

**ODISHA INFORMATION COMMISSION
BHUBANESWAR**

**Present: Shri Sunil Kumar Misra
State Chief Information Commissioner**

Dated: 8th November, 2018

Complaint Case No.442/2015

Biswajit Mohanty,
Shantikunj, Link Road,
District-Cuttack Complainant

- Vrs -

(1)Public Information Officer,
Parliamentary Affairs Department &
Office of the Chief Minister, Odisha,
Government of Odisha,
Bhubaneswar.

(2)First Appellate Authority,
Parliamentary Affairs Department &
Office of the Chief Minister, Odisha,
Government of Odisha,
BhubaneswarOpposite Parties

Decision

1. Complainant, Biswajit Mohanty, is present. Naba Kishore Sethi, PIO-cum-Under Secretary, Parliamentary Affairs Department and Office of the Chief Minister, Odisha and Bishnuprasad Mishra, Deputy Secretary, Office of the Chief Minister, Odisha are also present. The PIO has made a written submission which is taken on record.

2. Vide an application in Form-A dated 29.06.2015 submitted before the PIO, Office of the Chief Minister, Odisha, the complainant had requested the PIO to provide him information about all the staff and officers engaged / deployed at the residential Office of the Chief Minister of Odisha. He had also asked for specific

details such as names of the staff / officers, their designations, last monthly gross pay drawn by them and duties assigned to them.

3. Vide a letter dated 17.08.2015, the PIO sent to the complainant a copy of the letter dated 28.07.2015 of the Office of the Chief Minister, Odisha along with one page information as available in the Parliamentary Affairs Department.

4. The complainant followed up his application in Form-A by filing a complaint before this Commission vide a petition dated 26.11.2015. In the complaint petition, he alleged that no Public Information Officer had been appointed in the Chief Minister's Office.

5. The case was earlier heard on 4 occasions. During the initial hearings the PIO of the Parliamentary Affairs Department submitted that as per the letter dated 11.07.2006 of the Office of the Chief Minister, Odisha, the PIO and the First Appellate Authority of the Parliamentary Affairs Department would act as the PIO for the Office of the Chief Minister, Odisha as well. Further, as per the Chief Minister's Office letter dated 25.07.2017, the issue of appointment of separate PIO and First Appellate Authority in the Office of the Chief Minister, Odisha had been considered earlier. An intimation in the matter had also been sent to the Secretary of this Commission vide a letter dated 15.09.2016 expressing difficulties in having a separate PIO in the Chief Minister's Office.

5.1 The complainant on the other hand submitted before the Commission that the Office of the Chief Minister did not appoint a PIO despite the Commission's earlier two directions to this effect.

5.2 In view of the submission thus made by the complainant, the Commission directed the PIO to produce before the Commission the various letters referred to in the PIO's written submissions. The complainant was also advised to submit copies of the earlier orders of the Commission referred to by him.

6. In compliance of the directions thus issued, while the appellant expressed his inability to trace out the directions which, as per him, had been issued, the respondents submitted copies of a few note-sheets and correspondences including copies of summons issued by the Commission in connection with four complaint

cases. The documents also included a letter dated 15.09.2006 of the "Principal Secretary to the Chief Minister", Odisha addressed to the Secretary of this Commission.

6.1 It is seen from the documents submitted that while dealing with some complaint cases earlier, viz in C.C.No.145/2006, 146/2006, 147/2006 and 160/2006, this Commission had noted that the PIO of the Parliamentary Affairs Department was acting as the PIO for the Office of the Hon'ble Chief Minister as well. The Office of the Hon'ble Chief Minister had not appointed its own PIO. Hence the Commission summoned the PIO of the Office of the Parliamentary Affairs Department for a discussion in the matter. Shri B.B. Jena, then Deputy Secretary of the Parliamentary Affairs Department appeared before this Commission in obedience to the summons issued. The Commission observed that the PIO of the Parliamentary Affairs Department did not have jurisdiction over or legal access to the internal administrative matters such as transactions of official business, disposal of files, correspondences etc of the Office of the Hon'ble Chief Minister or, for that matter, of the other Ministers except regarding their personal and staff establishments. Hence, the Commission desired that the Office of the Hon'ble Chief Minister should have its own PIO. The Commission advised that the Office of the Hon'ble Chief Minister might designate as many PIOs and APIOs as deemed fit. It was further advised that the Offices of the Ministers / Ministers of State and Deputy Ministers might designate Additional Private Secretary / P.A. to Minister / Minister of State as Public Information Officer and the Private Secretary who is the next higher authority of Additional Private Secretary / P.A. as the First Appellate Authority.

6.2 The observations thus made by this Commission were reported by the Deputy Secretary to the Government, Parliamentary Affairs Department to the Commissioner of the said Department who, in turn, sent a letter dated 05.09.2006 to the Principal Secretary to the Hon'ble Chief Minister, Odisha as well as all to the Private Secretaries of the other Ministers thereby apprising them of the urgency of designating Public Information Officers, APIOs and First Appellate Authorities in their respective offices.

6.3 In pursuance of the aforementioned letter, the Principal Secretary to the Chief Minister addressed a letter to the Secretary of the State Information Commission, Odisha. It was submitted by him that as per the provisions contained under the Rules of Business of the Government of Odisha, the establishment of the Chief Minister's Office was being looked after by the Parliamentary Affairs Department. Accordingly, the PIO and the appellate Authority of the Parliamentary Affairs Department were allowed to function as the PIO and the First Appellate Authority in respect of the Chief Minister's Office. With reference to the advice of the Commission to nominate separate PIO and the First Appellate Authority for the Office of the Chief Minister, the Principal Secretary to the Chief Minister listed out a few reasons as to why the same could not be done. It was pointed out that the Chief Minister's Office did not maintain any file relating to any Department. After receipt of files from the Departments, the same were being returned to the concerned Departments along with the orders of the Hon'ble Chief Minister. Whenever the Hon'ble Chief Minister would write a letter to any quarter in relation to a State matter, copy of the same would also be sent to the Department concerned for records and reference. The Chief Minister's Office only maintained registers on movement of files in the shape of UOI / UOR. It was further pointed out that the letters / petitions received in the Office of the Chief Minister, or in the Grievance Cell, were being forwarded to the appropriate Departments / Offices for necessary action. Therefore, when any person required any material pertaining to a subject, the same should be supplied by the concerned Department / Office. Since the Chief Minister's Office was not preserving any record and the information applied for would be available with the Departments / Offices, it would perhaps be proper to advise the applicant to file their applications before the PIOs of the appropriate Departments / Offices in order to enable them to collect information smoothly. The Principal Secretary to the Chief Minister also stated that his Office did not maintain any cash register. There was also no Cashier in the Office who could receive cash relating to application fees paid for supply of information prescribed under the RTI Act, 2005. Moreover, the cash transactions in respect of the Chief Minister's Office were being made by the

Parliamentary Affairs Department. It was also contended by the Principal Secretary that in case a PIO / Appellate Authority was specifically appointed, the concerned authority would have to collect the same from the relevant Department and supply or reject the application only after obtaining the views of the relevant Department in which case the applicant would face difficulty and the matter would be a time-consuming affair. "It would not be possible to cope up with the volume of work relating to all Department / subordinate Office for which information will be sought from this Office". Submitting as above, the Principal Secretary to the Chief Minister requested the Secretary of the State Information Commission to place the matter before the Hon'ble Commission and to apprise the problems regarding notifying separate officers to function as PIO and the First Appellate Authority for the Chief Minister's Office. It was stated by him that the PIO and the Appellate Authority of the Parliamentary Affairs Department would continue as such for the Chief Minister's Office.

6.4 It appears that no further action was taken by this Commission on the letter dated 15.09.2006 of the Principal Secretary to the Hon'ble Chief Minister. However, in May, 2008, the matter was agitated by the Parliamentary Affairs Department itself. The Section Officer of the Parliamentary Affairs Department recorded his observations on the importance and urgency of designating separate PIO and First Appellate Authority for the Office of the Hon'ble Chief Minister. In three-page note-sheets, he stated about the difficulties which were being experienced in acting as the PIO for the Office of the Chief Minister. With reference to the contention that the Chief Minister's Office did not maintain any file relating to any Department, it was stated that the Chief Minister's Office in any case had their own files and papers which were being maintained by them. It was also pointed out that in some cases where information had been sought from the Chief Minister's Office (viz. Police action in a particular case, on appointment of Judges in another case), the files were very much in the Chief Minister's Office and yet the Parliamentary Affairs Department had to refer the matter to the Chief Minister's Office; and, thereafter, on the basis of suggestions received, moved the file to the other authorities. If only the Chief

Minister's Office had its own PIO, the time lost could have been saved. "Most of the applicants seek information about the action taken on their letters / petitions submitted in the Office of the Chief Minister / grievance cell of the Chief Minister". After ascertaining from the Office of the Chief Minister the names of the Departments/Offices to whom the information relate, the applications are then transferred under Section 6(3) to such Departments/ Offices. This consumes time. If there were a PIO in the Chief Minister's Office, the transfer could have been made without loss of time. It was pointed out by the Section Officer that while under Section 6(3) a transfer was required to be made within 5 days from the date of receipt of the application, the above time-limit was being invariably breached. As regards the contention that the Chief Minister's Office did not maintain a cash register, the Section Officer suggested that the cash relating to application fee etc. could be deposited in the Cash Branch of the Parliamentary Affairs Department. The Section Officer concluded his notes with a request that the observation made by the Hon'ble Information Commission be adhered to. The PIO of the Parliamentary Affairs Department in his turn endorsed the views of the Section Officer. He prepared a chart in order to show how at least six days were being wasted in making reference to the Chief Minister's office for getting their views which could be saved if there were a separate PIO for the Chief Minister's Office. Such an appointment would also benefit the general public. The Joint Secretary of the Parliamentary Affairs Department endorsed the views of the subordinate authorities. It was observed by him that he had discussed the matter with the Joint Secretary in the office of the Chief Minister. He also requested that the file be endorsed to the Office of the Chief Minister to consider the facts and to take necessary steps. The file was then moved to the Additional Secretary to the Chief Minister, Odisha who with the approval of the Principal Secretary of the Chief Minister observed that "the present arrangement of the PIO and the First Appellate Authority of the Parliamentary Affairs Department may continue as such for the Office of the Chief Minister".

7. As a perusal of the note-sheets would show, the Commission's recommendation regarding appointment of PIOs, APIOs and First Appellate

Authorities were implemented in the Offices of the other Ministers except in the Office of the Chief Minister, Odisha. The same continues till date even after lapse of 12 years. The difficulties experienced by the PIO and the other authorities / officials of the Parliamentary Affairs Department and the problems listed out by the Chief Minister's Office as reflected in the letter of the Principal Secretary to the Chief Minister have been noted. Before reverting to the same, it would be necessary at the outset to examine the issue at hand within a legal frame- work. Needless to say, the legal frame .work for the purpose is the frame-work provided in the Right to Information Act itself.

7.1 Section 5 of the Right to Information Act, 2005 deals with designation of Public Information Officers etc. For the sake of convenience, Sub-sections (1) & (2) dealing with such designations are reproduced herein below :

“ 5(1): Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.

(2) Without prejudice to the provisions of sub-section(1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be:

Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added

in computing the period for response specified under sub-section (1) of section 7”.

7.2 Section 6 deals with request made by a person for obtaining information. As per Sub-Section (1), “a person, who desires to obtain any information under this Act, shall make a requestto(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned Public Authority”.....

7.3 Sub-Section (3) of Section 6 provides that where an application is made to a public authority requesting for an information – (i) which is held by another public authority or (ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority to which such application is made shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer”. It has also been provided that transfer under sub-section (3) shall be made “as soon as practicable” but in no case later than five days from the date of receipt of the application.

7.4 Section 7 of the RTI Act, 2005 deals with disposal of request for information. As per Sub-Section (1) of this Section, the Central Public Information Officer, or State Public Information Officer, as the case may be, on receipt of a request under Section 6 shall, as expeditiously as possible, and in any case within 30 days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in Sections 8 & 9. In Section 7, the time limit of 30 days is subject to the proviso to sub-Section (2) of Section 5 or the proviso to sub-Section (3) of Section 6. In other words, in the situation to which the afore-mentioned sub-Sections apply, additional time would be available.

The proviso to sub-Section (1) of Section 7 provides that “where the information sought for concerns the life or liberty of a person, the same shall be provided within forty eight hours of the receipt of the request:

Sub-Section (2) of Section 7 deserves to be noted. It provides that:

“ If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-Section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request”. This is subject to extra time as per Section 5 (2) and Section 6(3).

8. Viewed from the above frame-work, it is crystal clear that the thrust of the RTI Act as regards its implementation is on the public authority. The public authority is the very fulcrum of the RTI Act, 2005. The public authority is the central entity recognized under the Act. Every Public Authority must have APIO (where necessary), PIO and First Appellate Authority. These are the functionaries of this entity. Designation of these functionaries is the very first task assigned by the RTI Act. When the Act was enacted in the year, 2005, the above task/mandate was required to be done mandatorily within a specified period.

8.1 Further, as seen, a distinction has been clearly made under Section 6(3) between one public authority and another public authority. This in itself means that there can not be any mix-up of the functionaries of two separate Public Authorities. Each public authority must have its own PIO and can not ask the PIO of another public authority to Act as its own PIO. The latter situation has not been envisaged under the RTI Act.

8.2 What also clearly emerges is the importance which has been attached to furnishing of information within the prescribed period. Time is of the essence. Non-furnishing of information within the prescribed period would amount to refusal and penal consequences etc. would follow.

9. Now the question which needs to be answered is whether or not the Office of the Chief Minister can be regarded as a Public Authority. The Commission had categorically observed earlier that the Chief Minister as well as each Minister is a public authority. The above observation has not been countered at any point of time. Therefore, this aspect need not be deliberated upon. In fact the question whether the Chief Minister is a public authority or not is not a question at all. Needless to say, the Chief Minister is the head of the Government and thus is the highest

administrative functionary of the State. In the circumstances, and the Commission's observation that the Chief Minister is a public authority not having been controverted in any manner, there is no escape from the conclusion that the said Office must have its own PIO and First Appellate Authority.

10. Having observed thus, it would still be pertinent to comment on the difficulties pointed out in the letter of the Principal Secretary to the Chief Minister. He has referred to the Rules of Business to state that the administration / establishment of the Chief Minister's Office is looked after by the Parliamentary Affairs Department. The reliance thus placed on the Rules of Business deserves to be rejected. For, as a PIO has to be appointed mandatorily under Section 5 of the RTI Act, 2005, the Rules of Business can by no means come in the way of such appointment. It cannot be overlooked that by virtue of Section 22, of the RTI Act, 2005 overrides all other Acts and laws in force.

10.1 It is stated that the Chief Minister's Officer does not maintain any file. In this connection, it is pertinent to observe that designating a PIO is not contingent upon maintenance or otherwise of files. Designation of a PIO has to do with and is in relation to information held by the public authority or held under its control or information the subject matter of which directly is closely connected with it. The word "held" denotes custody. However, the other two expressions viz "held under control" and "the subject matter of which is closely connected with the function a public authority" do not denote custody. Custody in such situations may be with others. Yet it shall be the obligation of the public authority to furnish the information. It cannot be denied that applicants/information seekers may seek from the Office of the Chief Minister information which is held under the direct control of the said office or the subject matter of which is closely connected to the said office. The Section Officer of the Parliamentary Affairs Department in his notes had cited a few such instances. The very fact that there is a Chief Minister's Grievance Cell by itself indicates that there could be occasions for information seekers to approach the said office. This is just one example and is not exhaustive. It is therefore imperative that the Office of the Chief Minister, being a Public Authority, must have its own PIO to attend to

applications requesting for such information. For the same reason, the said office must also have a First Appellate Authority.

10.2 The concern voiced over the possible load which will have to be coped with in case there is a separate PIO appears to be exaggerated. Under the RTI Act, a citizen has to seek information from the public authority to whom the subject matter of the information closely relates and which (information) is held by it or is held under its control. Therefore, when it comes to the other public authorities, it is expected that citizen requiring information held by or relating to such other public authorities shall seek such information only from them and not from the Office of the Chief Minister. The Office of the Chief Minister would be approached either for information supposed to be held by it or under exclusively its control or, in the worst situations, where the subject matter of the information as a perceived close connection with the office of the Chief Minister. Therefore, there is no reason to apprehend that the Office of the Chief Minister shall be flooded with requests for information. In the worst scenario referred to supra, the application can always be transferred under Section 6(3) of the Act to the appropriate public authority.

10.3 As the practice exists, the Chief Minister's Office which has neither an APIO nor a PIO does not have any obligation to respond within a statutory time limit. The time limit applies only to the PIO of the Parliamentary Affairs Department who does not have the information in its possession, nor has control over the information. The existing practice thus fastens liability to a PIO who is least equipped to discharge such liability. It is also noted that the PIO of the Parliamentary Affairs Department after does not know to which public authority or department the information relates. He or she has to ascertain the same from the Office of the Chief Minister and then transfer the application under Section 6(3) to the appropriate public authority. Needless to say, and this also stands corroborated by the notings of the Section Officer endorsed by the superiors, the circuitous process being adopted in defeats / breaches the time limit prescribed under Section 6(3) which in turn results in failure to furnish information to an information-seeker within the limitation prescribed under Section 7(1). It is imperative that applications for information are directly handled by

the authorities concerned with the information or are familiar with the citus of the required information so that they can discharge the statutory obligation of furnishing information within the period as prescribed in the Act.

10.4 In the situation as exists, the Office of the Chief Minister may at times don the mantle of a referred PIO. However, a Referred PIO has no obligation under Section 6(3). If and when an information relates to or is closely connected with the functions of Office of the Chief Minister, such a situation should not continue. Liability must also get fashioned to the PIO of the said office.

10.5 In some situations, information are required to be provided within 48 hours. This is where the information concerns life and liberty. The possibility that some such information would be sought from the Office of the Chief Minister cannot be ruled out. The circuitous process as being followed nor can hardly cater to such a situation. It can also be very well seen that in such emergence situations it is the citizens who shall suffer.

10.6 The Commission in recent times have in fact come across several instances where applications addressed to the Chief Minister and handled by the PIO of the Parliamentary Affairs Department have not been attended to within the stipulate times limits. This is evidently because of the existing practice.

10.7 The Principal Secretary to the CM had raised another difficulty with reference to absence of cash book and a Cashier. The Commission cannot comprehend why a cashbook cannot be maintained in the Chief Minister's Office and why a Cashier cannot be appointed. Even if a Cashier is not appointed, arrangement can surely be made for depositing cash with a designated authority. Therefore the difficulty so pointed out is devoid of any basis.

10.8 Before concluding on the sated difficulties, we may refer to the decision of the Kerala High Court in the case of Kerala Public Service Commission vrs State Information Commission and Others. In its judgements cited in WP(C) No. 33718 of 2010(L), the Hon'ble High Court held that the difficulties pointed out by the Public Service Commission were "nothing but a managerial issue". "Once a piece of law is

in place, inconvenience is no excuse to exclude adherence to it". The bounden duty is to obey and abide by it.

11. For the detailed reasons stated herein-above, the submissions made by the Office of the Chief Minister are rejected. Right to Information has been recognised as an extension of the "freedom of speech and expression" enshrined in Article 19(1) (a) of the Constitution of India; hence a Fundamental Right. It is therefore imperative that the Right to Information Act which confers the above fundamental right on the citizens is followed in letters and spirit and everything that is required to allow the citizens "smother and greater access" to information [the words in quotes are reproduced from the Preamble] is invariably done. It has clearly emerged from the discussion in this order that the practice being followed by the Office of the Chief Minister does not enable, let alone facilitate, such smother access. Hence the Commission hereby directs the Office of the Chief Minister to follow its the Commission's earlier advice in the matter of appointment of PIO and First Appellate Authority for its own office and ensure that such appointments are made within a month from the date of receipt of this order under intimation to this Commission.

12. With the above direction, the grounds raised by the Complainant are allowed and the subject complaint case stands disposed of.

Pronounced in open Proceedings

Given under the hand and seal of the State Commission, this the 8th Day of November, 2018.

**State Chief Information Commissioner
08.11.2018**