

## **Without Fear and Favour : XI**

### **Impact of RTI in public dealings**

**R. S. Tolia\***

I get invited to address civil servants belonging to various services as a part of the on-going training and awareness programmes conducted in various training academies across the country. Of these, I have found the Mixed Training Programme conducted by the IG Forest Academy, Dehra Dun, UP Academy of Administration, Lucknow and Uttarakhand Academy of Administration, Naini Tal, as quite useful. The Forest Academy runs a course mixing civil servants belonging to the IAS, IPS and IFS; UP Academy those belong to 20 years plus of their Provincial Civil Service whereas our own Administration Academy concentrates on a mix of all middle tiers of departments. What I share here is the generic impact of RTI which is discerned by all of us when it comes to responding to any communication which a citizen sends to any public office related to any matter whatsoever. I mention to them the following differences in particular brought about by what is popularly come to be addressed as the RTI.

#### **1. The Only Law which Acknowledges Receipts**

Before the notification of this RTI law there existed no law which bound an office, or a civil servant for that matter, to acknowledge a request received from an ordinary citizen.

Now, there is a Register maintained in all offices which enters all such letters in a serial order with a summary of all particulars and its date of receipt, as well as the manner of its disposal. Of course, this letter is accompanied by a fee of Rs 10, known as the application fee; which has also been exempted if the citizen is identified as a BPL family member. So, all letters under the RTI Act are entered in a prescribed register and their progress details also entered in this register. This is the first major difference brought about by this salutary Act.

## **2. Law with a Time Limit**

Earlier there was no compulsion on the part of an officer, or a civil servant, to dispose of the subject matter of a letter within a stipulated time period. As is well known by now that any application received under this new dispensation has got to be dealt with very expeditiously and disposed off latest within 30 days, and no later. Thus there is a cap of 30 days maximum.

## **3. Burden of proof on the office or officer**

The burden of proof that the subject matter of the letter received has indeed been disposed of within the stipulated 30 days is on the office or the officer and not on the citizen. The officer and the office has to produce such a proof, when this contention is debated. The despatch register, postal evidence etc are all to be kept by the officer/officer, as a proof of disposal.

#### **4. Silence pays no more**

If the office or the responsible officer keeps silence and does nothing or does not respond to the letter, this silence, deliberate or otherwise, is held against the office/officer. In the past such a silence at times benefited the office/officer, but no more now. Such a silence goes against the office/officer and tantamounts to rejection of the subject matter referred to in the letter received. The old adage *Maunam Swikriti Lakshmanam* ( Silence is deemed as concurrence ) has been turned upside down and now, *Maunam is Aswikriti Lakshnam* ( Silence is deemed as rejection or non-access or non-acceptance ). It is something like ‘an offence of omission’, certainly making the public servant more accountable than in the past. RTI, as we know is meant to achieve twin goals of ensuring transparency as well as accountability in the delivery of public services.

#### **6. All actions appealable to the next higher officer**

All correspondence or action taken by the first officer is appealable before his next higher officer, whose address has now to be noted at the end of each correspondence. So a citizen is also to be told now where a citizen has to complain if s/he is not satisfied for any reason. This has removed the cloak of secrecy surrounding officers and officers and citizen has a second opportunity for redressal, nearest to her/his place of residence. If the first officer fails to inform the next higher officer’s designation and address, again such an act tantamounts to an act omission, punishable under the RTI Act.

## **7. The Next higher bound similarly**

Every public office is deemed as a legal person and following the principle of natural justice this legal person is also given two opportunities. The next higher officer, who is the controlling officer of the first one, is the last chance available to the public office concerned. The second officer, called the First Appeal Officer, is also required to acknowledge every appeal presented, with particulars, in a prescribed register, with particulars of disposal of the appeal; has again 30 days at his/her disposal to address the issue under the original application, as per the RTI Act, is given additional 15 days, over and above the first 30 days of appeal, however, he is required to note in the order as to why s/he took these additional 15 days.

This appeal officer, like the first officer, is also to note down towards the end of his/her order that in case the citizen is not satisfied by his disposal on any count, s/he may submit final appeal before the State Information Commission, adding the postal address of the Information Commission.

Like the junior officer, if s/he fails to dispose of the appeal in 30 days, it is deemed rejection of appeal; or chooses to maintain a silence, this is also reckoned tantamount to rejection of the appeal preferred ! Similarly, it is this officer who carries the burden of proving that she or he did do, what she or he was required to do, and keep complete evidence of every act she or he has undergone.

## **8. Entire burden of proof on the office and officers concerned**

As mentioned above, the entire burden of processing the application and communicating the action taken to the citizen concerned, including the documentary evidence of every act and action, now rests with the office and officers. Here the citizen is like a railway - passenger, who has purchased a valid train ticket for Chennai, who has now to be deposited at the Chennai junction, by the railways authorities. All that this passenger is required to do is to keep the valid ticket purchased in her/his possession, and it is the responsibility of the railways authorities to ensure that the passenger reaches Chennai.

This passenger can not be asked any question, nor is he expected to answer any query by any railway official either related to the objective behind the journey or any matter related to the ticket. All presumptions are in favour of the passenger, holding this valid journey ticket. Further, it is entirely the sweet-will of the passenger if s/he decides to get down at any railway station, falling on the route to Chennai. After all it is the passenger's loss if s/he has bought a ticket for a destination, longer than was actually needed. In short, the RTI Act is an entirely citizen-friendly statute, as all presumptions are in her/his favour, and the entire burden of proof is on the other side, the public office and the public officials concerned.

## **9. Personal accountability and collective responsibility**

Earlier public servants used to get away scott –free and successfully shifted the fault-burden on the so-called ‘system’, the ‘system’ became an easy escape-route. No more now ! The first officer, called the Public Information Officer ( PIO) has been made personally responsible for delivering the ‘information’ and has been made liable for pecuniary punishment @ Rs 20 per day of delay. Additionally, he could also be recommended for departmental action as per her/his disciplinary regulations. Thus RTI obligations have now been made part and parcel of a public servants departmental and official responsibility. The next higher officer is also made responsible, as a part of the system, as he/she been given the discretion, as well as the second and last opportunity to rectify any mistakes that the junior official may have committed.

In my view, this accountability of the ‘next higher’ official is yet another improvement in official or public functioning, as over the years we have been witness to a weakening , if not altogether abandonment of ‘supervisory’ responsibilities on the part of those senior in service and rank. RTI has ushered in an era of ‘increased supervisory accountability’ and if RTI Act is implemented strictly the offices would become centers of ‘collective responsibility’, instead of ‘each one to oneself and the God above us all’ mode of working, which had become the order of the day.

Information Commissions, if they impose salutary ‘compensations’ to the citizens, who have been harassed

without justification by offices, realization of such compensations, as it becomes a pecuniary fine for a collective failure, will fix the responsibility more squarely and effectively, where it is really due viz.. more pointedly at the 'heads of the office' level, as the senior officers are also known officially.

## **10. An Independent Supervisory Authority**

There are several other checks and balances which have been introduced by this simple but most effective statute which could have been discussed e.g. the concept of 'deemed PIO', 'deemed rejection', 'self-disclosure mandate', each one near revolutionary in so far as the extant practices in public dealings are concerned, which have silently brought about a most discernible change in the psyche of public servants, during these past four years, what I emphasize by way of comparison with the immediate past, is the tenth and most effective change this Act has put firmly in place. The establishment of Information Commission, as the third entity, other than the Chief Minister and Chief Secretary, on the executive side of the State, which has now "an absolute and free access" to any document or information, in possession of any public office. On the executive side, this privilege existed earlier only with the Chief Minister and the Chief Secretary of a State, or parallel entities at the Union level. The major difference, which has to be appreciated by everybody is that now a 'third entity' has for the first time been created with similar 'unhindered access', which is outside the Government. The Information Commissions, as we know,

are independent and autonomous entities, not subordinate to any public authority enumerated in the RTI Act.

Broadly, these are the ten major points on which the public handling of communications from the citizens to the public officers has departed quite significantly, irretrievably and wholly in the public interest.

Indeed it is difficult to even visualize today the life and public dealings as they existed prior to October 2005, when the RTI Act became operational, and now when a citizen feels hugely empowered by the 'access to public information' and shrugs off that feeling of sheer helplessness, which had become the order of the day.

No wonder that there was a huge outcry from the public when an attempt was being made to reduce the potency of this new found instrument in the name of 'removing difficulties'. Information Commissions, by and large, have been able to find their way around some of the so-called grey areas or difficulties and it would be entirely in public interest not to tinker around with the existing provisions and leave it to the 'practical regime' to resolve which might appear unresolvable.

---

R.S. Tolia is Chief Information Commissioner of Uttarakhand Information Commission and he encourages queries at [rs\\_tolia@rediffmail.com](mailto:rs_tolia@rediffmail.com).