

Karnataka Right to Information (Amendment) Rules, 2008

Submission by

Commonwealth Human Rights Initiative, New Delhi

Introduction

The Commonwealth Human Rights Initiative (CHRI) is an international, independent, non-profit NGO working for the practical realisation of human rights of people living in the Commonwealth. Access to Information and Access to Justice are the core areas of our programmatic activity. Public education and policy advocacy are the core approaches that inform CHRI's work. CHRI is headquartered in New Delhi with offices in Gujarat and Chhattisgarh in India and London in the UK and Ghana in Africa.

This submission from CHRI responds specifically to the notification issued by DPAR, Government of Karnataka (No. DPAR:14:RTI:2008) dated 17 March 2008 which inserted a new rule in the Karnataka Right to Information Rules, 2005 which is given below:

“14. Request relate only to a single subject matter:- A request in writing for information under section 6 of the Act shall relate to one subject matter and it shall not ordinarily exceed one hundred and fifty words. If an applicant wishes to seek information on more than one subject matter, he shall make separate applications:

Provided that in case, the request made relates to more than one subject matter, the Public Information Officer may respond to the request relating to the first subject matter only and may advise the applicant to make separate application for each of the other subject matters.”

CHRI urges the Government of Karnataka to reconsider this particular rule as it puts a lot of restrictions on the citizens' access to information from the state government. We have highlighted our primary concerns regarding this new rule as given below:

Primary concerns in the new RTI Rule No. 14:

1) Access to information must not be restricted:

The Right to Information Act 2005 (RTI Act) does not place any limits on how much or how old information a citizen can request. It is for the State Public Information Officer (SPIO) to make a reasoned judgment as to that can be given within 30 days. This is the letter and spirit of the Act. By restricting the application to access information on only one subject matter amounts to placing limitations on the right of access beyond the grounds mentioned in sections 8 and 9 of the Act. This is both illegal and undesirable and goes against the letter and spirit of the Act.

2) There can be no limitation on the number of words in a RTI application

The limitation placed on the number of words used is also not in tune with established practice. RTI is a fundamental right derived from the Right to Freedom of Speech and Expression guaranteed under Article 19(1) of the Indian Constitution. Restrictions on these rights may be placed on grounds of sovereignty and integrity of the State, public order, morality and decency,

defamation and incitement to offence friendly relations with foreign States and contempt of court according to Article 19(2). Further under Article 350 of the Indian Constitution any citizen may submit a written representation regarding any grievance he/she may have to any Government officer. There is no restriction on the word limit or diversity of the subject matter of this representation. The RTI Act creates a statutory right of a general nature to access information as it covers all public authorities. Only sections 8 and 9 are valid limitations on the exercise of this right. No other limitation is recognized in law. Sadly the RTI Act does not say that it is meant to give effect to a fundamental right. However the spirit and objective of the Act are to bring about greater transparency and accountability and creating an informed citizenry in general. Where this right is likely to conflict with other public interests such as optimum use of the resources at the disposal of the Government the preamble of the Act requires that such conflict be harmonised keeping the democratic ideal as paramount. Plainly said, the democratic ideals are freedom, equality and justice for all. The Rule issued by the GOK is not in tune with this philosophy. This Rule amounts to rationing of information access opportunities which is not within the power of State to impose. There can be cases where it may be necessary to give some explanation to the PIO as to what information is being requested. Limiting the space available for the citizen to express himself/herself is also an unacceptable restriction on the fundamental right of speech and expression. This is undesirable and goes against the very letter and spirit of the RTI Act and also the Indian Constitution.

3) Rules cannot curtail the scope of the citizens' right to information

The Rule-making power given in section 27 is to be used for carrying out the provisions of the RTI Act, not for curtailing them. The new Rule in effect curtails the scope of the citizen's right. Therefore the Rule is illegal itself. The Government notification states that the Rule has been made in accordance with the powers of the Government given in sub-sections 1 and 2 of section 27. There is no power in section 27(2) that can be used for issuing such a Rule. This Rule does not meet any of the criteria listed in that sub-section. Section 6 deals with the procedure of making information requests and it does not require anything but the application fees to be prescribed by the Government. As this is a crystal clear provision there is no need to complicate its operation with retrogressive Rules.

5) The new Rule places an unreasonable amount of discretion in the hands of the SPIO to decide what constitutes a single subject matter

The new Rule places an unreasonable amount of discretion in the hands of the SPIO to decide what constitutes a single subject matter. As this term is left undefined in the Rules it will be misused more often than not. SPIOs are already doing this in many states even in the absence of such Rules. This is another basis for challenging the validity of the Rule.

6) SPIO can make a reasoned judgment of what information can be given in 30 days as per section 7(9) of the RTI Act

The appropriate method of handling voluminous information requests is that the SPIO should go through the application, make a reasoned judgment of what can be given within 30 days subject to the two caveats mentioned in section 7(9) of the RTI Act i.e. 'limitation of resources and safety and preservation of the record in question.' In any case the SPIO is required by law to tell the applicant how much additional fees needs to be paid even for this limited amount of information and mention the name of the Appellate Authority where fee review can be sought. At this stage itself the SPIO can inform the applicant that he/she will get only a part of the information requested. There is no compulsion on the SPIO to give all the information sought

just because it is being sought under the RTI Act or because there is a fundamental right to information. The SPIO has the space to talk to the applicant, inform him/her of the extra time that may be required to comply with the request fully. If the applicant agrees, then the SPIO may provide the information within the extended time line. If applicant does not agree then he/she always has the appeals route. In any case there is no unnecessary burden placed on the SPIO under the existing scheme of things. There is no reason for complicating this system. The new Rule places an illegal burden on the applicant. Therefore it is wrong and must be withdrawn.

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