

Draft Rules for Freedom of Information: From frying pan to fire

Except a few people who have been chasing the Freedom of Information Act 2002 for this or that reason, no body in the whole nation is exactly aware about the Draft Rules of this all-important central legislation recently published in the website of the Ministry of Personnel, Public Grievances and Pension and also about the exceptionally short time-gap from 15th to 31st August 2004 allowed to the desirous citizens to submit their views and suggestions thereon. Again, as irony would have it, the Government have carefully chosen not to set free through the print or electronic media the very set of Draft Rules of an Act, which supposedly promises the free flow of information to the people across the nation. This semi-clandestine manner of notification of the Draft Rules, and that too after a long lapse of 18 months since the Act was assented to by the President seems to be, in the words of Delhi-based CHRI, a cruel joke at the grandiloquent commitment given in the CMP of the UPA Government, "The Right to Information Act will be made more progressive, participatory and meaningful".

Now coming to its contents, utterly disappointing is the provision of the Draft Rules seeking to impose a multi-level fee regime that the citizen seeking information has to comply with. Strangely enough, while the FOI Act 2002 in its Section 6 had provided for a plain written application to be submitted to the Public Information Officer without any fee to accompany it, the proposed Rules under its Section 4 make it mandatory for a Demand Draft or a Banker's Cheque of Rs.50/- to be attached to the application seeking information. In a country where overwhelming majority of people are illiterate in bank transactions, can this provision be implemented at all at grass root level? Again, take the case of a working man or woman whose minimum wage, say for instance in Orissa, is only Rs.50/-; can s/he dare to apply at all for information before a BDO or a Tahsildar for a piece of information, even if that relates critically to roti-kapada-makan questions of his life? Moreover, where the Public Information Officer refuses to disclose information quoting any of the spacious exemption clauses of the Act, the Draft Rules don't provide for a refund of the deposited amount of Rs.50/- to the applicant, thus rendering the latter a double loser. Again, the Draft Rules has fixed Rs.5/- per page as its reproduction charge to be paid by the applicant, whereas the cost of photocopying a standard page everywhere in India hovers between a meagre 50 to 70 paise only. Then if the PIO decides to give the information through the medium of a floppy or a CD, he shall charge as much as Rs.50/- per piece, whereas its average cost now is somewhere between Rs.10/- to Rs.15/- only. The prohibitive fee structure proposed thus under the Draft Rules has given rise to the double suspicion that an insolvent and overbureaucratized State out to grab every imaginable source legitimate or otherwise to augment its diminishing income has deliberately chosen the fertile field of info-business for the purpose on one hand, and to silently whisk away as many poor people as possible from daring to invade their hitherto securely established regime of secrecy with the weapon of right to information, on the other.

The next dispensation of the Draft Rules (Section 5) that deals with the first appellate authority is simply an object of laughing stock. The FOI Act in its Section 12 (Appeals) provides for the aggrieved citizen, if he so desire, to go for the first appeal against the decision of the PIO before an authority to be prescribed by the Rules. If still displeased with the result of this appeal, he can choose to lodge a second appeal against the decision of the first before the Central Government, State Government or Competent Authority as the case may be. It is just a common knowledge that the Secretary of a Ministry or of a Department, standing as he does at the apex of the bureaucratic echelon represents the Government for all legal and other purposes. The Act had declared him as the second and ultimate Appellate authority. Now strangely enough, the Draft Rules declare the same heads as the First Appellate Authority too. In plain terms, both the Act and Rules together compel one to appeal before the same authority whose decision he seeks to

challenge. Is it not a classic case of legal absurdity par excellence? How such an utterly unworkable provision made its way into the Draft Rules – out of gross oversight or otherwise- is a matter to be seriously enquired into by all concerned. Whatsoever be the reason, the hidden subconscious of the framers of the Rules comes out in bold relief, that is, not to leave any loophole through which the bureaucracy might be held accountable before any outside authority for its sure-to-commit infringement of the transparency provisions of the FOI Act. In course of the country-wide debate over the FOI Act 2002 a consensus had emerged among the RTI activists that the ultimate authority of appeal should be an outside body having adequate standing and power like the Vigilance Commission as suggested by CHRI or a retired Judge acting as a Chief Information Commissioner as suggested by Mrs. Aruna Roy and her group. The paranoid drafters of the Rules however seem to have thrown into the monsoon wind this unanimous and sensible recommendation of the civil society without giving any consideration to it.

Both the Act and Rules are flawed with serious omissions too. First, no provision has been made for an acknowledgement receipt that need be issued by the PIO to the requestor for information as soon as his application is submitted in the prescribed form. It is just a common sense that a dak receipt is just like a copy of FIR, a prime, critical and all-time instrument, which would stand the petitioner in good stead throughout, during his chase after the desired information from the PIO and also for the punitive justice, if need be, thereafter against the defaulting PIO from the appellate authority. The next critical omission is the conspicuous absence of any penal provisions in the shape of either fine or disciplinary action vis-a-vis the proven acts of transgression of the FOI rules by the PIOs, which renders the whole legislation a toothless one. If a PIO knows for sure that nothing would happen to harm his personal interest for violating the FOI rules, why should he feel impelled to honour the request of an ordinary citizen and cater to his information needs in time ?

Even the eminent RTI activist Smt. Aruna Roy, who is a member of National Advisory Council of UPA Government and whose alternative draft law entitled 'Right to Information Act 2004' was accepted in principle in the NAC meeting on 14th of August chaired by Mrs. Sonia Gandhi herself, seems to be thoroughly disheartened with the roughshod manner in which the Draft Rules were notified the next day on Ministry's website without her knowledge. Soon afterwards she confided in an exclusive interview to Mr. Subramaniam Vincent of India Together, "The current law (FOIA 2002) is not acceptable to the NAC. ... I don't know how it came about that the Ministry of Personnel issued this notification at the same time that the NAC finalized draft amendments to the law itself. .." and finally exhorted, "People should continue to debate and monitor the progress of the law outside the NAC to ensure that the government will follow through with the recommendations."

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