

C. Commercial Law

Right to Information - Would it Make a Difference?

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Most departments of the Government have had proclaimed allegiance to the citizens right through what is popularly called "Citizens Charter". Quite many promised to take serious note of public grievances. Quite many promised to reply to citizen's queries within specified time limit. But, alas, in practically all cases it has proved only to be rhetoric. RTI has teeth to deter the complacent and the casual. Hopefully, it would prove to be the real right to information and its provisions would not be frustrated by flux of time. Will that happen? -

Editor

The need for citizens right to information can be no better expressed than what the Supreme Court observed in the famous Raj Narain case:

"In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security."

Undoubtedly, Government departments and Government officials are repositories of lot of information that is not easily accessible to the public. They take numerous decisions on issues that affect the life of citizens and concern their vital interests. Indeed the Government officials are a privileged lot. For decades they are accustomed to work in 'secrecy' and their accountability is dismal. They function in the form of permanent bureaucracy, enjoying social status and perks envied by many. They enjoy immense security of service. Many believe that it makes many of them indifferent, casual and inefficient to quite an extent.

The Right to Information Act, 2005 (RTI, in short) derives its origin from the fundamental right of expression guaranteed to citizens under article 19 of the Constitution. The RTI has come about as a result of active persuasion by certain activist groups, including the

campaign spearheaded by the Magsaysay Award winner Aruna Roy. The RTI confers a legal right to the citizens to seek information from any 'public authority'. The term 'information' is quite wide in scope. It means "any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force". Besides, the expression 'right to information' provides meaningful access to the information a citizen may like to seek. "Right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to -

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- (i) inspection of work, documents, records;
- (ii) taking notes, extracts, or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

Importantly, the RTI emphasises upon the right of the citizen to seek information. The public authority cannot ask for the locus standi of a citizen to seek information. Section 6(2) states categorically, "An applicant making request for information 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".

The RTI is unique in the sense that it permits any citizen to seek any information. Imagine if thousands of persons seek information from the same office. It would mean tremendous amount of work for that office. Perhaps realising this but at the same time not undermining the citizen's right to information, the RTI rightly advises the public authorities to provide as

much information as possible suo motu to the public in order to reduce the pressure of work. Section 4(2) says :

"It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information."

Another novel feature of the RTI is to fasten responsibility on the officials to act in time-bound manner. Section 7(1) mandates the Central/State Public Officer to provide the information to the applicant, as expeditiously as possible, and in any case within thirty days of the receipt of the request. Even if the request has been addressed to an officer not concerned with it, he is required to transfer the application as soon as practicable but not later than five days from the date of receipt of the application, vide proviso to sub-section (2) of section 6.

Section 8 of the RTI specifies the kind of information that need not be provided to a citizen. They mainly concern the security interests of the country. As exception, for instance, the Government is under no obligation to give any citizen cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other offices. However, and importantly, the decisions of the Council of Ministers, and reasons thereof, and the material on the basis of which decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over. Another important exception is that an officer is under no obligation to provide information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual. But information that cannot be denied to the Parliament or a State Legislature shall not be denied to a citizen also.

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RTI provides for appeal against the decision of the Central Public Information Officer to a designated senior officer. What is significant is that in any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer who denied the request.

RTI prides for constitution of Central Information Commission and State Information Commissions to receive and inquire into complaints against the action and decisions of the Central/State Public Information Officers or the appellate authorities. The Commissions would also oversee the implementation of the RTI.

An innovative feature of the TRI is that it provides for imposition of penalty upon the erring officers who contravene or violate the provisions of the RTI. This further signifies the citizen's right to have access to the information and to ensure that the Officers take it seriously and not simply as yet another piece of legislation. Sub-section (1) of section 20 of the RTI is quite categorical.

Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or mala fide denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees.

On the whole, the purpose of the RTI is to empower the citizen to obtain information from the public authorities as matter of legal right. Its purpose is also to enhance efficiency and transparency in their working. The RTI intends the officialdom to be accountable to the citizens of the country and puts their functioning to direct scrutiny by the citizens.

It is true though that most departments of the Government have had proclaimed allegiance to the citizens right through what is popularly called "Citizens Charter". Quite many promised to take serious note of public grievances. Quite many promised to reply to citizen's queries within specified time limit. But, alas, in practically all cases it has proved

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