
(2013) 12 GUJ CK 0088

In the Gujarat High Court

Case No : Special Civil Application No. 2398 of 2013

Chandravadan Dhruv

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 21-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0088

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; P.K. Jani, Government Pleader with Ms. Vacha Desai, AGP for the Respondent(s) No. 1, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—By this application under Article 226 of the Constitution of India, in the nature of a public interest litigation, the petitioner, a journalist by profession, seeks to challenge the order dated 4th September 2012 passed by the State Information Commission in exercise of its powers u/s 18 of the Right to Information Act, 2005 (for short, "the Act 2005"), by which the Commission dismissed the complaints lodged by the petitioner with respect to the duty of the public authority under the Act, 2005 to provide for proactive disclosure of the information maintained in its records. Although the State Information Commission refused to entertain the complaints filed by the petitioner, yet thought fit in exercise of its powers u/s 25(5) of the Act 2005 to issue directions to the various public authorities under the Act to ensure that there is due compliance of the provisions of Section 4(1), (a), (b), Section 4(2), Section 4(3) and Section 4(4) of the Act, 2005. It appears from the materials on record that the petitioner in person filed as many as 739 applications addressed to the various public information officers of the various departments of the State Government praying for a certified copy of the proactive disclosure published as the information under the provisions of the Act 2005.

2. Such applications which were filed by the petitioner in person were rejected on

the following grounds:

(i) The public information officer demanded fees for the amount of Rs. 20/- for providing a copy of such information.

(ii) The public information officer has brought to the notice of the petitioner that such information is available on the website of the Gujarat Government.

(iii) Some of the public information officers declined to provide such copies on the ground that it was not permissible for them to supply the same.

3. Feeling dissatisfied with the stance adopted by the public information officers, the petitioner in person filed a complaint before the State Information Commission u/s 18 of the Act 2005.

4. The petitioner in person prayed for the following reliefs before the State Information Commission.

(i) Directions be issued to provide copies of the proactive disclosure without any fees.

(ii) Since the public authorities have violated the provisions of the Act the concerned public authorities be imposed with a fine of Rs. 250/- per day.

(iii) Necessary action be taken against the erring public authority in terms of Section 20 of the Act of 2005.

5. Before the State Information Commission, the petitioner in person submitted the following:

(i) It is the duty of the public information officer to provide for the information (proactive disclosure) free of cost and on regular basis.

(ii) It is the duty of the concerned officer to declare such information on his own without waiting for any person to demand for the same.

(iii) Such information should be provided at the earliest and in any case within a period of 30 days.

(iv) The officer may charge a token fee to obtain the copy of the information but for the purpose of inspection there should not be any demand for any fees and such inspection should be permitted.

6. It appears that the State Information Commission came to the conclusion that there was no substance in the complaints, and accordingly, rejected the same. However, as stated above, the State Information Commission also thought fit to issue directions in exercise of powers u/s 25(5) for the proper implementation of the provisions of the Act 2005.

7. Having heard the party-in-person and Mr. P.K. Jani, the learned Government Pleader assisted by Ms. Vacha Desai, the learned AGP appearing for the State-respondents and having gone through the materials on record, the only question

that falls for our consideration in this petition is whether the State Information Commission committed any error in not entertaining the complaints filed by the petitioner.

8. We are not impressed by the submission of the party-in-person that the authorities are obliged to provide with the copy of the information free of charge. We are in agreement with the State Information Commission that if any information is a part and parcel of the record of the public authority, then it is the duty of the authority to provide inspection of the same to any person free of charge but if any person demands for a certified copy of such information, and since such information is a part of the record of the authority, in such circumstances, the authority would be justified in demanding the requisite fees as provided under the provisions of Section 6 of the Act 2005.

9. In the aforesaid context, we may quote Section 6 of the Act 2005 as under:

6. Request for obtaining information.--(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to--

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) 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.

(3) 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:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of

receipt of the application.

10. We deem it necessary to even look into the Rules framed by the State Government in exercise of the powers conferred by Section 27 of the Act 2005.

11. These Rules are called "The Gujarat Right to Information Rules, 2010". Rule 3 provides for application for obtaining the information, which reads as under:

3. Application for obtaining information:

(1) A person who desires to obtain information shall make an application in Form A or in a neatly typed or hand written application containing all essential details described in Form A accompanying with the fees prescribed in rule 5(a) or through the e-media to the Public Information Officer of the concerned Public Authority.

Provided that a person applying through the e-media shall have to pay the fees within seven days from the date of application, failing which the application shall be treated as withdrawn:

Provided further that no fees prescribed in clause (a) of rule 5 shall be payable by a person belonging to the Below Poverty Line families; if such person encloses with the application a certified copy or a true copy of the Below Poverty Line Card or a certificate issued in that behalf by the concerned authority.

(2) The fees as provided in rule 5(a) shall be paid in cash wherever facility for cash receipt is available or by demand draft or by pay order or in the form of Non-Judicial stamp or Non Judicial Stamp Paper or stamping through franking or Electronic stamping or Court fee stamp or Judicial stamp paper or Indian postal order or revenue stamp or by Challan credited in the Government Treasury through authorized banks in the budget head 0070-other administrative services, 60--other services, 800--other receipt, (17)--fees and other charges under these rules.

(3) The Public Information Officer shall inform the applicant in Form B regarding other fees and charges to be paid as provided under clause (b) of rule 5:

Provided that no fees and charges prescribed in clause (b) of rule 5 shall be payable by a person belonging to the BPL families if such person encloses with the application a certified copy or a true copy of the BPL Card or, the certificate issued in that behalf by the concerned authority.

(4) The fees and charges payable under clause (b) of rule 5 may be paid in cash wherever facility for cash receipt is available or by demand draft or by pay order or by Indian postal order or by Challan credited in the Government Treasury through authorized banks in the budget head 0070 - other administrative services, 60 - other services, 800-other receipt, (17)-fees and other charges under these rules.

(5) The fees and charges paid by demand draft or by pay order or by Indian

postal order shall be duly crossed and shall be drawn in favour of Government of Gujarat or as the case may be, the concerned Public Authority.

12. Rule 4 provides for the disposal of the application, which reads as under:

4. Disposal of the application:

(1) The Public Information Officer shall be required to provide the information sought for, to the applicant within thirty days of the receipt of the request or reject the request for any of the reasons specified in the Act or partially provide the information sought for and partially reject the request for any of the reasons specified in the Act and inform the applicant in Form C:

Provided that the applicant shall be given reasons for not giving the information which are exempted from disclosure u/s 8 or section 9 of the Act:

Provided further that where the information sought for concerns the life or liberty of a person, the Public Information Officer shall be required to provide such information within forty-eight hours of the receipt of such request or application.

(2) In case where the information sought for does not fall within the jurisdiction of the Public Information Officer/Public Authority to whom the application is made, the Public Information Officer shall transfer such application or such part of it to another concerned Public Authority in Form D as soon as practicable but in no case later than five days of the receipt of the application and inform the applicant immediately about such transfer.

13. Rule 5 provides for rates of fees, which reads as under:

5. Rates of Fees:

The rates of fees and other charges for obtaining required information and documents shall be as under:--

(a) Application Fees:--Rs. 20/- per application

(b) Other fees and charges:--

(1) Information/documents to be provided where a separate system or procedure or fees/charges for providing copy does not exist in a Public Authority-charges:--

(a) A4, A3 size paper--Rs. 2/- per page

(b) Larger size paper--Amount of actual cost.

(2) For inspection of records where a separate system or procedure or fees/charges does not exist in a Public Authority

(a) No fees for the first half an hour.

(b) Rs. 20/- for each half an hour thereafter.

(3) An amount of actual cost for providing sample, model or photograph where a

separate system or procedure or fees/charges does not exist in a Public Authority.

(4) Rs. 50/- per floppy or disc for information to be furnished in a floppy or a disc, wherever possible.

14. Thus, from the above it is very clear that there is a procedure for obtaining the information and for which the fees have also been prescribed. The submission of the party-in-person is, therefore, bereft of any merit that the public authorities are obliged to provide the information free of cost.

15. The above takes us to the obligations of the public authorities under the Act, 2005. Section 4 of the Act 2005 provides for such obligations, which reads as under:

4. Obligations of public authorities.--(1) Every public authority shall--

a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

b) publish within one hundred and twenty days from the enactment of this Act,--

(i) the particulars of its organisation, functions and duties;

(ii) the powers and duties of its officers and employees;

(iii) the procedure followed in the decision making process, including channels of supervision and accountability;

(iv) the norms set by it for the discharge of its functions;

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) a statement of the categories of documents that are held by it or under its control;

(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(ix) a directory of its officers and employees;

- (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
 - (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
 - (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
 - (xiii) particulars of recipients of concessions, permits or authorisations granted by it;
 - (xiv) details in respect of the information, available to or held by it, reduced in an electronic form;
 - (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
 - (xvi) the names, designations and other particulars of the Public Information Officers;
 - (xvii) such other information as may be prescribed; and thereafter update these publications every year;
- (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;
- (d) provide reasons for its administrative or quasi-judicial decisions to affected persons.

(2) 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.

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.--For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public

authority.

16. It appears that a duty is cast upon the public authorities to make all possible endeavours to provide as much information suo motu as possible to the public on regular intervals through various means of communication, including the internet, so that the public have minimum resort to the use of the Act 2005 for the purpose of obtaining information.

17. In the aforesaid context, we may quote with profit the decision of the Supreme Court in the case of *The Institute of Chartered Accountants of India Vs. Shaunak H. Satya and Others*, wherein the Supreme Court made following observations in paragraph 18:

18. The information to which RTI Act applies falls into two categories, namely, (i) information which promotes transparency and accountability in the working of every public authority, disclosure of which helps in containing or discouraging corruption, enumerated in clauses (b) and (c) of section 4(1) of RTI Act; and (ii) other information held by public authorities not falling u/s 4(1)(b) and (c) of RTI Act. In regard to information falling under the first category, the public authorities owe a duty to disseminate the information widely suo motu to the public so as to make it easily accessible to the public. In regard to information enumerated or required to be enumerated u/s 4(1)(b) and (c) of RTI Act, necessarily and naturally, the competent authorities under the RTI Act, will have to act in a pro-active manner so as to ensure accountability and ensure that the fight against corruption goes on relentlessly. But in regard to other information which do not fall u/s 4(1)(b) and (c) of the Act, there is a need to proceed with circumspection as it is necessary to find out whether they are exempted from disclosure. One of the objects of democracy is to bring about transparency of information to contain corruption and bring about accountability. But achieving this object does not mean that other equally important public interests including efficient functioning of the Governments and public authorities, optimum use of limited fiscal resources, preservation of confidentiality of sensitive information, etc. are to be ignored or sacrificed. The object of RTI Act is to harmonize the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the Governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand. While sections 3 and 4 seek to achieve the first objective, sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore, when section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfillment and preservation of democratic ideals. Therefore, in dealing with information not falling u/s 4(1)(b) and (c), the competent authorities under the RTI Act will not read the exemptions in section 8

in a restrictive manner but in a practical manner so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding the other public interests.

18. In the context of Section 4 of the Act, 2005, the State Information Commission has also issued the necessary directions in exercise of its powers u/s 25(5) of the Act, which reads as under:

25. Monitoring and reporting

....

(5) If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

19. The directions which have been issued by the State Information Commission in exercise of its powers u/s 25(5) of the Act 2005 practically takes care of the issues which have been raised by the petitioner in this petition.

20. We are also in agreement with the finding recorded by the State Information Commission that if the petitioner refused to pay the requisite fees and for such non-payment of fees the public authorities refused to part with the information, then in such circumstances, it could not be said that such refusal would fall within the ambit of Section 18 of the Act 2005 so as to make the complaints filed by the petitioner maintainable before the State Information Commission. The complaint u/s 18 before the State Information Commission would be maintainable only in the following contingencies.

18. Powers and functions of the Information Commission. (1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,--

(a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to

information within the time limit specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

21. We are also not impressed by the submission of the party-in-person that the State Information Commission ought to have imposed penalty against the public authorities for refusing to supply the information by exercising the powers u/s 20 of the Act 2005.

22. Section 20 would apply only in cases where the State Information Commission is satisfied that an officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the specified time 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 and, in such circumstances, a penalty of Rs. 250/- each day could be imposed till the application is received or information is furnished, however, the total of such penalty should not exceed Rs. 25,000/-. Since we are in agreement with the findings recorded by the State Information Commission that the complaints which were filed could not have been entertained u/s 18 of the Act 2005, there is no question of imposing any penalty on any of the officer.

23. Before parting we deem it necessary to observe that the Right to Information (RTI) has become a key instrument for democratization in India, and is aiding the forces for positive social change in many ways. One of the most important elements of the RTI Act is its Section 4, which mandates pro-active disclosure of certain categories of information. Proactive disclosure has been called the future of the RTI, and digital publication is a key means of proactive disclosure. Effective implementation of this section of the Act can transform the leverage citizens have over public authorities in order to ensure their accountability. Regular publishing, including through the Internet of the most frequently sought information, will also mitigate the huge burden that is placed on public authorities to respond separately to the large number of specific queries about public information.

24. Since the issue raised by the petitioner is of a vital public importance, we, on our own, made a little research on the subject and found that the Department of Personnel and Training of the Government of India has constituted a Task Force for the effective implementation of Section 4 of the RTI Act. As a part of this Task Force, IT for Change is facilitating a sub group on "Guidelines for Digital

Publication under RTI supporting Proactive Disclosure of Information". As a part of the work of this sub-group a one day consultation was held on the said subject i.e. "Formulating guidelines for digital publication under RTI supporting proactive disclosure of information" in Bengaluru.

25. The recommendations made by the Task Force for the effective implementation of Section 4 of the Act, 2005 are as under:

25.1 What information should be mandatory to be digitally published?

? Section 4.1.b, especially read along with 4.1.a, covers almost all public information. All information should be pro-actively disclosed unless there is a compelling and legal justification to the contrary. Section 4.1.b lists categories of information that should have been pro-actively disclosed within 120 days of the publication of the RTI Act, and is not exhaustive vide sub-section xvii which reads to cover "such other information as may be prescribed." In any case, 4.1.a calls for cataloging and computerizing all records, that are appropriate to be computerized, and facilitating access to all such records. This covers the entire gamut of government information other than that which is specifically excluded.

? In general, every information needed to lead a life of security and dignity should be pro-actively disclosed. This is the basic duty of a democratic state. Information related to the problems of people should be prioritized. All effort should be continually made to assess and address people's need for information.

? Proposed policies and programmes should be made public before taking final decisions on them. All policies must be mandatory to be subject to public consultations. Drafts of public legislation, and information/documents based on which the information is prepared, and also the justification for decisions taken, should be pro-actively shared. All inputs received as a part of the consultations along with the responses thereto and action taken, should be shared. Often major changes take place in the last phase just before a bill is presented. All major changes should be subject to open consultative processes, especially those made at late stages.

? MoUs, agreements and contracts with international banks and institutions, corporates and NGOs should be published. Such information is often refused on the pretext that the interests of outside agencies may be compromised. The need to disclose all or maximum information should be a part of all contracts with outside agencies. Information about tenders is often not disclosed as sensitive information. This should not be so, and people have a right to comment on information related to tender before they are issued.

? Some of the most useful information is dynamic, and must be updated on a quarterly basis. Proper standards and records for such regular updation should be maintained.

? Service delivery standards and performance indicators are generally not published and they should be. Penalties for non-compliance to standards of

service delivery should be prominently published.

? Each department should develop an information policy (or RTI policy or pro-active disclosure policy) interpreting the intention of the Act in terms of the specific mandate and activities of the department, with respect to all levels of the department's activity and presence.

? Such a policy should describe in detail the record scheme (all issues vis-à-vis compliance with section 4.1.a) apart for mentioning what information is being pro-actively made available and how, what is not made available and why, and steps taken for compliance with 4.1.c and 4.1.d.

? Departmental information policies should be prepared in consultation with, and to the satisfaction of, the concerned Information Commission. These policies should also be put up as drafts for public consultations, public inputs taken and reasoned responses provided. Such policies have to be updated every year. Preparing and publishing such a policy must be made obligatory citing the provisions of section 25.2. All such departmental information policies should be part of the annual report of the Information Commissions u/s 25.1 and widely publicized.

25.2 In what form should this information be published?

? It is important to demystify information and it should be presented in a form in which it can be used easily by people. (However, the original formats of information should continue to be made available.) Information should be available in a manner that takes into account citizens' needs and points of view. Regular needs assessments should be done for this purpose.

? Templates for digital publication should be designed for each public authority.

? Information should be made available in a reusable form, using open data standards and open technical compatibility standards. Access should be provided at the raw data level. Outside agencies should be able to use such data to present it in different forms, which could be more useful and relevant in different contexts and to different groups.

? Information should be presented, as per widely accepted accessibility standards, in a form that visually impaired people and those with other disabilities are able to access it.

? Although often information is available department-wise for the whole state, it is difficult to access it locally, community-wise, cutting across the mandate and activities of the different departments. All information should be made available at the panchayat or ward wise. All public information must be republished at the panchayat/ward level in a community-centric manner using multiple sources of information to give a complete local picture. Human Development Indicators at the ward level should be captured and should act as the basis for planning.

? Frequently asked questions and frequently occurring problems should be listed.

A glossary of frequently used terms should be displayed.

? Often the best form of presenting information is not the text format, but it could be through photographs (the example of a NREGA work-site was given), or audio or video formats. Information should be given in a format which it is most relevant and useful to people.

? Public authorities should learn how to visualize information, and provide it in appropriate forms whereby it will be most useful to people.

? A portal should be designed for proactive disclosure which can be at the departmental level or across the government (For example, Mexico). Individuals/organizations should be able to register to receive alerts when documents are added in specific categories that they have registered for. Andhra Pradesh's state government portal was mentioned as a good practice in this regard. Documents, information and comments should be pro-actively circulated on civil society e-lists dedicated to the concerned subject matter, and those who have a general interest in policy matters.

? Efforts at making all information available digitally in the public domain in conveniently accessible forms should be complemented by developing information kiosks at village/ward levels where everyone can access digitally available information directly, or in an assisted manner.

? Focus on digital publishing does not mean that governments stop or de-prioritise publications through other means, like booklets, pamphlets, notice boards, walls, etc. Broadcast media should also be used effectively. A good mix of all means and possibilities should be employed. The RTI Act and its different provisions require a lot of publicity and promotion through every possible means. All important information with different public authorities, especially that which is most relevant to people, should be publicized using all possible means.

25.3 How to ensure proper record keeping?

? The required level of proactive disclosure is not possible without appropriate record keeping, and this aspect needs focused attention. There are detailed rules for record keeping and they should be strictly followed and the scheme for it should be published. Record keeping practices may have to be reviewed from the point of view of comprehensive proactive disclosure requirements, especially through digital means.

? Section 4.1.a is very clear about the need for proper record keeping, inducing in digital and networked form. Funds should be earmarked for digitizing records. Complete details of all records that are maintained and available digitally, and about those which are not, with due justification thereof, should be published. Annual reports on compliance with section 4.1.a should be sought by the Information Commissions.

? The costs involved in digitizing resources and maintaining networked computer

based record-keeping and information systems is often cited as a major deterrent. It was felt that it is no longer a major issue. India is at par or better in terms of IT issues than many developed countries that maintain high standards of digital publishing of public information. The real cost is in terms human resources, including skills, and these are easily available at all levels in India today.

? An example was given about how a government office in Bangalore was able to scan all its documents at a very low cost. Another example that was discussed was of "Bhoomi" project in Karnataka, whereby, it was contended that, if open public access to such complex spatial data as the land records of the entire state can be ensured, how can giving access to all textual documents of an office or department be any more difficult.

25.4 How should the proactive disclosure be monitored and enforced? ? It was stressed that the most important area to work on is effective monitoring and enforcement. Unless monitoring and enforcement is effective, no amount of guidelines on proactive disclosure will be useful. In fact, the current list under 4.1.b of areas requiring proactive disclosure is quite clear but has very little compliance. The real issue is that there is no penalty for non-compliance and Information Commissions have not used the proactive action possibilities that are there in the Act.

? Monitoring and enforcement has to be outside the executive branch of the government system, because within the executive branch there is a tendency not to ruffle feathers because of shared "location" and interests.

? While digital means enable easy proactive disclosures, they also facilitate proactive monitoring and enforcement since compliance can be monitored remotely on a continuous basis. This opportunity should be capitalised upon.

? The Information Commissions should be responsible for monitoring and enforcement. If they become truly active, enforcement of proactive disclosure is possible. Though not often exercised, it was felt by most that Information Commissions have clear suo moto powers and responsibilities under the Act. (For instance, u/s 25.5.) The Act requires Information Commissioners to pro-actively ensure the implementation of the letter and spirit of the Act.

? It will be required for the above purpose to issue clear guidelines to the Commissions, and improving the staff strength and other resources available with the Commissions.

? Active monitoring of compliance with section 4 should be done vis-?-vis the declared information policy of the concerned department, which inter alia will have templates for disclosure.

? It is required to develop appropriate indicators for monitoring such compliance, which should be done by the Information Commission in consultation with the concerned departments.

? Since compliance with proactive disclosure requirements is an across-the-department systemic requirement, and not a one-off act as in case of furnishing information against request, it should be the responsibility of the concerned Head of the Department to ensure compliance and not merely of the Public Information Officer.

? Ensuring proper digital record keeping and full proactive disclosure as per the letter and spirit of the RTI Act is a departmental system-wide and regular activity. This requires dedicated staff and dedicated nodal officer, at least at the departmental level, with appropriate authority and responsibility, for specifically ensuring the required level of proactive disclosure.

? Although it can be done remotely, monitoring and enforcing compliance on proactive disclosure requires a good amount of continuous dedicated effort. It may be useful to make one of the information commissioners exclusively responsible for this role. The commissioner made responsible for digital publication of information must be given adequate staff for remotely monitoring compliance and preparing reports on it.

? The annual report of the Commission should include the results of such proactive monitoring, along with the earlier mentioned report on compliance from the department.

? Non-compliance should attract adverse notice and the concerned public authority should be given appropriate directions. Good performances should be given star ranking to reward and incentives compliance.

? The concept of information audits should be promoted, which should specifically look into how information is processed and stored in an office (record keeping) and how it is made available pro-actively, including through digital means. This can be done as a part of regular audits or as a separate specialized process anchored by the Information Commissions.

? A major problem about making Information Commissions responsible for monitoring proactive disclosure is that this can happen effectively only at the central and state levels. However, the most important information for most people may lie with the lower levels of government. Nodal officers at the block level reporting to the Information Commissions with respect to the activity of monitoring proactive disclosures should be explored as an option.

? Since proactive disclosures can be monitored remotely by anyone, civil society organizations should also be encouraged to monitor compliance and submit their reports, supported by adequate data.

? It is important that community monitoring of proactive disclosure also takes place. For this purpose, state, district, block and panchayat level public information committees should be set up.

? The attitude to and compliance of RTI provisions, especially regarding proactive

disclosure, should be a part of annual performance reports of all officials.

For the foregoing reasons, we do not find any merit in this petition and the same is consequently rejected with no order as to costs.