

To  
**The Governor, Orissa, Bhubaneswar**

**Sub: Memorandum for complete withdrawal of the Ultravires Orissa RTI Rules and for its replacement by appropriate citizen-friendly Rules under the RTI Act-2005.**

Hon'ble Sir,

A day long sharing workshop on Orissa RTI Rules was organized for media persons at Red Cross Bhawan on 11.11.05. The focus of the deliberation was to review the operationalisation of the Orissa Rules under the RTI Act in different parts of the state during the first month of its working. Since it was felt that the Orissa RTI Rules are completely subversive of the Mother Act, it should be scrapped altogether and be replaced by appropriate, citizen-friendly Rules to be made in tune with the Central Act and Rules, based upon the public opinion as required under Section-24 of the Orissa General Clauses Act-1937. The representatives of both Print and Electronics media had actively participated in the deliberation. Mrs. Katrina Munda, a **Governer-awardee** for her role in bringing transparency to the public works and Naib-Sarapanch of Tulasikani Panchayat of Bisra Block in Sundargarh district narrated the story of how she was beaten up by the Contractor and his goons following her seeking of information about the construction of a public road in her locality. The recent amendment notification of the Central Govt. for reducing the inspection fee from Rs. 20/- to Rs,5/- only for each subsequent hour and citizen-friendly Rules for appeal hearing was greatly hailed by the participants of the workshop as a victory of Civil Society-s persistence demand for such reform. Activists from different districts like Sundargarh, Bolangir and Nuapara did also present their respective story of how there is no sign of any preparedness at the Block level for giving information to the public as per the RTI Act during the last month. The workshop was organized under the aegis of **Right to Food Campaign, Orissa**. Prof. Digambar Satapathy had presided over the meeting.

Based upon the deliberations, it was decided to bring to your kind notice the following points concerning the Ultravires, repugnant and deficient provisions in the Orissa RTI Rules, for immediate remedial action.

1.The RTI Act in its Section-7(5) has categorically said that no fee shall be charged from the BPL persons for application, cost of providing the information and cost of the print or electronic medium. But the Orissa Rules have allowed the exemption of application fee only {vide Rule-4(1)}, while depriving the BPL families of their lawful right to avail the exemption of the other two fees. This very provision made under Orissa RTI Rules, being ultra vires of the mother law should be struck down, and the Orissa Rules should allow the exemption of all the three categories of fees for the BPL persons as prescribed by the RTI Act.

2.The Sections 27 and 28 of RTI Act have categorically specified the four kinds of fees only, beyond which no appropriate Government or competent authority can impose any other fees. But the Orissa Rules have made an ultra vires provision in prescribing such extraneous fees as fee for 1<sup>st</sup> and 2<sup>nd</sup> appeals and inspection of documents (vide Schedule- 1) and also in prescribing the cost of damage under Rule-10 and deposit of expenditure for production of witness or documents under the Rule-12 to be paid by the applicant and appellant respectively. These extraneous provisions need to be struck off to bring the Orissa Rules in compatibility with the RTI Act 2005.

3.The mode of selection of the Chief Information Commissioner and Information Commissioner for Orissa, as adopted by the 3-member Recommending Committee is in clear violation of the provisions made under Section 41(c) and (d) of the RTI Act, which bind a Public Authority to publish all relevant facts while formulating important policies or announcing the decisions that affect public and to

provide the reasons for any administrative or quasi-judicial decisions to the affected persons. The Act further stipulates that such information must be “disseminated widely and in such form or manner which is accessible to the public” {Vide Section-4(3)}, a provision which has also been given a good-bye by the Recommending Committee by their sudden and arbitrary act of declaring the ‘appointment’ of the Chief Information Commissioner and Information Commissioner for Orissa. So it is suggested that the Govt. of Orissa as well as the Recommending Committee, which is also a public authority under the RTI Act within the meaning of its Section [2h (d)] and Section [41(b-viii)], should publicise the list of their chosen nominees for the said posts and invite the public views thereon before making the final notification of the constitution of the Commission in the Official Gazette as required under Section 15 of the Act.

4.The Section 20(2) of the Act says that disciplinary action in terms of the service rules shall be taken against the defaulter PIO if the latter persistently fails in his/her duty to provide the required information to the public. The Orissa Rules, which lack in such a provision, should provide for the specific kind of disciplinary action and modes of execution thereof.

5.The Section 26(1a) of the RTI Act obliges the appropriate Government to develop and organize educational programme to advance the understanding of the public, in particular the disadvantaged communities as to how to exercise the rights contemplated under the Act. Except the misplaced advertisement in the local newspapers post facto of a part of the so-called Orissa Rules, which on scrutiny is found to be illegitimate and ultra vires of the mother Act, the people at large are in complete dark about what the State Govt. have done to fulfill the above-said mandatory provision of the Act.

6.The 11-member Core Committee of the Govt. of Orissa set up for implementation of the RTI Act in their 1<sup>st</sup> meeting held on 22.8.05 had decided inter alia that Rs.10 lakh shall be placed with Gopabandhu Academy of Administration for the purpose of training {Vide para 4(c)}, and a tentative budget of 1.16 crores shall be allotted for implementation of the Act in the State {vide para 11 of the proceedings of the meeting}. The detail expenditure of such earmarked amount of money ( Rs.1 crore and 26 lakh) should be publicized suo moto by the Government of Orissa as required under Section 4(1b-xi).

7.The Core Committee in the above said meeting had also decided to hold a special training programme for NGOs and Civil Society Organisations at Bhubaneswar, out of the allotted funds. The Govt. of Orissa should publicize the details thereof, if any such programme were at all held and the detail expenditure incurred thereon, as required under Section 4(1b-xi) of the RTI Act.

8.The Rule-10 (Calculation of cost of Damage) of Orissa Rules, which throws the burden of paying the cost of damage to the public property, if any, made by the concerned PIO in course of collecting the material sample, on to the shoulders of the citizen who applied for the said sample, is not only ultra vires of the RTI Act, but also contravenes natural justice. How is it that the citizen shall pay for the nuisance if any committed by the PIO? Rather the Section 19(8b) of the RTI Act obliges the concerned public authority to compensate for any loss or damage suffered by the complainant in course of his act of seeking the information from a public authority. Rule 10 under the Orissa RTI Rules should therefore be abolished.

9.The Rule-12 (Deposit of Expenditure) is another detestable and ultra vires provision made under the Orissa RTI Rules, which says that an appellant before the Information Commission has to bear the expenditure to be incurred for production of evidence/witness that may be necessary in course of the adjudication of his appeal. This provision flagrantly violates the categorical injunction given under the

Section 19(5) and Section 20(1) of the RTI Act which says that in any appeal proceedings the onus or burden of proving that he acted reasonably and diligently shall lie on the PIO himself, against whom a complaint or an appeal has been made. The Rule 12 under Orissa RTI Rules should therefore be struck off.

10. The Rule-13 (Realisation of penalties and damage) under the Orissa RTI Rules, is a draconian provision that reminds us of the colonial rule of East India Company in our country. It provides for confiscation of one's landed property of a citizen-applicant or citizen-appellant by the concerned public authority, if the concerned citizen fails to deposit the damage cost or any penalty imposed on him within 30 days of the notice of the same made to him. As a matter of fact the RTI Act nowhere provides any room for charging any penalty or damage cost from the citizen. Rather the law upholds just the opposite principle i.e. penalty or damage if any shall have to be paid by the public authority concerned [Vide Sections 19 and 20]. The provision under the Rule-13 of Orissa RTI Rules which is thus outrageously ultra vires of the mother law i.e. the Right to Information Act 2005, should therefore be struck off.

11.(A) Abolish the provision made under Sub-Rule 2 of Rule-4 under Orissa RTI Rules that the Applicant has to satisfy the PIO about his/her identity before his/her application is considered, since the Section 6(2) of the RTI Act categorically says that an applicant 'shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.'

(B) Abolish the provision made under Sub-Rule 2(e) on the "identity" of an applicant defined as "an evidence to show the citizenship like an electoral photo identity card/passport or any other document which can satisfy the authority about the citizenship of the person" which is ultra vires of the Section 6(2) of the RTI Act.

12. (A) The Form-A (Application for Information) under Orissa Rules is too long, complex and over-demanding one, which would not only frighten away the ordinary members of the public from applying for information under the Act, but is also ultra vires too of the mother law. The Column-2 asking for Father/ Spouse name, Column-3 asking for permanent address and Column-4 asking for particulars in respect of identity of an Applicant are very much the personal details, the disclosure of which by an applicant before the PIO has been forbidden under the Section 6(2) of the RTI Act. Again, the Column-8 (Is this information not made available by the Public Authority) is absolutely redundant. It is just a common sense that if a citizen happens to know where a piece of information is available, why should he go at all for applying under the Act by paying fees? Similarly, the Column-7 asking 'Has this information been provided earlier?' is simply redundant, since a person might ask for the same information again by paying the required fees, if he has somehow lost it. Again, the Column-9 asking, 'Do you agree to pay the required fee?' is redundant, since a person may not afford the high price that a PIO shall demand in the Form-B (Intimation for payment).

(B) Any attempt to prescribe a compulsory, written application form, as is sought to be imposed by the Orissa RTI Rules is ultra vires of the RTI Act, which in its Section 6(1b) allows the citizens to make oral requests for information and in its Section 7(9) obliges a PIO to provide the information to the applicant in the very form in which it has been asked for. The Application Form, if at all to be prescribed, should be made optional, simple to fill up, and user-friendly one. Therefore no application for information should be rejected as provided currently under Form-C on the ground that the Application Form has not been filled up "complete in all respects".

13. The Form-B (Intimation for Payment) under the Orissa Rules may be retained, with one amendment i.e. it should mention the detail break up of the fees, in stead of the block amount only, that a citizen applicant has to pay as required under the Section 7(3a) of the RTI Act.

14. The Form-C (Intimation of Rejection) as it stands now is not only prohibitive of people's right to information, but also ultra vires of the mother law. The Section 7(1) of the RTI Act says that a request for information can be rejected 'for any of the reasons specified in Sections 8 and 9' only. But the Form-C in its column (i) without specifying the particular reasons under the said Sections, mentions just in a blanket, roughshod manner that 'it comes under exempted category covered under Sections 8 and 9 of the Act'. Similarly, the Col. (iv) spaciouly saying that 'The information is contained in published material available to public' as a ground for rejection carries no meaning for the citizen at all. Again, the Column (vi) saying, 'The information sought for is prohibited as per section 24(4) of the Act' is negatively slanted against the citizen's quest for information, since the said Section permits the information on corruption and human rights violation to be disclosed though after getting the approval of the Information Commission. So in stead of saying just 'no', the said column might say, 'Your application has been forwarded to the Information Commission for their opinion'. The Column (vii) saying that 'The information would cause unwarranted invasion of privacy of any person' is absolutely redundant, since this factor is covered under Section 8(1j), already taken care of by the Column (i) mentioned above. Then the said Form contains the following Columns, which are ultra vires of the mother Act:

Col. (ii)- Your application was not complete in all respects.

Col. (iii)- Your identity is not satisfactory.

Col. (ix)- For any other reason see overleaf.

Thus the Form-C (Intimation of Rejection), which in the present form, is both redundant and ultravires in many respects and therefore deserves to be recast thoroughly in line with Section 7(1) of the RTI Act 2005.

15. The Form-D and Form-E as prescribed under the Orissa Rules for the purpose of making appeals (1<sup>st</sup> and 2<sup>nd</sup>) should contain a Form for acknowledgement receipt to be issued by the concerned appellate authority to the citizen-applicant on submission of his/her appeal.

16. (A) A serious technical incongruity has been noticed between Form-G (Cash register), where 3 modes of payment such as Treasury Challan, Bank Draft and Cash have been mentioned at its Column-4, and the Schedule-1 on fees that allows only 2 modes i.e. Treasury Challan and Cash. It is suggested that various other modes payment such as postal order, money order, Bank Cheque and ATM should be allowed too for the convenience of payment by the citizens belonging to various stations of life.

(B) Another serious case of incongruity is that while the Rule 4(1) allows the electronic mail system for an applicant, the Form-A containing the Application Form omits to mention it and limits the correspondence to post or person only. The Orissa Rules' omission to mention the electronic mode for transaction between the applicant and PIO is in clear violation of the letter and spirit of the provisions made under the RTI Act [vide Section 4(1a), 4(1b-xiv), 4(2), 4(Explanation), 6(1), 7(5) and 7(9)].

17. Strange as it might seem, in none of the Rules and Forms, there is any provision made for the PIO to give the money receipt of the payment made by the citizen. And it is sure, without this indispensable provision in the Rules, there would be no meaning at all for any payment to be made by

the citizen, or there is no guarantee that the payment made by the citizen would ultimately reach State treasury.

18. (A) The various kinds of fees as prescribed under the Schedule under Orissa RTI Rules are unbearably exorbitant giving the impression as if the people of Orissa are richest in India and have the highest paying capacity to afford them. The amount of said fees should be drastically reduced in compatibility with the direction given under Section-4(4) that all suo moto information be available free or at cost price only, and under Section- 7(5) of the RTI Act that all fees should be made reasonable.

(B) Moreover, the RTI being a Central Act and having jurisdiction over the whole of country, any body living in any part of the country is eligible to apply for information from the public authorities of Orissa while anybody living in Orissa has the eligibility to apply for information from the public authorities of the Centre and other States as well. It is therefore utmost desirable that not only the fee structure, but also the forms required if any in different connections, should follow the pattern adopted by the Centre and majority of States.

19. The Section 27(1) of RTI Act says that every 'appropriate Government may make rules to carry out the provisions of this Act. But the Orissa RTI Rules have conspicuously failed to make the appropriate Rules on the following matters, which need to be made up at the earliest and that too following the due procedure, as mandated under the RTI Act.

- a. Transfer of an Application for information from one PIO to another PIO when the information asked for is available with the latter as required under Section-6(3) of the Act.
- b. Provision for the PIO to help the persons unable to write in the matter of making his oral request into a written application as required under Section 6(1b) and help the sensorily disabled persons to access and inspect the documents as required under Section-7(4) of the Act.
- c. The provision for procedure and forms necessary for issuing notices to the third party in connection with disposal of an application for third information as required under Section-11 of the Act.
- d. The provision for serving the severe-able information by the PIO to the Applicants as required under Section-10 of the Act.
- e. Provision for inspection of offices of public authorities by the citizens as required under the "Explanation" appended to the Section-4(4) of the Act.
- f. Provision for application for information to Security and Intelligence agencies of the State pertaining to "corruption and human rights violation" as required under Section 24(4) of the Act.
- g. Provision for supply of information by the public authorities to the applicants within 48 hours of the application so made concerning the 'life or liberty of a person' as required under Section 7(1) of the RTI Act.
- h. Provision for adoption by each public authority in Orissa of the 'Template for Information Handbook under the RTI Act' (prepared by the Ministry of Personnel, GOI), to be incorporated under the Orissa RTI Rules for disseminating the suo moto information of 17 categories as required under Section 4(1b) of the RTI Act.
- i. Provision for awarding of compensation on the part of public authorities to the complainant for any loss or detriment suffered in course of seeking an information, as required under Section 19(8b) of the RTI Act
- j. Provision for modalities of disciplinary action to be ordered by the Information Commission against the recalcitrant PIOs as required under Section 20(2) of the RTI Act.
- k. Provision for acknowledgement receipt of and time-limit for disposal of a complaint to be made by an aggrieved citizen before the Information Commission as required under Section 18 of the RTI Act.

- l. Provision for procedure and criteria for disposal of an application, when it relates to information coming under the category of 'exemptions from disclosure' (such as the grounds of security and integrity of the State, Court injunctions, privilege of legislature, intellectual property, fiduciary relationship, confidential information received from foreign Government, confidential information received for the purpose of maintenance of law and order and security, investigation and prosecution of crime, cabinet papers and privacy of the individual etc.), as given under the Section 8(1) of the RTI Act, in view of the qualifying provisos including the rider given there-under that "the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person".
- m. Provision for procedure of supplying the ordinarily exempted, copyright-related information to an applicant-citizen ( Section-9 of the RTI Act), if the 'public interest in disclosure outweighs the harm to the protected interests' as required under the qualifying provision of Section 8(2) of the Act.

20. In view of the absence of a time limit for disposal of 2<sup>nd</sup> appeal by the Information Commission, the Orissa RTI Rules should provide for the same.

21. As per the Section 24 of the Orissa General Clauses Act 1937, every rule made under an Act should be published widely in various media to elicit public opinion thereon. Again, the Section 4(1c) of the RTI Act says that every public authority should 'publish all relevant facts while formulating important policies or announcing the decisions which affect public'. Again, the Section 4(1b-vii) emphasizes that every public authority should have an arrangement "for consultation with or representation by the members of the public in relation to the formulation of its policy or implementation thereof." But the arbitrary manner in which the recent notification of the Orissa RTI Rules has been made just on the verge of the scheduled date of final enforcement of the Act violates the above two statutory obligations. So the Govt. of Orissa and all competent authorities in the State should place their respective draft rules under the RTI Act in the public domain for opinion by the members of the public, following which the same could be finally notified in the Gazette of Orissa, as required under Section 27(1) of the Act.

Yours faithfully,

**Pradip Pradhan**  
**Convener**

**ON BEHALF OF THE PARTICIPANTS OF THE WORKSHOP HELD ON 11<sup>ND</sup>  
NOVEMBER 2005 ON ORISSA RTI RULES AT RED CROSS BHAWAN,  
BHUBANESWAR**

Copy to-

- Dr.Man Mohan Singh, Prime Minister of India, New Delhi,
- Secretary, Ministry of Personnel, Govt of India, New Delhi
- Mr.Maheswar Mohanty, Speaker Orissa Legislative Assembly, Bhubaneswar
- Mr. Navin Patnaik, Chief Minister, Orissa, Bhubaneswar