

RTI and Proactive Disclosure:

Come 12th December it would be 18 months since the RTI Act came into force in India. Awareness about the Act in certain areas has increased reasonably. But government officials/departments everywhere are still to get used to idea of giving information. Besides attending to the information requests received from people the law also casts an important duty on all public authorities to disclose on their own 17 categories of information about their structure, organisation, staffing, procedures, operational norms and finances. Public authorities around the country were given 120 days i.e. up to 12th October 2005 to complete this task and make a large volume of information available to people easily so that they would not have to make a written request for it. However in several states public authorities have been very slow to compile this information. In many States this task might not have begun yet. Citizens have had to make written requests, pay the application fee and wait for 30 days to secure information that would otherwise have to be disclosed proactively.

Zakir a young lad from small Kalol town of Panchmahals district of Gujarat has decided that he is going to get all the information from all government departments, which is going to be of use for general public. For a year now he has been making several applications under the Act and also mobilising hundreds of other people to demand information.

Today Zakir was at the State Information Commissioner's Office. This was his first appearance before the Commission. A few days ago he had received a letter from the Commission asking him to remain present before the commission regards his complaint that he had sent to the SIC. Zakir on the 22nd of March 2006 had asked for all information pertaining to Government schemes that were being implemented from the Deputy Collector's Office Godhra. He sought details of eligibility criteria and documents required for applying to these schemes and funds received for disbursement under this scheme. In his limited experience he had learnt that each time a person went to the concerned department with the filled up form availing of benefits under the scheme he/she would be sent back saying that he/she did not fulfil the criteria for being a beneficiary under the scheme or that the financial allocation for the current year is over and he/she could not apply only next year. Zakir felt that it was essential that all information about government schemes be made public or else what was the point of having these schemes when the benefits are not reaching the people. He submitted a written application but did not pay an application fees citing that this was proactively disclosable information. Technically this information should have been disclosed by the Block office proactively.

When Zakir did not receive any reply nor any information even after 30 days he submitted his first appeal on 11th May to the Residential Deputy Collector (RDC) at Godhra who is the designated first appellate authority. The RDC was also not keen on giving the information. Almost three weeks

later he sent back a reply to Zakir saying that the appeal was incomplete, as it was not submitted in the prescribed format and the appeal fees were of Rs 50/- was not affixed.

Zakir was slightly surprised at this response from the appellate authority. The appeal procedure that was stated in sec 19 of the Act merely required the appellate authority to hear both parties and pass his decision within 30 days of the hearing. Zakir was sure that there was no provision in the Act or the Gujarat rules which required appeal fees. A prescribed appeal format no doubt had been provided but filling the appeal in that format was definitely not mandatory.

Unhappy with the response of the Appellate Authority, Zakir filed a complaint with the State Information Commission (SIC) on the 12th of July stating the whole facts of the case. The Act does not require the SIC to reply to the applicant within any fixed time period. More than 16 weeks later on the 18th of November Zakir received a letter from the office of the Commission asking him to be present before the Commission on the 30th of November with regards to the appeal that he filed before the commission.

So this was Zakir's story till now. He waited outside the commissioner's office. His hearing was 5th in line. Whilst he was waiting outside he saw the PIO from the deputy collectors office as well as the appellate authority. They too were asked to remain present. Whilst Zakir was waiting outside there were a number of other people who had come for their appeal hearings. Amongst them were several government officers as well. A man from the deputy collector's office Ahmedabad was seated beside Zakir. Zakir was carrying with him some of the RTI training material and pamphlets. Looking at these in Zakir's hand he asked Zakir what work he was doing. Zakir gave a brief description of his worked – he was working to enable people to use the RTI Act, bring about awareness of the Act and at the same time make sure that government departments were doing their jobs. He told Zakir that it was all good work and that training material was good and easy to understand. After a few moments of silence the government official burst out. He said that he was simply sick of this new Act. There was a severe shortage of staff and due to that instead of one district he was now in charge of 3 districts. When the Act came into force he got designated as the PIO and automatically in effect he got designated the PIO for all three districts and had to attend to the information requests of all three blocks. He had a request each day and was unable to cope with the requests. He went to say, *“sarkar ko to aur kuch kaam nahin hein. Woh to naye naye kayde nikalti rahti hein aur bhog hum bante hein.”* He said he had reached a stage where he was now giving information free of cost. He would not even demand an application fee and would even allow examination of records free of charge. According to him he was here for the 9th time answering the reasons for delay and was now actually hoping that he would be fined heavily and dismissed of the post of the PIO so that he could get back to doing other important work.

At about 12noon Zakir, the PIO of the Deputy Collector's office and the appellate authority from the same department were called in. Zakir asked the Commissioner whether he could present his case but the Commissioner refused saying that he had read the papers and was clear about what the facts of the case were. The Commissioner then turned to the PIO and asked why his department had not provided the information. The PIO promptly replied that the information was ready but since the applicant had not paid the application fees the information was withheld. The Commissioner looked slightly annoyed. He chose to educate the PIO and informed him that the information sought by the applicant fell under section 4(b) of the Act. Such information had to be made available to people without them even asking for it and without any application fees. The applicant should not be made to wait for 30 days and such information should be provided immediately. The Commissioner then asked the PIO whether his department had prepared all the information that was required under proactive disclosure. The PIO said no. The Commissioner was not surprised. All he said was *“Tum log abhi bhi nahi sudhre”*.

The Commissioner then inquired about the appeal proceedings. He asked the appellate authority why a hearing between the two parties was not held despite the applicant making an appeal. The appellate authority replied that the applicant had not followed the appeal procedure. The appeal was not filled in the prescribed format and that the appeal fees had not been paid. The Commissioner reminded the PIO that it was not necessary to fill in the appeal in the prescribed format. It can be filled in on a plain sheet of paper and it would have the same status of an appeal. He also said that no fees for an appeal are required to be paid by the applicant. The Commissioner realised how that problem had arisen. He mentioned to Zakir that the original draft rules had a provision for a Rs 50/- fee to be submitted with every appeal. However this provision was removed when the final rules were out. This change in procedure was not conveyed to all the departments and officials were still following the old rules. It was apparent that due to this reason the attitude of the SIC was slightly lenient towards the PIOs. But on the other hand *“lack of awareness of the law can never be an excuse for violation of the law!”* The SIC finally warned the PIO that if they would continue to deny information requests in this manner it would be subject to penalty henceforth.

After this the Commissioner gave his decision. He ordered the PIO of the deputy collector office to provide the information within the following 10 days. He then said to Zakir that that if he were not satisfied with the information that is provided then the doors of this office would be always open for him. The Commissioner also issued a circular to all District Collectors across the State asking them whether they had disclosed all the information required by under section 4(1)(b) of the RTI Act. If they had already made it available then copies of that information be submitted to the SIC immediately and if they have not disclosed the information as yet then they are required to do so within 15 days of the SIC's order. Here

again copies of this information have to be submitted to the Commission as well.

The PIO and the appellate authority had been visibly nervous during the proceedings. When they stepped out of the office they felt slightly relieved because this time at least they were spared of paying the penalty. The PIO then turned to Zakir and told him that he has already prepared the information and would send it to him as soon as he reached his office.

Zakir was a happy man as he left the Commissioner's office. He somehow wished that the Commissioner had insisted on a penalty. That would have definitely cautioned other PIOs and departments. However this in itself was a good move ahead. He walked down mighty pleased. Not only had he got the information he wanted but also ensured that all Collectors across the State were now obliged to make this information available to all. His constant complaint was that most offices were used to asking for fees for proactive disclosure. This order was now definitely going to bring to an end that practice.

The whole process of from filing his first application to this day had taken more than eight months. Getting the information in hand was going to take another 10 days. It had been a long wait. The main purpose of the new law was to ensure that governance changes and improves, corruption reduces and transparency rather than secrecy becomes the rule. Zakir was sure that was going to be a reality soon.

Narrated by Navaz Kotwal

Zakir Sheikh has been trained by CHRI to use the RTI Act