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New Delhi 110 067
6 December 2007

Shri Wajahat Habibullah
Chief Information Commissioner of India
II Floor, August Kranti Bhavan, Bhikaji Cama Place
New Delhi 110 066

Dear Shri Habibullah,

We were distressed to read some of the recommendations made to the government by the Information Commissioners during their conference held in Delhi in October 2007. In particular, we were alarmed at recommendations to the government to amend the RTI act. We are firmly of the view that it is yet too early to think of making any changes in the RTI act, and that in any case when the time comes for making any changes, such changes must be based on a factual assessment of the use of the act and on extensive public debate.

Specifically, some of the more objectionable recommendations for changes in the Act include:

1. Recommendation III/1

The grounds of a complaint u/s 18 and for an appeal u/s 19 are over-lapping. Separate grounds should be there for appeals and complaints. Clause (b)(c) and (e) of section 18(1) may be deleted as these grounds are basically for exercising appellate powers u/s 19.

Our comments

This recommendation seems to be based on a misunderstanding of the act. Though on the face of it s. 18(1)(b) empowers the applicant to file a complaint against non-receipt of information – this is not the same as an appeal for s. 18(1)(b) provides for a complaint against malafide denial (as specified in s. 20(1)) distinct from an appeal against denial.

Similarly, 18(1)(c) would be a complaint against unreasonable delay (20(1)) and not just an appeal against a deemed refusal.

18(1)(e) would be a complaint against knowingly furnishing (20(1)) wrong, incomplete, misleading etc. information and not just an appeal against incomplete etc. information.

2. Recommendation III/9

Section 20 should be amended so as to give discretion to the Commission to decide the quantum of penalty. The word “shall” appearing in section 20(1) may be substituted by the word “may”.

Our comments

Perhaps the Information Commissioners are not aware of the long struggle of the people to include a mandatory penalty clause in the RTI act. Experiences of other states, including Delhi and Maharashtra, were studied and the consensus was that the RTI act would not succeed unless it included mandatory penalties. Therefore, it is totally unacceptable that this hard fought clause be casually dismissed by the ICs.

Besides, most laws in India have mandatory penalty clauses, and these laws are extensively used to penalize members of the public. Therefore, there appears to be no justification to leave the discretion of imposing a penalty entirely on the information commissions, when it comes to penalizing public servants.

3. Recommendation III/11

Dismissal of frivolous or vexatious complaints: A new section may be inserted for the purpose either as 20B or as section 7A.

Our comments

This is unacceptable for at least two reasons. First, the terms “frivolous” and “vexatious” are impossible to define in objective terms, being essentially subjective. Whereas an application seeking to expose non-payment of wages to the amount of Rs. 50 might appear frivolous to a PIO for whom such an amount holds little value, it might be a matter of survival to the daily-wage labourer. Similarly, applications seeking to expose wrongdoings of government servants will often appear vexatious to government servants. However, if this becomes a basis for rejection, then one of the basic objectives of the act – to promote answerability of the government – will be defeated. Besides, it is only through the repeated exposure of such “frivolous” and “vexatious” bits of information that fundamental systemic changes will occur.

Second, if applications are to be rejected on these grounds, then this will inevitably lead to a large number of applications being rejected at the level of the PIO, forcing more and more people to go in for appeals. Even if at the appeal stage these rejections are overturned, it would not only waste the time and energies of the applicants, and delay the provision of information, but also further clog up an already overburdened system of appeals. Besides, given the problems in defining “frivolous” or “vexatious” in an objective manner, it would be impossible to penalize the PIOs for rejecting applications on these basis, thereby making it impossible to curb the torrent of rejections.

4. Recommendation II/8

Power of Contempt should be given to the Information Commissions so as to implement their orders.

Our comments

We are already fighting against power of contempt of courts. Therefore, power of contempt, if and when the RTI act is amended, should be limited to ensuring compliance of the ICs orders and not for “upholding dignity of Commissions”.

Apart from recommendations regarding amendments to the RTI act, we were also puzzled to see a tendency within the commissioners to seek government approval for decisions that are well within the jurisdiction of the information commissions and not a matter in which the government should be allowed the slightest opportunity to interfere! We are sure you will agree with us that the interpretation of the RTI act is a prerogative of the information commissions, subject only to the rulings, if any, of the High Courts and the Supreme Court. Despite this, we found that on various occasions, like those listed below, the government was asked to interpret the law, or worse.

5. Recommendation II/12

In the absence of any contempt provision under the RTI Act, it is suggested that the compensation clause under Section 19(8)(b) of the Act can be invoked against the public authorities for non-compliance of the Commissions' decisions.

Our comments

It is wrong to suggest this to the government. This is already well within the powers of the commissions to impose. By suggesting it to the government, the commissioners seem to be suggesting that they cannot exercise these powers unless they get the act amended or get government clearance!

6. Recommendation IV/7

Uniformity as regards disclosure obligations for items such as Annual Confidential Reports (ACRs), Annual Property Returns (APRs), DPC Proceedings, Income Tax Returns, etc.

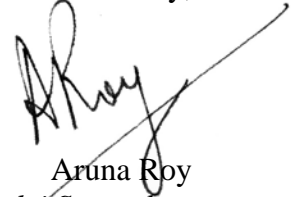
Our comments

Again, this is for the information commissions to determine, on the basis of their interpretation of the law. A uniform practice for disclosure should be dictated by provisions of the RTI act and the government should not be asked to take a view on this, but simply ordered to comply with the decision of the ICs.

We, the undersigned, therefore request you to ensure that these and other objectionable recommendations of the ICs are withdrawn. We would once again like to reiterate that the correct way of determining whether any changes need to be brought about in the act and in the functioning of public authorities, the government and the information commissions, is to initiate a public debate on problems, if any, being faced by any or all of the stakeholders. It is only through such a public debate that acceptable and lasting solutions will emerge.

With regards,

Yours sincerely,



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Mazdoor Kisan Shakti Sangathan



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