

Proposed Law Amending Tamil Nadu Right to Information Act 1997

Tamil Nadu Right to Information Act 2004

Submitted to the Government of Tamil Nadu- July 2004

An Act to make provision for securing right to information in the State of Tamil Nadu and for matters relating thereto

WHEREAS the right to information has been recognised by the Supreme Court as a part of the fundamental right guaranteed to the citizens under Article 19 (I) of the Constitution of India;

AND WHEREAS the right to information is the bed-rock of democracy and can pave the way for transparency, openness and accountability in governance of the affairs of the State and ensure effective participation of the people in a democratic society;

WHEREAS it is necessary that every Governmental action should be transparent to the public :

AND WHEREAS to achieve this object, every citizen should be able to get information from the Government.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Fifty Fifth Year of the Republic of India

Definitions :-

2. In this Act, unless the context otherwise requires,-
 - (1) **appellate authority**—means officer or officers authorised by the concerned Competent Authority to act as the Appellate Authority, by general or special order, for the purposes of this Act;
 - (2) **administrative unit** will include all units from the lowest level of unit of every administrative department to the highest and includes statutory boards, commissions and all enforcement agencies.

The Catalyst Trust 3, Shanthi Avenue Dr.Radhakrishnan Nagar, Thiruvanmiyur, Chennai 600 041, Ph: 24461597,

Civic and Consumer Action Group (CAG), 7, Venkateswara Nagar, 4th Street, Adyar, Chennai 600 020 Ph:24914358,

Human Rights Advocacy and Research Foundation (HRF), No.10. Thomas Nagar, Little Mount, Saidapet, Chennai 600015 Ph: 22353503

(3) **'Citizens Charter'** A Citizens Charter shall mean a publication, brought out by a public authority setting out information under section 4 b

(4) **"Competent Authority"** means, -

- (i) the Head of every Department of the Government by what ever name called;
- (ii) the Heads of public and other authorities ' in the State;
- (iii) Chief Executives/functionaries of Public undertakings, and Statutory Boards statutory authorities and other public authorities
- (iv) Registrar of the High Court , and designated officers in all other courts and all other Statutory Commissions.

(5) Document (Evidence Act)

Documents means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter.

(6) **"Government"** means the Government of Tamil Nadu;

(7) **"Information"** means information relating to any matter in respect of the affairs of the Government and of any public authority and includes a copy of any record in the form of a document, diskettes, floppy, electronic or any other digital mode of recording information;

(8) **"Public authority"** means any authority or body established or constituted by any State law and includes any other body owned and controlled by the State or which receives any aid directly or indirectly *from* the Government and shall include the bodies whose composition and administration are predominantly controlled by the Government or on which office bearers are appointed by the Government.

Explanation—For the purpose of this clause the expression "aid" shall include Government aid in the form of Government land at concessional rates or any other monetary concessions like exemption from tax, etc., by Government as specified by Government, from time to time;

(9) **"Public Information Officer"** means an Officer designated by any Public Authority under sub-section (1) of Section 5 and shall include such officer or employee whose assistance has been taken by the Public Information Officer for the performance of his duties under this Act;

(10) **"Right to Information Tribunal"** means the Tribunal constituted by the Government for the purposes of Section 8 (a)

(11) **"record"** means and includes:-

- (i) any document, manuscript or file ;
- (ii) any microfilm, microfiche and facsimile copy of a document;
- (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (iv) any other material produced by a computer or by any other device;

3. Right to Information

Every person shall have the Right to obtain Information subject the provisions of this Act.

4. Obligation on Public Authorities

Every Public Authority shall,-

- (a) maintain all its records, in such manner and form, as is consistent with its obligation under this Act to provide information to the public
- (b) publish a Citizen's Charter containing the following and make the same available in all administrative units at all levels
 - (i) the particulars of its organisation, functions and duties
 - (ii) the powers and duties of its officers and employees and the procedure to be followed by them in decision making process;
 - (iii) the norms set by the public authority for the discharge of its functions;
 - (iv) the rules, regulations, instructions, manuals, government resolutions, orders and guidelines and the list of record in the office, which can be made available to the citizens;
 - (v) the details of facilities available to citizens for obtaining information;
 - (vi) the name, designation and other particulars of the Public Information Officer; and
 - (vii) the procedure for redressal of grievances of the public in their dealings with the public authorities.
 - (viii) such additional information as may be prescribed by the Competent Authority concerned, from time to time;
- (c) make available relevant facts concerning important decisions and policies likely to have an impact on public interest
- (d) before initiating or giving clearance to any project which is likely to have an impact on life, livelihood and environment, publish or communicate to the public generally and to the persons affected or likely to be affected by the project in particular, the facts available to it or to which it has reasonable access and which in its opinion should be known to the affected persons or persons likely to be affected.

5. Appointment of Public Information Officers:

- (1) Every Public Authority shall for the purposes of this Act, designate one or more officers as Public Information Officers in all administrative units and offices under such authority from the lowest to the highest administrative unit including VAOs and Presidents of Village Panchayats.
- (2) Every Public Information Officer shall be empowered to deal with a request for information made under sec. 6 and shall render all assistance to any person seeking such information.
- (3) The Public Information Officer may seek the assistance of any other Officer or Employee as he considers necessary for the proper discharge of his duties.
- (4) Any Officer or Employee whose assistance has been sought under sub-section (3), shall render all assistance to the Public Information Officer seeking his assistance.

6. Procedure to obtain information

- (1) A person desirous of obtaining information shall make an application to the Public Information Officer.
- (2) On receipt of an application requesting for information under sub-section (1), the Public Information Officer shall, forthwith acknowledge the receipt of the application.
- (3) The public information officer shall as expeditiously as possible and in any case, not later than fifteen working days from the date of receipt of the application, either provide the information as requested or reject the request for any of the reasons specified under the provisions of this Act.

Provided that, in a suitable case for the reasons to be recorded and communicated to the applicant, the time limit may be extended by another fifteen working days:

- (4) Where a request is rejected under sub-section (2), the Public Information Officer shall communicate in writing to the person making the request,-
 - (i) the reasons for such rejection;
 - (ii) the period within which an appeal, against such rejection may be preferred; and
 - (iii) the officer or authority before whom the appeal shall be preferred by the applicant.
- (5) As far as possible, the information provided should reflect the information and material available with the authority Whenever and wherever the information applied for, involves the life and liberty of a person, such information shall, subject to the provisions of section 7, be

supplied to the applicant within twenty-four hours of the receipt of the application.

7. Exemption from disclosure of information

Notwithstanding anything contained in this Ordinance, no person shall be given the, -

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security or interests of the State, relation with foreign State or lead to incitement of an offence :

Provided that, whenever any information sought is to be withheld on the aforementioned grounds, the request for such information shall forthwith be put up by the Public Information Officer through the Competent Authority to the Committee for consideration and decision;

Provided further that, the Public Information Officer shall, after obtaining the 'approval from such Committee for rejection of the request, while communicating such rejection to the applicant mention that such rejection is with the approval of the Committee ;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court ;

(c) information, 'the disclosure of which would cause a breach of privilege of Parliament or the State Legislature ;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the Competent Authority is satisfied that larger public interest warrants the disclosure of such information ;

(e) information available to a person in his fiduciary relationship, unless the Competent Authority is satisfied that the larger public interest warrants the disclosure of such information ;

(f) information received in confidence from foreign government or International Organization :

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes ;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders ; and

(i) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Competent Authority is satisfied that the larger public interest justifies the disclosure of such information.

8. Composition of the Right to Information Tribunal

“The Right to Information Tribunal shall consist of :-

- (a) Any person who is or has been a Judge of High Court appointed by the State Government, who shall be its Chairperson.
- (b) two members, one of whom shall be a woman who shall have the following qualifications namely:-
 - (i) be not less than 30 years of age;
 - (ii) possess a bachelor's degree from a recognised university; and
 - (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of atleast 10 years in dealing with issues relating to transparency and accountability in public affairs or administration.”

9. Other Information

(1) Without prejudice to the provisions of section 7, -

- (a) the information pertaining to decision making in a case, shall be made available to any applicant after the decision has been taken or deemed to have been taken in such case and the matter is complete or over;
- (b) all information relating to any occurrence, event or matter which has taken place, occurred or happened fifteen years before the date on which any request is made under sub-section (1) of section 6, shall be provided to any person making such request.

(2) Any information, which cannot be withheld from the Parliament and the State Legislature and the Courts, shall necessarily be made available to the applicant under the provisions of this Act.

10. Severability

No request for an information shall be totally rejected on the ground that it is in relation to an information or record which is exempted from the disclosure, if, it is possible to give that information from the part of the record which does not contain any information that is exempted from disclosure under this Act and which can reasonably be severed from any part of the record that contains the exempted information.

11. Appeals

(1) (I) Any person aggrieved by an order of the Public Information Officer may, within thirty days from the date of receipt of such order or within 60 days of making the application if no order is received, prefer an appeal to the Appellate Authority.

Provided however that the appellate authority may condone any delay in filing the appeal if good cause is shown, for reasons to be recorded in writing

(2) The appellate authority may, after giving the person or persons affected a reasonable opportunity of being heard, pass such order as it deems fit.

(3) If an appellant is unable to be present physically but sends in his representation in writing the Appellate Authority shall pass orders after duly considering the written representation of the Appellant.

(4) Any person aggrieved by the proceedings/order of the appellate authority may within thirty days from the receipt of such order, prefer a further appeal to the Right to Information Tribunal.

(5) The appeals referred to in sub-sections (1) and (3) shall, as far as possible be disposed of within fifteen days of the receipt of such appeals or within such extended period not exceeding a further period of fifteen days, after recording the reasons for such extension of period.

(6) The decision of the Tribunal as the case may be, in appeals shall be final.

12. Penalty

(I) Where any Public Information Officer has without any reasonable cause, failed to supply the information sought within the period specified under sub-section (2) of section 6, the appellate authority or the Tribunal may, in appeal impose a penalty of rupees two hundred for each day's delay in furnishing the information, after giving such Public Information Officer a reasonable opportunity of being heard.

(2) Where it is found in appeal that any Public Information Officer has knowingly given,-

- (a) incorrect or misleading information, or
- (b) wrong or incomplete information;

or has unreasonably rejected any application,

the appellate authorities may impose a penalty, which it thinks appropriate after giving such officer a reasonable opportunity of being heard.

- (3) The penalty under sub-sections (1) and (2) as imposed by the appellate authority, shall be recoverable from the salary of the Public Information Officer concerned, or if no salary is drawn, as an arrears of land revenue.
- (4) The Public Information Officer on whom the penalty under sub-sections (1) and (2) is imposed shall also be liable to appropriate disciplinary action under the service rules applicable to him.

13. Constitution of Councils

- (1) The Government shall set up a Council for monitoring the working of this Act, at the State level under the Superintendence of the Chief Secretary and for every district under the Superintendence of the concerned District Collector. Such Council shall comprise such members who are persons of repute and standing in society including representatives of media and non-government organisations, and academicians, as may be prescribed.
- (2) The State Council shall table an Annual Report on the working of the Act, in the State Legislative Assembly during every budget session.

14. Constitution of Commission of Records

- (1) The Government shall set up a Commission of Records comprising the representatives of the Government, persons of repute and standing in society including academicians, as may be prescribed. It shall be the duty of the Records Commission to advise the Government on release of the old records for being made available for public information.
- (2) The decision of the Records Commission shall be binding on the Government and it shall be implemented within three months unless the Government, for reasons to be recorded decides to overrule the decision of the Commission.
- (3) In each such case of overruling of the decision of the Records Commission, the Government shall lay a statement on the table of the State Legislature at the earliest failing which the Government is deemed to have accepted the decision of the Commission and has to implement the same.

15. Act to have overriding effect

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law made by the State Legislature or any rules, regulations or order made thereunder.

16. Powers to make rules

- (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.
- (2) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while in session for a total period of thirty days, which may be comprised in one session or it two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in rule or both Houses agree that the rule should not be made, and notify their decision to the effect in the Official Gazette, the rule shall, from the date of publication of such decision in the Official Gazette, have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

17. Power to remove difficulties

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arises, by an order published in the Official Gazette, do anything, not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for removing the difficulty.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature.

18. The Tamil Nadu Right to Information Act 1997 and the Rules made there under are hereby repealed. However, notwithstanding such repeal, all acts, orders and decisions taken under the said Act and rules shall be deemed to be valid and all appeals and other proceedings pending on the date of commencement of this Act shall be dealt with in terms of the provisions set out herein above.

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