20 (1)
3. Information Commissions should ensure that the penalties imposed by them are recovered and are entered in the ACRs of the concerned officials.

4. If a citizen complains of denial of information to him within 24 hours affecting thereby his/her life and liberty, the Commission should directly entertain such complaint under Sec 18 and should dispose it off within 48 hours.
- 5.. “Life and liberty” should be defined as provided under article 21 of the Constitution.
6. Both parties should be treated equally by the Commission. Often, the officers of public authorities, who are the accused are being offered chair by the Commission whereas the complainant-citizens are asked to stand before the commission during the hearing. This discriminatory behaviour severely affects the image of the commissioners and destroys the confidence of the citizens in the Commission’s intention and ability to act against the errant officials. Both parties should be heard in every case. Principles of natural justice should be respected by the Commission.
7. The Commission should ensure that the first hearing in every matter should take place within 30 days of receipt of complaint/ appeal and there should not be a gap of more than 10 days between the two hearings.
8. All hearings at Information Commissions should be video recorded.
9. The Information Commissions may organize debate and discourse on RTI on its own rather than organising so-called awareness campaign by way of funding to the NGOs or sub-letting of funds to the private bodies.
10. The Commission has not submitted their annual reports under Section 25 of RTI Act till yet. It is a gross violation of the Act.
11. Every case in which decision is passed in favor of the citizen should lead to appropriate compensation to be paid for costs incurred by the citizen coupled with his mental harassment. This should be recovered from the concerned public authority as required under Section 19(8b) of RTI Act.
12. The Commission should give the acknowledgement receipt to each application by the complainants or appellants just after receiving it.
13. A case of appeal or complaint should not be closed till complete information is received by the citizen and appropriate orders for penalty and compensation passed by the Commission to his full satisfaction.
14. Acknowledgement receipt should be given immediately by the office of the Information commission.
15. In case of failure of disclosure of information under section-4 of the Act, the Commission should order for an enquiry and recommend disciplinary action against the public authority.
16. The Circuit Benches of the Information Commission should be set up in different parts of the State to hear the cases filed by the citizens. If it materializes, the people from the remote districts will not have to come all the way spending thousands of rupees to appear on the date fixed for hearing in the office of the Commission located in Bhubaneswar.