

From: Vishal Kudchadkar

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Shri Shantaram Naik,
Chairman, Parliamentary Standing Committee.
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Sub.: RTI amendment Bill

Dear Sir,

In addition to the submissions I have made vide my email dated September 28th, 2013, I give the following in the matter of the proposed amendment to the RTI Act.

1. Political parties as public authorities

Political parties have publicly expressed several arguments as to why they do not come within the ambit RTI Act. One of their objections to being covered by the RTI Act is that they are no public authorities like other bodies that are in the government sector. They have said, if they are brought under the RTI Act then all other agencies and organisations that received substantial financing from Government should also be declared public authorities. I came across CHRI's (Commonwealth Human Rights Initiative's) compilation of the judgements of High Courts declaring non-Government organisations as public authorities. I have attached the same for your reference. The compilation shows that many categories of non-Government organisations have been declared to be public authorities under the RTI Act and political parties need not feel discriminated against by the CIC's order. A summary of these findings is given below while the full compilation is in the attachment.

This compilation is categorised on the basis of the following types of non-Government organisations recognised as public authorities under the RTI Act:

1. **Societies, Trusts and Charitable Institutions;**
2. **Cooperative Societies, Cooperative Banks and Cooperative Sugar Mills;**
3. **Privatised Organisations and Special Purpose Vehicles (Private Public Partnerships);**
4. **Autonomous Institutions;**
5. **Educational Institutions; and**
6. **Religious Institutions**

Summary of Findings:

A quick summary of the findings based on this compilation is given below:

The High Court-wise break up of judgements on this issue is as follows:

1. **Punjab and Haryana** – 5 judgements (2 Division Bench orders)
2. **Kerala** – 5 judgements (2 Division Bench orders)

3. **Allahabad** - 5 judgements (2 Division Bench orders)
4. **Delhi** – 5 judgements (1 Division Bench order)
5. **Bombay, Jharkhand, Karnataka** – 1 judgement each.

Neither the Supreme Court nor other High Courts have pronounced their views on this issue till date although cases of a similar nature may be pending before them.

Notable private bodies declared public authorities:

- **Bangalore International Airport Authority Ltd.** (Karnataka HC);
- **Delhi Multi Model Transit System Ltd.** (Delhi HC)
- **Electronics and Computer Software Export Promotion Council** (Delhi HC – Single Judge and Division Bench)
- **Management bodies of Hindu temples** (Madras HC)
- **Cricket and Lawn Tennis Associations** (Punjab and Haryana HC)
- **KRIBHCO, NAFED, NCCF** (Delhi High Court)
- **Tamil Nadu Road Development Co. Ltd.** (Madras HC)

Rationale for holding non-Government bodies as public authorities:

- Investment by a Government in a company (50% or lesser equity participation);
- Public funds or grants-in-aid provided to private bodies;
- Public funds provided for constructing buildings or infrastructure facilities;
- Lease of public land for use at concessional rates of rent;
- Permitting use of public buildings or infrastructure free of charge over long periods; and
- Exemption from payment of taxes.

Excluding Political Parties from the RTI Act may violate Article 14 of the Constitution:

The CIC’s June 2013 order held six political parties to be non-Government organizations that are substantially financed by the Central Government. The RTI (Amendment) Bill, 2013 seeks to exclude not only those six parties but all other political parties registered with the Election Commission from the RTI Act. This amounts to treating political parties as a special category of non-Government organizations that receive substantial financing from the Government and yet will not be covered by the RTI Act. This in my opinion may violate Article 14 which guarantees equality before the law and equal protection of the law for all persons (natural person such as individuals and artificial juridical persons such as non-Government organisations).

2. Political parties are constituted under the Constitution

- a. **Multi-party system is part of the basic structure of the Indian Constitution:**
Seven years ago a Constitution Bench of the Supreme Court unanimously held that “parliamentary democracy” and “multi-party system” are an inherent part of the

basic structure of the Indian Constitution [*Kuldip Nayar vs Union of India and Ors.* (2006) 7 SCC1 para 195, accessible at: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=30905>).

This position has been reiterated by a 3-member Bench of the Apex Court in its recent judgement on the issue of the right of the voter to reject all candidates contesting an election to Parliament or State Legislatures now becoming popular as the NOTA case (“None of the Above”) [*PUCL Vs Union and Anr. vs Union of India and Anr.*, WP (C) No. 161 of 2004; judgement accessible at: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=40835>].

A multi-party system derives its identity and meaning from its constituent components, namely, all ‘political parties’ that routinely put up candidates in every election to be chosen to represent people in Parliament and the State Legislatures. They form the government if they acquire a majority of seats in the Lok Sabha or the Vidhan Sabha or sit on the Opposition benches if they fail. So after *Kuldip Nayar*, political parties cannot justifiably claim to be private bodies like the hundreds of Rotary or Lions Clubs or other private associations of individuals in India. Political parties, whether in Government or in the Opposition, are undoubtedly bodies that exist and work for in the public interest. As components of the multi-party system they indisputably acquire a public character and are indispensable for the very existence of India’s multi-party based parliamentary form of government. Further because of the fact that the term “original political party” is defined under paragraph 1(c) of the Tenth Schedule of the Constitution, they may also become bodies constituted under the Constitution – a criterion for determining public authorities mentioned under Section 2(h)(i) of the RTI Act. There is very little justifiable reason why political parties ought not to be brought under the country’s regime of transparency just like all other organs of the State, namely, the Executive, the Judiciary and most importantly, the Legislature which is mostly filled up with their own members as observed by the Court.

b. Some categories of information about Parliament’s working are held only by political parties:

An important arm of a political party is its legislature party or parliamentary party comprising of their members elected to the Lok Sabha and the Rajya Sabha. The leaders and deputy leaders of other recognised legislature parties or groups are also known as ‘chief whips’. They ensure that MPs belonging to their parties toe the party line on almost every issue. Under *The Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998*, they are entitled to office space, a telephone line and secretarial services, all free of cost (the text of this law is available on the website of the Ministry for Parliamentary Affairs at: <http://mpa.nic.in/actwhip.htm>). The offices of these leaders and deputy leaders of legislature parties hold the following categories of information in material form which are not accessible to the people anywhere else:

- i. Criteria for selecting members of the legislature party/parliamentary group to represent the party/group on the various committees of Parliament;
- ii. Criteria for selecting members of the legislature party/parliamentary group to speak on any issue or Bill in either House;
- iii. Contents of the 'whip' or instruction issued to the members of the legislature party/ parliamentary group during a discussion on a 'motion of confidence' for or a 'motion of no confidence' against a government;
- iv. Contents of the 'whip' or instruction issued to the members of the legislature party/ parliamentary group on any matter raised on the floor of the House such as a discussion or voting on any Bill or other motion moved by Government or any member;
- v. Contents of the 'whip' or instruction issued to the members of the legislature party/ parliamentary group during the election of the President or the Vice President of India; and
- vi. The minutes of the meetings of the legislature party/ parliamentary group on all matters relating to the business of Parliament;

These categories of information are not held by the Secretariats of the Lok Sabha and the Rajya Sabha which are covered by the RTI Act. Neither these Secretariats nor the Government nor the Election Commission of India can demand the production of these categories of information from these political parties under any law. In other words a whole range of information that relates entirely to the functioning of MPs in Parliament is simply not accessible to the citizen-taxpayer under any law even though he/she pays for the expenses incurred in creating and maintaining such information. This information is available only with the respective political parties. In the absence of a legal obligation to disclose information citizens who elected an MP will simply have no information about the working of the machinery that controls his/her behavior in Parliament. This is one of the reasons why citizens are unable to clearly understand the reasons behind the actions of political parties that stall progressive legislation such as the Women's Reservation Bill or the Lokpal and Lokayuktas Bill. Further, under paragraph 1(b) of the Tenth Schedule of the Constitution "legislature parties" are defined as a collective of all members of a House of Parliament belonging to a political party. So such legislature parties also may also become bodies constituted under the Constitution – a criterion for determining public authorities mentioned under Section 2(h)(i) of the RTI Act.

Yours truly,



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