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Random Thoughts : 8

P P P Framework and R T I

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Reflecting in an entirely free-wheeling way on the first anniversary of the RTI Act in October 2006 I had mentioned in my first book on the RTI Act, A Practical Guide to the Right to Information Act, 2005 (Natraj Publishers, 2006, p 19) that “ the most contentious of all definitions (given in this Act) is going to be that of ‘information’ itself, and the on-going debate on the file notings, which had hogged the limelight and overwhelmingly overshadowed possible discussions on all other ‘definitions’ ”.

The ‘File Notings’ Debate

Going by the trajectory of this celebrated debate and the views which had been expressed on the issue, ranging from the Prime Minister Manmohan Singh to President Kalam, I had hazarded a guess ‘that one had not heard the last word on the contentious issue of “the file notings” and the matter was bound to lead to many a clarifications on some of the ‘definitions’ which appeared to be open to more than one interpretation’ (p 9 – 37). Mercifully, this strange battle is confined to the ‘public authorities’ which are under the domain of the Central Government and as predicted, this Office Memorandum of the Ministry of Home Affairs issued on the 25th November, 2005 and last heard the Ministry has been given time by the Central Information Commission to withdraw it by May, 2009 ! As far as we are

concerned here in Uttarakhand our 'public authorities' have been freely providing 'file notings' not otherwise legally prevented from disclosure. Point being made here is that the various Information Commissions have absolute freedom from each other and one 'public authority's' over-arching writ need not bind others from acting as per the letter and spirit of this land-mark legislation.

Private Sector

As is well known by now the RTI Act relates to access to information 'under the control of a public authority' and a 'public authority' has to be (i) any authority, or (ii) body, or (iii) and institution of self-government, and these could be :

(a) a government body, established by or under the constitution, or by any law made by Parliament, or by any law made by the State Legislature, or by notification issued or order made by the appropriate Government (meaning the State or the Central), or

(b) a non-Government organization substantially financed.

A category of body, which is 'owned', 'controlled' or 'substantially financed', even though not specifically covered by (a) above, is also covered by the definition of 'public authority' and hence amenable to the provisions of this Act. In so far as any body 'owned' or 'substantially financed' is concerned there is not much ambiguity, as the funding which has been provided 'directly or indirectly by funds provided by the Government makes this also amenable to the provisions of the Act. In this category a class of bodies have appeared which are just 'controlled' by the state department but not directly funded. This category is the class of privately managed institutions, both minority and non-minority, which come into existence only after the education department issues them a No Objection Certificate (NOC). Does successfully securing a NOC from the education department authorities

constitute a process of some 'control' ? This has unleashed a dialogue on the conditionalities which are imposed for securing a NOC for complying with the conditions prescribed by the examination-holding agencies like the ISLC and CBSE and those by the Secondary Education department of the state concerned. The jury is still out on this contentious issue even though the department has said that granting the NOC amounts to exercising the 'control' within the meaning of the Act.

Information relating to any 'private body', say a private sector industry, can also be secured through a public authority by a citizen, to the extent this private body is furnishing any information to this public body 'under any law for the time being in force'. So, in a limited way, the private sector bodies or units are also covered by the provisions of the RTI Act, not directly but through the public authorities to whom they are furnishing any mandatory information. To illustrate information or periodical returns furnished by private sector units on environment, pollution-control measures, labour laws, provident funds etc to the respective public organizations is accessible, indirectly through these public statutory bodies. This has been implemented in Uttarakhand through a decision in appeals filed before the Information Commission for information relating to industrial units.

Public Private Sector hybrid

As it was to promote transparency and accountability in the 'working of every public authority' that the RTI was enacted when this 'working of public authorities' itself undergoes substantial or fundamental changes a host of issues get automatically thrown up. As we are aware the Governments world over are increasingly encouraging public-private partnerships (PPP) which has been necessitated by the urgent need to provide the infrastructure services. Infrastructure services have hitherto been exclusively delivered by the public sector.

In context of Uttarakhand, given the nascent stage of PPP mainstreaming, the issues to be taken on board appear to be as follows:

1. Is the PPP initiatives in the state to be supported by a policy framework or is it to be supported by specific laws (the instrumentality issue) ?
2. Is there a need of a dedicated PPP unit within the government as a means of developing domain knowledge for PPP initiatives and pooling the PPP expertise in the public sector ?
3. What is the administrative status of the PPP unit in term of its roles e.g. advisory or approving or both ?
4. What are the institutional arrangements for approving PPP projects and co-ordination among concerned agencies within government involved in steering projects ?
5. What is the status of Infrastructural Development Fund as a dedicated source of public funding for both project development and infrastructure development ?
6. What is the status of the regulatory authority to advise the government in formulating the guidelines relating to tariffs, conduct of public hearing regarding approval of PPP projects, regulating the working of PPP projects and adjudication of disputes ?
7. What are the incentives and concessions, terms of their eligibility, contingent guarantees and financial support and their exact specifications ?

Obligations of the Government :

As decisions get taken on the seven items listed above, and more, with the increased leveraging of public funds through private participation for infrastructural development, simultaneously arrangements will also have to be made to effect amendments in

various existing rules on the one hand and notification of a whole host of office memos on the other. Major obligations to be discharged would actually lie in implementation of provisions contained in section 4 of the RTI Act.

Unsatisfactory discharge of obligation on the part of most of the departments of the requirements contained in section 4 has started attracting notice of both the citizens as well as the Information Commission itself.

All Ministries and departments, including their respective offices at the sub-national and district levels are required to maintain all their records 'duly catalogued and indexed in a manner and the form which facilitates the right to information under the RTI Act and ensure that all records that are appropriate to be computerized are within a reasonable time computerized and connected through a network all over the country on different systems so that access to such records is facilitated'.

From the point of view of mainstreaming of PPP in Uttarakhand the Manuals which describe (i) the particulars of the PPP Unit and the regulatory authority, (ii) powers and duties of the officers and employees of these institutions, (iii) the procedure followed in the decision making process, including channels of supervision and accountability, (iv) the norms set by the Government for discharge of functions by the PPP Unit and the Regulatory authority, and above all (v) all the rules, regulations, instructions, records and manuals held by it or under its control and used by its employees for discharging their functions will need to be digitized and made available in hard and soft copies, in addition to being uploaded on the internet.

Transparency, feed-back and navigation

This being the fourth year of the implementation of the RTI Act in the country, discharging of this obligation by the related departments of the state government being expected by all in an on-line manner, as it were, this is not going to be an easy task. Transparency in making public details of all that has been listed above will only be helpful to the PPP framework itself as it is only through such a mechanism alone that the complex process of PPP mainstreaming would be able to receive the feed-back it would need so desperately at various stages of its evolution, in this state as well as the country. In any case it would be found inescapable by the departments concerned as neither the stakeholders involved nor the concerned citizen is unlikely not to resort to the RTI route for an early resolution of the various road-blocks which this novel approach is going to encounter. The Information Commission, on its part, obviously is bound to direct the government to ensure that the obligations of self-declaration are complied with sooner than later.

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