



# Right to Information

## NEWS AND VIEWS FROM WEST BENGAL

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### Editorial

Ultimately, the West Bengal Information Commission has started functioning after the oath taking ceremony is over. The new challenges faced by the newly appointed SCIC Sri Sujit Sarkar and SIC Sri John F Koshi are widespread. The crux being the disposal of the previously unsolved cases and the burden of another 2000 cases piled up during the defunct period of the Commission. Both the Information Commissioners are confident that they will be able to tackle the problem of such a magnitude if they can hear eight cases daily. Optimism is very charming and most probably has been orchestrated by two proverbial judgments. One being the judgment passed by the Central Information Commissioner Sri Sailesh Gandhi vide **Decision No. CIC/SG/C/2009/001346/6359final**. Deliberating the outstanding judgment Sri Gandhi said, "This Commission which is a creation of the RTI Act is very conscious of the fact that its job is to ensure information to citizens within a time bound manner. This Commission is conscious that the poorest man in India, - who does not even get enough to eat and may be dying of hunger, - is paying for every minute of this Commission's time. Hence it believes its duty is to ensure that Respondents or Appellants are not able to take disproportionate amount of its time to delay matters through the device of adjournments or multiple hearings. A Citizen has a right to expect that delivery of every service which the State must provide to him, - whether a ration card, passport, or a decision by this Commission, - must be done within a reasonable time."

In another judgment Hon'ble Justice Jayanta Kumar Biswas of Calcutta High Court in **W.P. No. 11933 (W) of 2010** categorically pointed out, "A second appeal arises from a decision in a first appeal under s.19(1), and a first appeal arises from a decision or a failure to give a decision under s.7. The sparkle of a strong strand of speed woven through the sections of the Act is abruptly lost in the second appeal that has been allowed to run wild. This openedended second appeal scheme is bound to make the s.6 request go totally adrift generating a multi-tier avoidable and unwanted offshoot Court proceedings such as this case.

In my opinion, keeping in mind the respective maximum periods fixed for deciding a first appeal under s.19(1) and disposal of a request for obtaining information under s.7, the second appellate authority should have decided the second appeal within 45 days from the date of filing thereof. In view of the scheme of the statute, I think this period should be considered the reasonable period for deciding a second appeal. I am of the view that this petition should be disposed of directing the authority to decide the appeal."

These two judgments clearly reveal that the ultimate concern of the Right to Information Act, 2005 is the citizens and guaranteeing the accountability and transparency of the state towards its citizens. This duty bound concern of the Commission is also time bound. Conducting eight hearings per day by both the Information Commissioners will not suffice to clear the backlog within three months even mathematically. The previous backlogs have not been counted in the stated figure of 2000 cases. To hold high the spirit of the Act will require monumental initiative to cope with the situation. Let us believe that the newly appointed SCIC and SIC will do their best to achieve this. Five years have already passed after the promulgation of the Act and the state of West Bengal is lagging behind all the states of India. It is high time to act.

### Suggestion for opening a new window on High Court Rulings

The website of the Central Information Commission has a window named 'High Court Rulings' wherein one can find decisions of different High Courts regarding RTI matters connected with the Central Information Commission. This gives ample opportunity to the citizens to understand the views of the Judicial Authorities in the RTI matters.

The Calcutta High Court has passed several decisions in matters related to RTI and all those judgments are real treasure for the democratic functioning of the state and quasi-judicial authorities in the state. We appeal to the West Bengal Information Commission to introduce such a window comprising Calcutta High Court Judgments in RTI matters.

### Disciplinary action against errant ADM

Sri Samar Ketan Ghosh submitted one RTI application to the Additional District Magistrate (G) & SPIO, South 24 Parganas on 03.09.2008 seeking 8-point information regarding the status of a complaint petition dated 10.03.2005 submitted to the DPRDO, South 24 Parganas, and about the misappropriation of government fund for illegal construction on a disputed land. Having no reply from the SPIO Sri Ghosh preferred a complaint before the Commission and the Commission issued a Show Cause notice to the said SPIO. Getting no reply Sri Ghosh made two further complaints to the Commission and the Commission also issued notice to the said SPIO for the 2<sup>nd</sup> time. Finding no other solution the Commission vide its order dated 03.08.2010 recommended disciplinary action against Sri Sanjay Bansal, ADM(G), 24

Parganas(S).

This is the first case of such recommendation of taking disciplinary action against a government official in West Bengal for not complying with the directions of the Commission. Moreover, this is the first instance of invoking Section This is also a lesson for such persons holding public office that mere transfer to other places does not absolve the responsibility of the PIO committing erroneous deeds.

### **Police Officer penalised for giving misleading information**

In reply to one RTI application of Smt. Subhra Banerjee, Sri Aditya Kumar Maity, Sub-Inspector of Police, M V Section, Howrah furnished misleading information. Hon'ble Information Commissioner Sri Sujit Kumar Sarkar imposed a penalty of Rs. 25000/- Sri Maity, being the maximum penalty in such cases, vide order no. 1935 (3) (Order) - WBIC/RTI/85/06(Pt.II) dated 06.08.2010. This is the first incident of penalty being imposed on a police officer

### **Comments on the proposed Amendment of Central Right to Information Rules**

The Ministry of Personnel, Grievances & Pensions has come up with a proposal for the amendment of the existing Central Information Commission (Appeal Procedure) Rules, 2005 and the Right to Information (Regulation of Fee and Cost) Rules, 2005 and the Central Government will make notification of the Right to Information Rules, 2010 in the official gazette. Comments are being solicited from the citizens by 27<sup>th</sup> December, 2010.

Certain points have been elicited in the proposed Rules but many new curtailments have also been incorporated which will restrict the rights of the citizens as enshrined in the Right to Information Act, 2005. We object and dispute incorporation of the following in the proposed amendment of the Right to Information Rules, 2010 (hereinafter referred as Rules) :

1. The text of proposed amendment in Rule 4 of the

Rules reads, "Provided that the request for information shall relate only to one subject matter and shall be limited to two hundred and fifty words, excluding the address of the Central Public Information Officer and the address of the applicant." This part of the proposed amendment is in sharp contrast and contradictory to the provisions and spirit of the provisions of the Act.

As per Section 6 the CPIO is deemed to provide all reasonable support to the citizens in making a RTI application if he is unable to write. The citizen does not require to give any reason for making the application. Moreover, if any applicant sends application to the CPIO who is not having the information, the application is not dismissed and the CPIO receiving the application is to send it to the CPIO holding the information. The provisions of Section 5 also points out to the designated mechanism to make such assertive management of information provision and it appears from these inferences of the provisions of the Act that there should be no binding on provision of information to the citizens at any cost. We think that is the spirit of the Act and if the proposed amendment takes place it will diametrically oppose the spirit and provisions of the Act. Any restriction on the number of subject matter of questions and any bar on the length of the application will have absolute derogatory effect on the issues of transparency and accountability of the state and also the premise of 'Citizen is sovereign'. We strongly oppose any amendment as proposed in Rule 4 of the Proposed Rules, 2010.

2. Proposed Rule 5(g) envisages introduction of hiring charge of a machine by the public authority for supply of information to be included as fee for supplying information. This has no relevance because actual cost is covered by sub-rule (b) & (c) of

proposed Rule 5. Proposed Rule 5(h) also envisages induction of postal charge in excess of Rupees Ten as fee for supplying information is also untenable as per the RTI Act, 2005. In framing Rules the Executive cannot exceed the Statute at its own will derogating the right of the citizen as enshrined in the Statute. Moreover, the enhanced cost of supplying information by the public authorities will hinder the cause of Right to Information to the citizens at large and subsequently the transparency and accountability of the state. We object to introduction of Proposed Rule 5 (g) & (h)

3. Sub-rule (1), (2) & (3) of Rule 11 of the proposed Rules are inconsistent with the aspiration of the Act that the common citizen will use this Act for the purpose of addressing its right to question the government. The utilisation of the Act so far by the citizens has not been questioned by the quasi-judicial authority with impunity for not clinging to 'legal' officialdom. The introduction of the above sub-rules of Rule 11 of the proposed rules will squarely affect the rights of the citizens under this Act and hence the proposed amendment should be set aside.

4. The process of adjudication is always imbued with discretionary natural justice on the part of the adjudicators. Introduction of Rule 13 of the proposed Rules is unnecessary from the experience of the five years of the implementation of the Right to Information Act, 2005. The body of adjudicators are quite competent to meet the progressive requirements and act accordingly.

The Right to Information Act, 2005 in its entirety demonstrates the ambit of the citizens with a greater weightage. Any move like the present amendment to curtail the citizen weightage should be discarded.

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