

Bending over backwards to break RTI – June 29, 2009

Dear All,

There has been some discussion about the circular issued by the Department of Personnel and Training on how Information Commissions should conduct hearings. The sum and substance of the circular is that benches constituted by the Central Information Commission and other multi-member State Information Commissions are illegal. All Commissions must hear every case as a body according to DoPT. This is impractical, untenable and goes against the letter and spirit of the RTI Act. This position is argued below in detail.

What does the May 22 2009 circular say?:

The circular issued by the Director, DoPT claims that the opinion of the Department of Legal Affairs was sought regards the legality of benches of Information Commissions hearing appeals and complaints. (click for the circular here: http://persmin.gov.in/WriteData/CircularNotification/ScanDocument/RTI/1_1_2009-IR_1.pdf)

The Dept. of Legal Affairs has held that there must be a specific provision in the Act for the constitution of benches. Further, the powers granted to the Chief Information Commissioner, Central Information Commission (CIC) under section 12(4) do not include the power to constitute individual or multi-member benches. In view of this opinion received from the Dept. of Legal Affairs, the Director has advised the Secretary of the CIC to ensure that the CIC "as defined by section 2(k) of the RTI Act" take decisions on complaints and appeals.

What is wrong with this circular?:

With due respect to the wisdom of the DoPT in issuing this circular and the even greater wisdom of their advisors- the Department of Legal Affairs, the following difficulties must be pointed out:

1) Section 12(7) of the RTI Act states that the headquarters of the CIC shall be at Delhi and the CIC may with the previous approval of the Central Government establish offices at other places in India. What was the intention of Parliament when it inserted this section? The most obvious reason that is apparent to common sense is that Parliament believed the CIC must be accessible to people all across the country and not be closeted in Delhi alone. Given the fact that a maximum of ten Commissioners can be appointed (in addition to the Chief Information Commissioner) this decentralisation and spreading out of offices of the CIC is theoretically possible. If Parliament wanted the CIC to hear all cases as one body, this provision would become redundant. The general rules of interpretation require that no provision of a law must be interpreted in a manner that renders another provision in the same law lifeless or unworkable. The principle of harmonious construction requires that the law be interpreted in such a manner that all provisions are given effect to in a harmonious way.

If offices of the CIC are to be established across the country then the intention was not to make them dispose cases in collegium.

The circular of the DoPT does not take these important principles into account. (It is important to note that the Government of India has rejected the recommendation of the Second Administrative Reforms Commission to set up offices of the CIC all over the country. The reason given is that it is an expensive exercise that does not serve much purpose)

2) When seen in the light of the sheer workload of a majority of the Information Commissions, the advice given appears laughable. The Central Government and the State Governments have not given the Information Commissions high quality staff nor have they given them adequate freedom to hire quality personnel from the private sector. In countries like the UK a majority of the cases do not even go to the UK Information Commissioner. They are disposed of by the investigative staff themselves acting under the authority of the Information Commissioner. In India there is no investment made at any level to develop such investigative staff for Information Commissions. So there is no choice but to refer all cases to the Commissioners themselves. If Commissioners are required to decide all cases as a collegium we can expect pendency to go up to a decade or more- "File an appeal/complaint today - expect a decision after 10 years when the 3rd round of Information Commissioners take charge (each Commissioner has a tenure of five years only)". DoPT's advice is not only laughable but ill thought out and impractical. The advisors have not grounded themselves in the reality of the pendency levels in Information Commissions before drafting this advice. Somebody forgot to send them on essential field work before this opinion was drafted- a visit to the registry of Information Commissions would have revealed pendency levels.

Does the Chief Information Commissioner not have the power to constitute benches?:

Of course the RTI Act does not clearly state how appeals and complaints must be heard. Let us face it, this is a law drafted in a hurry, so some of the fine tuning is missing. This issue could have been addressed under the RTI Appeals Rules. The Central Government has made Rules prescribing the procedure to be adopted for disposing appeals. There is no mention of the necessity of collegial decision-making in those Rules. In expectation of the workload, the Chief Information Commissioner allotted work to his 4 colleagues and later revised it when 4 more were appointed. If the Act is silent and the Rules do not provide for collegial decision-making, what crime has been committed by constituting benches to dispose of matters speedily? The responsibility of running the CIC lies with the Chief Information Commissioner. Given the fact that the Act and the Rules are silent about how to handle the ever-increasing workload, the management powers given to the Chief Information Commissioner are adequate for the purpose of dividing work between Information Commissioners.

The advice given and the circular issued subsequently appear mischievous in their intent given the impracticality of the idea.

Why object after four years?:

When the Chief Information Commissioner allocated work to various Information Commissioners as and when they were appointed, DoPT did not object to such division of work. In fact it submitted itself to the jurisdiction of single and multi-Commissioner benches during the last four years. Now the reference of this matter to the Dept. of Legal Affairs and the subsequent advice rendered appear to be afterthoughts when they found themselves in a corner over the file-notings issue. This circular if implemented will have a crippling effect on most Information Commissions. Perhaps this is the intended effect given the fact that the CIC drove DoPT to a corner on the issue of file notings earlier.

What happens in other courts?:

We are all familiar with the single, double, division and constitution benches of the Supreme Court and the High Courts. Article 145(2) of the Constitution states that rules shall be made to provide for the number of judges of the Supreme Court who shall sit for any purpose. Specific rules will be made outlining the powers of a single judge or Division Court. Nowhere in the Constitution does it say that the Chief Justice shall constitute such benches. The Supreme Court Rules issued in 1966 empower the Chief Justice of India to constitute such benches (click here for the SC Rules: <http://www.supremecourtindia.nic.in/rulespdf.pdf>). These Rules were issued with the approval of the President. The situation is similar in the High Courts. So it is difficult to pin point any grave error committed by the Chief Information Commissioner by constituting benches to decide cases. This is the most practical thing to do.

What can we do?

Perhaps DoPT should do its own homework and amend the RTI Appeals Rules to empower the Chief Information Commissioner to constitute benches. Until such time, the Chief Information Commissioners can use their powers under the RTI Act to manage the CIC. So all of us in the RTI fraternity should write to the Minister of Personnel to withdraw this circular issued to the CIC and the Chief Secretaries of all the States and also recommend that the RTI Appeals Rules be amended to clearly empower the Chief Information Commissioners (Central and States) to constitute benches.

Please send the following sample email/letter to the Minister Personnel, Pensions and Public Grievances. :

"Dear Sir,

I would like to bring to your notice the impracticality of a recent circular issued by the Department of Personnel and Training under your Ministry. The circular No. 1/1/2009-IR dated 22nd May 2009 advises the Central Information Commission to hear all appeals and complaints as a single body instead of in benches as is the practice now. I believe this advice is ill-considered and violative of section 12(7) of the RTI Act. Given the current workload of the Central Information Commission this advice is impractical. We urge you to withdraw this circular immediately. Another circular bearing the same number has been sent on the same date to all the Chief Secretaries in the States advising them in a similar manner. We urge you to withdraw this circular as well.

Thanking you,
Yours sincerely,

(Name and address of the sender)

NO AMENDMENTS - LEAVE OUR RTI ACT ALONE."

Send your email/letter to:

1) Mr. Prithviraj Chavan, Minister of State, Personnel, Public Grievances and Pensions, Government of India.

Email: mмос-pp@nic.in or mchavanprithviraj@sansad.nic.in

2) Mr. Rahul Sarin, Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India.

Email: msecy_mop@nic.in

In the States you may send the following sample email/letter to the Chief Secretary urging him/her to ignore the circular:

"Dear Sir,

I would like to bring to your notice the impracticality of a recent circular issued by the Department of Personnel and Training Government of India. The circular No. 1/1/2009-IR dated 22nd May 2009 advises that the State Information Commission should hear all appeals and complaints as a single body instead of in benches as is the practice now. I believe this advice is ill-considered and violative of section 12(7) of the RTI Act. Given the current workload of the State Information Commission this advice is impractical. We urge you to ignore this circular.

Thanking you,

Yours sincerely,

(Name and address of the sender)

NO AMENDMENTS - LEAVE OUR RTI ACT ALONE."

Please remember to copy your emails to us as well for the sake of our records.

Our Slogan: NO AMENDMENTS - LEAVE OUR RTI ACT ALONE.

Thanking you,

Sincerely,

Venkatesh Nayak
Programme Coordinator
Access to Information Programme
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Tel: 91-11- 2686 4678/ 2685 0523
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