

Interpreting the scope of Section 7(3) of RTI Act- what happened at the CIC hearing

24 September 2009

Dear all,

Yesterday (23rd Sep. 2009) the full bench of the Central Information Commission (CIC) heard the matter regards the interpretation of section 7(3) of the RTI Act. Chief Information Commissioner Mr. Wajahat Habibullah, Information Commissioner Satyananda Mishra, Information Commissioner M A Ansari and Information Commissioner Shailesh Gandhi were present. The newly appointed Information Commissioner Mrs. Deepak Sandhu was also present but sat with the audience.

What did the public authorities say?

The lawyer representing the Institute of Company Secretaries - the respondent in the current case - made the usual arguments about voluminous information being requested by applicants leading to diversion of considerable time and energy of staff. He stated that Rule 4 of RTI Fee Rules notified by the Central Government applies to section 7(1) only i.e., they are applicable only for photocopying, inspection and sample charges. It does not apply to section 7(3)(a). Charging costs under this clause is left to the discretion of the PIO and the public authority. He argued that Parliament intentionally did not want this kind of cost to be prescribed by the government but to be determined by the PIO.

The representative of National Thermal Power Corporation (NTPC) made a submission that processing each RTI application costs them Rs. 30,000/- He also stated that lots of funds were spent on preparing site reports etc. If citizens can get a copy of such reports at the rate of Rs. 2 per page how would the public authority ever recover its costs? One Commissioner expressed a similar apprehension later on in the hearing. Another PSE representative stated that they were under compulsion to provide information in the form requested by the applicant and this took a lot of time away from other legally mandated work.

The Delhi Police representative came armed with a copy of a Rule issued by the Lt. Governor of Delhi under section 40(2) of the *Delhi Police Act* which allowed the Police Commissioner to charge costs for providing additional police forces to private parties for security purposes such as when any large public work or commercial work is being constructed or when public amusement is held on a large scale. The Rules allow the Delhi Police to collect charges rank-wise. (for the relevant provision click on:

http://www.humanrightsinitiative.org/publications/police/delhi_police_act_1978.pdf) In other words they wanted to charge the RTI applicant costs in a similar manner because they found it difficult to dig out old or voluminous records. One of the Commissioners stated that they would listen to the arguments but it was up to them to make a decision whether to allow such costs or not. Another Commissioner pointed out that efforts had to be put in for digging up records because the public authority had not done its best to improve its records management. If records management is improved then time would not be wasted in searching for records.

Issue framed by the CIC:

So the central issue that the CIC bench put forth for comments was whether additional costs can be imposed under section 7(3)(a) of the RTI Act when a request could not be complied with under section 7(9). In other words can the PIO charge 'further fee' in excess of the usual photocopying or inspection charges which are prescribed under the RTI Rules if providing information in the form requested by the applicant will disproportionately divert the resources of the public authority? Two Commissioners asked this question pointedly. It was also said that RTI could be misused to seek photocopies of published books by private authors which are stored in public libraries. One of the Commissioners said that RTI should not be used for this purpose.

What did civil society representatives argue?

Er. Sarbajit Roy questioned the legality of the CIC bench and argued that there was no provision in the RTI Act or in the RTI Rules for the constitution of smaller benches of the CIC. He also objected to the fact that two ICs who had ruled that fees should not be charged under section 7(3) were sitting on the bench but an Information Commissioner who had issued several decisions allowing costs to be charged under section 7(3) was not invited to be a member. Repeated references were made to this IC's decision in the matter of *K Lall v Shri M K Bagri, Registrar of Companies and Another* (<http://cic.gov.in/CIC-Orders/AT-12042007-01.pdf>) Bias was alleged against the CIC bench. The CIC did not react to this allegation except to state that K Lall was not the case under consideration. (I will try to send an analysis of K Lall and other decisions on similar matters shortly.)

Mr. Rakesh Kr. Gupta argued on larger issues such as non-compliance with section 4(1)(a) and contended that the social benefits of transparency in public authorities, when quantified, would far outweigh the costs of handling an RTI application. He also stated that the actual cost of photocopying was much less than the rate of Rs. 2/- prescribed in the rules. This was more than adequate to cover the actual costs incurred by the public authority in handling an RTI application.

While reiterating my arguments which were made in our first submission to the CIC in December 2008 I made the following points (I have expanded upon a couple of them in this email for the sake of greater clarity)-

1) It is a fundamental principle of democracy that not a single penny will be raised from the citizenry in the form of a tax nor will a single penny be spent by the government without Parliamentary approval. The RTI Act provides for only three kinds of fees - application fees, additional fees payable for information that is not in electronic form and additional fees payable for information that is in electronic form. The term 'further fee' used in section 7(3)(a) is not further to the fees mentioned in section 7(1). It is an explanation of the details of the procedure mentioned in summary in section 7(1). It is further only to the application fee mentioned in section 6(1). So there is no discretion left with the public information officer (PIO) to charge any other kind of fee imaginable under the sun in addition to photocopying charges.

2) When an application is made under the RTI Act, its provisions and its Rules ought to apply. Fee provisions from other laws cannot be imported into an RTI procedure. If Delhi Police will charge fees under Delhi Police Act when they receive RTI applications, then what is there to prevent another PIO from charging fees under 100 other laws enacted by Parliament and 50 laws enacted by the respective State legislatures? If the PIO feels thirsty while searching for the records and consumes a bottle of water during this process, will the applicant be charged the cost of that water bottle also? The principle of reasonableness lies at the crux of the fee-related provisions under section 7. All fees charged must be reasonable. If not there would be no justification for giving fee waiver to BPL persons. In other words this is an issue of affordability. If the exercise of a fundamental right becomes prohibitively expensive it is as good as denial of access to the citizen.

3) It is usual practice in other countries to set up committees of senior officers to harmonise contradictions between their RTI laws and laws on other subjects. That exercise has not been carried out in India. So there is no guidance as to what must be done when a citizen seeks information from the Patents Controller under the RTI Act because there is another procedure under the Patents Act for obtaining the same information and it is much more expensive. Why should the citizen be compelled to observe the provisions of the Patents Act when he/she makes an application under the RTI Act? The citizen should have the choice to seek information under any law that is of convenience to him/her. This argument is based on the well known principle of law that allows an aggrieved person the right to choose between remedies if more than one is available, so long as he/she does not approach both simultaneously.

4) The guidelines on the RTI Act for citizens circulated by the Department of Personnel (DoPT) in November 2007 make no reference to any fees other than application and additional fees. This circular was issued when Information Commissioner Satyananda Mishra was the Secretary, DoPT. So even the official policy of government is to not charge any costs other than for photocopying or for CDs.

(for the complete text of these guidelines click on:

http://persmin.gov.in/WriteData/CircularNotification/ScanDocument/RTI/1_8_2007_IR.pdf)

5) As for RTI applicants seeking photocopies of entire books from public libraries, that could be rejected straight away under section 9 because such an act would violate the copyright vested in a private individual or entity. So there was no danger of RTI being misused for making copies of library books.

6) Public sector enterprises (PSEs) like NTPC fall within the definition of Article 12 of the Constitution of India. They have been set up for a public purpose, not for the sole reason of generating profits. Such bodies have a duty to uphold fundamental rights guaranteed under the Constitution just as other entities in the Government are obligated. While it was alright for private entities to seek to recover costs from their consumers and clients, the PSEs cannot act in a similar manner especially when they have a constitutional obligation to honour fundamental rights of every citizen. Allowing the PIOs to charge exorbitant sums of money under section 7(3) would amount to imposing an unreasonable restriction on the exercise of the constitutionally guaranteed fundamental right to information.

7) Nothing in the RTI Act compels a PIO to provide information in the form sought by the applicant. Section 7(3)(b) gives the applicant the right to seek review of the form of access provided. So if it is not possible to make photocopies then inspection could be allowed. If the applicant is not satisfied he may seek a review of this decision before the appellate authority. If he is not satisfied at that stage either he may approach the relevant Information Commission. The Commission has the power to order that access be provided in the form requested if it deems fit. There is no instance where the CIC has ordered that voluminous information be provided just because an applicant is seeking it.

8) It would be nice to see which PIO would have the temerity to charge wages, search fees, compilation charges and other such costs for providing information in response to a question raised by a Member of Parliament or State legislature. When the information is given free of cost to people's representatives, it should be given at least at a reasonable price to citizens who elect them. They are the principles in a democracy.

9) Before the recession hit the Indian economy in 2008, Indian newspapers, especially the business news papers, reported that PSEs, especially, the larger ones which are members of the Standing Conference of Public Enterprises (SCOPE), had an accumulated surplus of Rs. 200,000 crores. The papers reported that the PSEs did not know what to do with the money and were organising seminars to find ways and means of investing them in the mutual funds market. Later in 2008 the Cabinet Committee on Economic Affairs approved the investment of 30% of surplus funds in mutual funds. Perhaps some part of this surplus might have disappeared now due to the economic recession. However, whenever such surplus is accumulated it could be used for meeting such additional expenses on account of RTI. Other government departments could seek a raise in budgetary support to meet similar expenses. After all it is the taxpayer who will foot the bill, not the public authority.

At the end of the 1.5 hour hearing the Chief Information Commissioner announced that the bench has reserved its decision.

What I found embarrassing

The last two points that I wish to make are very embarrassing to acknowledge, but this soul-searching and plain-speaking is required.

1) First, we are in this state of affairs today because of the irresponsible use of the RTI Act by a very small number of applicants. I have interacted with applicants who have sent 250 questions or even 400+ questions in one application and claimed that as an achievement. This kind of attitude towards RTI is extremely unfortunate. Such applications have a vexing effect on the PIO(s). This colours their approach to other information seekers subsequently. Such irresponsibility only harms the fundamental right to information by building up pressure on public authorities and even Information Commissions to find ways of handling such applications. The temptation often is to find solutions that may not be in keeping with the letter and spirit of the Act. We cannot avoid part of the blame for this mess. Restraint is a much needed approach while filing RTI requests. The representative of the respondent in this case stated that the applicant had asked 130+ questions in one application. It must also be said that often such

applications are filed by disgruntled employees or those who retired from the same public authority or those who failed to get a contract with the public authority. How do we ensure that such irresponsible use of RTI does not occur frequently is a big question. It seemed alright to have such aberrations during the initial years of RTI. The graph must decline in later years, if not RTI will be under serious threat again.

2) Second, there were at least 50 representatives from various public authorities sitting in that hall yesterday. The number of civil society organisations working towards the promotion of RTI that attended the hearing was a **grand total of 1 (one)**. With the exception of four of my colleagues, civil society representatives numbered a **grand total of two**. **In all there were less than 10 of us representing civil society**. If this is how seriously activists and advocates treat crucial RTI issues then the RTI Act may soon require divine intervention for survival. Thankfully, the bench stated that numerous submissions had been received from people spread all over the country. So the hope for survival may come from outside Delhi.

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