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"PUBLIC SERVANTS" KNOWINGLY GIVING INCORRECT, INCOMPLETE OR MISLEADING INFORMATION UNDER THE RTI ACT ATTRACTS DISCIPLINARY ACTION



By: M.S.Yatnatti: Editor and Video Journalist Bengaluru: The Right to Information Act, 2005 already provides for imposition of penalty and recommendation of disciplinary action by the Central Information Commission/State Information Commission, as the case may be, against the Public Information Officer who has knowingly given incorrect, incomplete or misleading information under the RTI Act. The CIC/SICs have been imposing such penalties and also recommending disciplinary action against such Public Information Officers and directions issued to all the departments to fix responsibility and take action under the Government Employees Conduct Rules 1957. Giving Knowingly false information and forged information attracts IPC 464 Making a false document and IPC 468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Punishment—Imprisonment for 7 years and fine—Cognizable—Non-bailable—Triable by Magistrate of the first class—Non-compoundable. Section 166 of IPC : Public servant disobeying law, with intent to cause injury to any person : Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. Most importantly in cited case law by Karira, the Commission themselves have invoked Section 166 of IPC (but have not initiated any action), which further strengthens this line of argument. The relevant extract from the said Order of the CIC is reproduced below; *10*. On perusal of this correspondence the Commission is constrained to conclude that Dr. S.K. Sarkar, Joint Secretary (AT&T) has obstructed, and Ms Anuradha Chagti and the DoPT as a public authority have knowingly violated and disobeyed the orders passed by the Commission knowing that the directions given by this Commission under Section 19(8) read with Section 19(7) are binding under the law. By their conduct, they have therefore committed offences punishable under Sections 166, 187 and 188 of the Indian Penal Code. Hence, if proved, the possibility of action under Section 166 of IPC cannot be ruled out.

RTI is a total problem solving mechanism and poor man's tool to solve his problems and not just record providing tool RTI Act is not just 2(f). It provides transparency under 2(f) and 4(1) (a) (b) (c) and Accountability under 4(1) (d). 4(1) (d) is check on whether public authority function under and as per 4(1) (a) (b) (c). RTI is a total problem solving mechanism and not just record providing tool. RTI will provide transparency and Accountability and this reduces the corruption. This information and reasons need to be provided to me as per Guide on RTI to Information Act 2005 published by the Government of India Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training (available here : <http://rti.gov.in/RTICorner/Guideonrti.pdf>) on page 12 and Para 9, following is stated: Providing Reasons for Decisions: The public authorities take various administrative and quasi-judicial decisions which affect the interests of certain persons. It is mandatory for the concerned public authority to provide reasons for such decisions to the affected persons. It may be done by using appropriate mode of communication. Attention is also invited towards the thread 'Affected Person ' under RTI ACT'. In fact, it can be said that "Affected" refers back to an action. The "Affected Persons" are the ones who are affected by that action. The reasons need to be given to affected person and copy of that can be given to me under 2 f of RTI Act. The Co-Operation Department is THE PUBLIC AUTHORITY under obligation to provide information "PUBLICLY" under section 4(1) (a) (b) (c) (d).

Public authorities cannot take excuse of "missing files" for denying information under the RTI Act as such claims have no legality under the transparency law for withholding records, the Central Information Commission has held. "Unless proved the record was destroyed as per the prescribed rules of destruction/retention policy, it is deemed that record continues to be held by the public authority," Information Commissioner Sridhar Acharyulu said in his order. The case came before the CIC after one Om Prakash sought to know information from Land and Building Department of Delhi Government regarding allotment of alternative plot in lieu of his land acquired by the Government. The Department admitted before the Commission that the relevant file is missing and it could not be traced even though the officers personally inspected room of the Land and Building Department after receiving the RTI application. The official representing the department said there is no possibility of retrieving the missing record. In a terse order, the Commissioner said loss of records that are required to be kept and maintained permanently, if considered as evidence in a case, should invite criminal complaint against officials under section 201 of Indian Penal Code (punishable with imprisonment which is directly proportional to seriousness of offence charged from seven years to 10 years and for life.) "Claim of file missing or not traceable has no legality as it is not recognised as exception by the RTI Act.

By practice "missing file" cannot be read into as exception in addition to exceptions prescribed by RTI Act. "It amounts to breach of Public Records Act, 1993 and punishable with imprisonment up to a term of five years or with fine or both," Mr. Acharyulu said. The Commissioner also issued a show cause notice to the Land and Building Department official asking why maximum penalty of Rs 25,000 be not levied upon him. Mr. Acharyulu recommended to the public authority to consider the issue "seriously" as the Commission has been hearing excuse of missing files on many occasions and also to initiate action under Public Records Act, 1993 against responsible persons. "The public authority also has a duty to designate an officer as records officer and protect the records. A thorough search for the file, inquiry to find out public servant responsible, disciplinary action and action against under Public Records Act, reconstruction of alternative file, relief to the person affected by the loss of file are the basic actions the public authority is legitimately expected to perform," he said. He said, prima facie, public authority cannot deny the right of the appellant by putting forward an excuse of the missing file. "If the file is really not traceable, it reflects the inefficient and pathetic management of files by the Public Authority. If the file could not be traced in spite of best efforts, it is the duty of the respondent authority to reconstruct the file or develop a mechanism to address the issue raised by the appellant," he said.

The DC and all PAs has to publish every year the work they carry out or the information they create under 4(1) (a) (b) (c) every day, but it did not published all the work carried out by the DC under section 4(1) (a) (b) (c) (d) of RTI Act 2005 and it has not provided citizens and opportunity to ask the reasons under section 4(1) (d). This information and reasons need to be provided to everybody as per Guide on RTI to Information Act 2005 published by the Government of India Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training (available here : <http://rti.gov.in/RTICorner/Guideonrti.pdf>) on page 12 and Para 9, following is stated: Providing Reasons for Decisions: The public authorities take various administrative and quasi-judicial decisions which affect the interests of certain persons. It is mandatory for the concerned public authority to provide reasons for such decisions to the affected persons. It may be done by using appropriate mode of communication. Attention is also invited towards the thread 'affected person ' under rti act'. In fact, it can be said that "Affected" refers back to an action. The "Affected Persons" are the ones who are affected by that action. The reasons need to be given to affected person and copy of that can be given to me under 2 f of RTI Act. The KSOU office is THE PUBLIC AUTHORITY under obligation to provide information "PUBLICLY" under section 4(1) (a) (b) (c) (d). The state government and all its departments need to publish everything they do in year as per RTI Act 2005 and this need to be published every year and applicant asking information becomes easier to provide also to the applicant and Government becomes transparent.

Citizens can force every PA to create information every day strictly as per the system and procedure as per listed Acts and rules regulations listed under 4(1) (a) (b) (c) every day and that can be cross checked by applicant by asking reasons under 4(1) (d) by the affected person and copy of the same can be given to any applicant under 2(f) of RTI Act. Promote transparency and accountability in the working of every public authority. Policy on Prevention, Detection, and Remediation of Fraud and Corruption by government is must and a major element of good governance is the control of corruption. For that reason, controlling corruption has been a key indicator. Good governance is a keystone of government. UPA government has given you RTI Act: Use It optimally : All opposition parties should use RTI optimally. Let them create booth wise RTI activists among their members or cadets and give them training and set of questions and gather that booth level information to perform better as opposition parties. Prime Minister should listen to opposition parties as they are voice of 66% voters. All responsible citizens should send RTI Question to each MP and each Minister and Prime Minister and get to know every day what they are doing and what they are performing and keep check on their performances and give them clear indication that India is awakened and want responsible Government which listens citizens. All MLAs and 543 MPs are public servants : After election are over all MLAs are public servants and they are MLA for all the constituency. All MLAs should chalk out their plans for development of their constituencies irrespective of who voted for them or who is not voted for them.

THE RIGHT TO INFORMATION ACT, 2005 is an Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. RTI Act provides transparency under Section 3 and 4(1) (a) (b) (c) and 2(f) of RTI Act 2005 and accountability under 4(1) (d) RTI Act 2005 as the PA will create information; or to interpret information; or to solve the problems raised by the applicants under the system and procedure as per listed Acts and rules regulations listed under 4(1) (a) (b) (c) every day and that can be cross checked by applicant by asking reasons under 4(1) (d) by the affected person and copy of the same can be given to any applicant under 2(f) of RTI Act. RTI is a total problem solving mechanism and not just record providing tool. RTI will provide transparency under 4(1) (a) (b) (c) and 2(f) of RTI Act 2005 every day and Accountability can be ensured under 4(1) (a) (b) (c) (d) and 2(f) of RTI Act 2005 and this will reduce the corruption in every public authority.

RTI Act is an Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. The information under RTI Act is defined in, Section 2(f) of the RTI Act, which defines "information" under this Act, unless the context otherwise requires. "(f) "information" 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;". This Act can be called as the "law of transparency and accountability" which acts as the citizen's weapon to question and get information related to the government's functioning so that they can analyze its performance, and act accordingly. Information is essential for the efficient working of journalists and thus, the Right to Information (RTI) Act is one of the most useful legislations for a journalist.

The RTI Act has two basic divisions the first requiring public officials to *suo moto* publish information pertaining to their departments and the second enabling the public to access information from a public office. The official documentary proof can be obtained by simply filing an application with a fee of Rs. 10. Under Section 2 (j) (ii) of the Act, the applicant can ask for certified copies of the documents or records. This certified copy of the document giving information can be admitted in the Court as Secondary Evidence. Note that under the RTI Act, the right to information includes the right to inspection of work, documents and records; taking notes, extracts or certified copies of documents or records; and taking certified samples of material held by the public authority or held under the control of the public authority. A citizen has a right to obtain information from a public authority in any relevant form including in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print-outs provided such information is already stored in a computer or in any other device from which the information may be e-mailed or transferred to diskettes etc. RTI, one of the few weapons the common man has in his fight against the high and mighty, citizens have unlimited powers under RTI Act 2005.

Every PA must understand that "information" is not created in "Paraloka" or "Swargaloka" or in "CIC" or "SIC" which will be given by PA under Section 2(f) of the RTI Act. It is PA which creates the information every day 4(1) (a) (b) (c) and the "information" 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 need to be created as per 4(1) (a) (b) (c) reasons under 4(1) (a) (b) (c) (d) need to be given by PA to the affected person and copy of the same can be given to any applicant under 2(f) of RTI Act .The PA should be forced to function and create information strictly as per under 4(1) (a) (b) (c) on the applications and request of public and provide it under 2(f) of RTI Act and information should not be incomplete misleading and false and public is free to check accountability under 4(1) (d) RTI Act 2005.The Right to Information (RTI) Act is one of the most important tools that can empower the common man, it had become imperative to fight against corruption for the effective functioning of the three pillars of democracy — legislature, executive and judiciary. The three pillars of democracy had been included in the ambit of the RTI Act and people should make use of the provisions of the Act to bring down corruption. There was a need to create awareness among people on the wide range of powers enshrined in the RTI Act. The educated sections of society must take active part in the fight against injustice and use the provisions of the RTI Act to protect the rights of the people.

THE INFORMATION IS CREATED UNDER RTI ACT 4(1) (a) (b) (c) 2005: And PA is obligated to provide this information created earlier and created every day and updated publicly and freely to all.Under 4 (1) (a) information is created before 2005 is computerized : The public authorities were functioning since before RTI ACT 2005 Under 4 (1) (a) they need to computerize the all available records and catalogues and make them available in digital or electronic format on electronic network. PA is obligated to provide this information publicly and freely.Under 4 (1) (b) information is created every day: The public approaches every day with request letters and applications and grievances to public authorities .

The public authorities functions every day and they create information on the request letters and applications and grievances to public authorities as per organizational function and duties and as per the norms set by it for the discharge of its functions; and as per the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions and as per the powers and duties and procedures followed in decision making process including channels of supervision and accountability as per the rules, regulations, instructions, manuals and records ; under 4 (1) (b). The PA must declare publicly and provide information publicly and free of cost in respect of (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 authorizations 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; The above information created by everyday by PA need to be updated and put on electronic network every year as updated information.Under 4 (1) (c) information is created by PA: The PA need to publish all decisions and policies and relevant facts which affects public.

The Accountability is checked by public under 4 (1) (d): The citizens who are affected by decisions made under RTI ACT 4(1) (a) (b) (c) can seek reasons for their administrative and quasi judicial decisions .PA can provide reasons to affected person and copy of such reasons can be provided to anybody under 2(f) of RTI Act. Public is fully authorized to ask how and why and under what rules and regulations such decision is arrived at under 4(1) (a) (b) (c) of RTI ACT 2005 using 4 (1) (d).

An RTI application can force the PA to create information on his application to PA under 4(1) (a) (b) (c) of RTI ACT 2005 and at the same time he can check the information whether it is provided as per 4(1) (a) (b) (c) of RTI ACT 2005 by invoking 4 (1) (d) of RTI Act 2005.And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Government and their instrumentalities accountable to the governed.

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