

November 21, 2014

To

The Central Information Commission
August KrantiBhawan,
New Delhi

Sub: Non-compliance of this Commission's order of dated June 03, 2013 by certain Political Parties – Action regarding

Sir,

1. A Full Bench of this Commission had passed the order dated June 03, 2013 holding that 06 Political Parties mentioned in the said order were Public Authorities under Section 2(h) of the RTI Act, 2005, and directing their Presidents/General Secretaries to appoint CPIOs and provide information to the appellants as per the provisions of the RTI Act. Paras 92 and 93 of the said order are extracted below for ready reference:

“92. In view of the above discussion, we hold that INC, BJP, CPI(M), CPIO, NCP and BSP have been substantially financed by the Central Government under section 2(h)(ii) of the RTI Act. The criticality of the role being played by these Political Parties in our democratic set up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of section 2(h). The constitutional and legal provisions discussed herein above also point towards their character as public authorities. The order of the Single Bench of this Commission in Complaint No. CIC/MISC/2009/0001 and CIC/MISC/2009/0002 is hereby set aside and it is held that AICC/INC, BJP, CPI(M), CPI, NCP and BSP are public authorities under section 2(h) of the RTI Act.

93. The Presidents/General Secretaries of these Political Parties are hereby directed to designate CPIOs and the Appellate Authorities at their headquarters in 06 weeks time. The CPIOs so appointed will respond to the RTI applications extracted in this order in 04 weeks time. Besides, the Presidents/General Secretaries of the above mentioned Political Parties are also directed to comply with the provisions of section 4(1) b) of the RTI Act by way of making voluntary disclosures on the subjects mentioned in the said clause.”

2. We regret to say that the above mentioned Political Parties have not complied with the order of this Commission despite lapse of 17 months.
3. In this connection, Shri R. K. Jain had filed Writ Petition(C) No. 1972 of 2014 in the Hon'ble High Court of Delhi seeking orders of the Hon'ble Court for the implementation of the order of commission under reference. The Hon'ble High Court vide order dated August 22, 2014 had passed the following order:

“In view of the statement made by the learned counsel for the respondent, the present petition is disposed of with the direction that the complaint filed by the petitioner be considered expeditiously and preferably within a period of six months from today.”

4. It is understood that in compliance with the order of the Hon’ble Delhi High Court, the Commission has posted the matter for hearing on November 21, 2014.
5. In the above context, we would like to bring the following to the attention of the Commission:

- 5.1 In case the six political parties felt aggrieved with the March 03, 2013 decision of the CIC, they could, and should, have taken some action to redress their grievance. The appropriate and legal action could have been either to request the CIC for a review or to file a petition in the High Court. Since none of these has been done, the inescapable inference has to be that there is indeed no aggrieved party as a result of the CIC decision of June 03, 2013.

- 5.2 Some news reports have indicated that statements have been made by some political leaders claiming that the decision of the CIC was “wrong” and the CIC does not have the authority to declare political parties as public authorities under the RTI Act.

In this connection, it is pointed out that (a) the CIC is duly constituted statutory authority to administer the implementation of the RTI Act; (b) The RTI Act contains a specific definition of a “public authority”; and (c) The Statutory Authority (CIC, in the present case) has exercised its statutory authority, and having satisfied itself that the six political parties mentioned in its order of June 03, 2013, do indeed satisfy the conditions enumerated in Section 2(h) of the RTI Act, 2005 for a body to be declared a “public authority”, has proceeded to declare them as such in a speaking order, giving detailed reasons for coming to the conclusion that it did.

In view of (a) and (b) above, it is clear that it is not up to anyone to (c) declare the decision of the CIC as wrong, and (d) even if someone feels wronged by the decision, there are legitimate courses of action available as mentioned at 5.1 above.

- 5.3 There have been reports of some attempted legislative action by the government of the day. A bill to amend the RTI Act was attempted to be introduced in the Parliament but was referred to a Standing Committee of Parliament. The Standing Committee was reported to have submitted its report but no news report of any action on the report of the Standing Committee has come to notice.

The incontrovertible facts are

- 5.3.1 The RTI Act, 2005, remains in force without any amendments till today.

- 5.3.2 The definition of a “public authority” as detailed in Section 2(h) of the RTI Act, 2005, remain intact, unmodified.
- 5.3.3 The June 03, 2013, order of the CIC remains valid and in force because it has not been set aside, nay, not even challenged in any forum at all.
- 5.4 In view of 5.1 and 5.2 above, it is clear that not complying with the CIC order of June 03, 2013 is a clear case of open defiance of a statutory authority by the six political parties. Such open defiance of the rule of law by such important institutions as political parties is not conducive to the functioning of a democratic society.
- 5.5 The non-compliance and the open defiance has had, and continues to have, a very serious detrimental effect on the state of democracy in the country at large. The continuance of the non-compliance and defiance has created a sense of cynicism and pessimism in the population at large, creating the impression in the minds of the people at large that the rule of law exists only for the common persons, and all institutions and people who enjoy some authority, formal or informal, are above the law.
- 5.6 This is an extremely serious consequence for a society such as India as it has the potential of making citizens lose faith in the rule of law, and in the entire political establishment, and hence in democracy. IF this is left unchecked and unchallenged, its detrimental impact can be catastrophic.
- 5.7 Since neither have (a) the CPIOs been appointed or designated “in 06 weeks time”, nor have (b) the RTI application extracted in the June 03, 2013 order responded to “04 weeks time”, nor have (c) any voluntary disclosures made under Section 4(1) b) of the RTI Act, as specifically directed in Para 93 of the CIC order of June 03, 2013; non-response to the RTI applications [(b) above] tantamounts to violating the complainants’ fundamental right to freedom of expression and speech under Article 19(1)(a) of the Constitution of India.
6. In view of the situation described above,
 - 6.1 We urge the Commission to exercise its authority under the provisions of RTI Act for the implementation of its order. We, therefore, request that the Commission may impose a penalty of Rs.25,000/- each on the Presidents/General Secretaries of the Political Parties under reference for non-compliance of its order under Section 20(1)ⁱ of the RTI Act, 2005.
 - 6.2 We would also like to emphasise that non-compliance of this Commission’s order by the Presidents/General Secretaries of the Political Parties has resulted in non-supply of any information whatsoever to the complainants herein. Needless to say, the complainants herein have suffered detriment on account of this in terms of mental agony etc. In the circumstances, we urge the Commission to exercise its

authority under section 19(8)(b) ⁱⁱ of the RTI Act to compensate the complainants herein for the detriment caused to them due to non-supply of information requested for in the RTI applications. Given the catastrophic potential of detriment as detailed in 5.5 and 5.6 above, we suggest that the compensation amount should be equal to 5% (Five per cent) of the average of the annual income as declared by each of these six political parties in their income tax returns which were made public under a decision by the CIC on April 29, 2008 (CIC/AT/A/2007/01029; CIC/AT/A/2007/01263, CIC/AT/A/2007/01264; CIC/AT/A/2007/01265-1270).

Based on the declarations made by these six political parties in their income tax returns for the latest available five years (from 2008-09 to 2012-13), the average annual income of the six political parties and an amount equal to 5% (Five per cent) of the average annual income, are shown in the table below.

| Party | Average Annual Income from 2008-09 to 2012-13 (Rupees) | Compensation amount (Five per cent of the Average Annual Income) (Rupees) |
|---|--|--|
| Indian National Congress (INC) | 410.70 crores | 20.535 crores |
| BharatiyaJanataPrarty (BJP) | 255.93 crores | 12.797 crores |
| BahujanSamaj Party (BSP) | 90.269 crores | 4.513 crores |
| Nationalist Congress Party (NCP) | 35.111 crores | 1.756 crores |
| Communist Party of India (CPI) | 1.442 crores | 0.072crores |
| Communist Party of India (Marxist) (CPM) | 88.525 crores | 4.426 crores |
| Total | Rs 881.98 crores | Rs 44.10 crores |

- 6.2.1 Five per cent of the average annual income over the last five years is being represented as an exemplary compensation required to be paid. The Commission would obviously uses its learned judgment on the amount of compensation to be paid.
- 6.2.2 To reiterate that there is no element of profiteering or money making in this effort to “to promote transparency and accountability in the working of every public authority,” as eloquently expressed in the Preamble to the RTI Act, 2005, that amount of compensation is not required to be paid to the

complainants but should be paid in to the **Prime Minister's Relief Fund** so that it can be utilised for national well-being.

- 6.2.3 If the due process requires notices to be issued for payment of compensation, it is suggested that notices may be issued to the Presidents/General Secretaries of the Political Parties to show cause why the compensation suggested above should not be awarded to the appellants herein, and paid into the **Prime Minister's Relief Fund**. The notice may be made returnable in three weeks' time so that the matter reaches finality without any further delay.

Submitted for consideration.

Jagdeep S. Chhokar

On behalf of the Association for Democratic Reforms

(Anil Bairwal)

Complainant

ⁱ Section 20(1) of the RTI Act, 2005, reads as follows:

“20. Penalties.—(/) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (/) of section 7 or malafidely 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, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that *he* acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.”

ⁱⁱSection 19(8)(b) of the RTI Act, 2005, reads as follows:

“19. Appeal:

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(b) require the public authority to compensate the complainant for any loss or other detriment suffered.”