

MAHARASHTRA RIGHT TO INFORMATION ACT, 2002

31 of 2003

[11th August, 2003]

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An Act to make provision for effectively securing and enforcing the right to information in the State of Maharashtra and for matters connected therewith or incidental thereto. WHEREAS the right to information has been recognised by the Supreme Court as a part of the fundamental right guaranteed to the citizens under Article 19(1) of the Constitution of India; AND WHEREAS the right to information is the bed-rock of democracy and can pave the way for

transparency, openness and accountability in governance of the affairs of the State and ensure effective participation of the people in a democratic society; AND WHEREAS it is expedient to make provision for effectively securing and enforcing the right to information in the State of Maharashtra and for matters connected therewith or incidental thereto; AND WHEREAS both Houses of the State Legislature were not in session; AND WHEREAS Shri Chunilal Karsandas Thakker, discharging the functions of the Governor of Maharashtra, was satisfied that circumstances existed which rendered it necessary for him to take immediate action to make a law for the purposes hereinafter appearing; and, therefore, promulgated the Maharashtra Right to Information Ordinance, 2002 (Mah. Ord. X of 2002), on the 23rd September, 2002; AND WHEREAS it is expedient to replace the said Ordinance by an Act of the State Legislature; it is hereby enacted in the Fifty-third Year of the Republic of India, as follows :-

1. Short title, extent and commencement :-

(1) This Act may be called the Maharashtra Right to Information Act, 2002 .

(2) It shall extend to the whole of the State of Maharashtra.

(3) It shall be deemed to have come into force on the 23rd September 2002.

2. Definitions :-

In this Act, unless the context otherwise requires,-

(1) "appellate authority" means the concerned Competent Authority mentioned in clause (3) and shall also include such officer or officers authorised by the concerned Competent Authority to act as the Appellate Authority, by general or special order, for the purposes of this Act;

(2) "Committee" means the Committee constituted by the Government for the purposes of Section 7A, under the Chairmanship of the Additional Chief Secretary (Home) to the Government and other two members as may be specified by the Government by an order issued in this behalf;

(3) "Competent Authority" means,-

(i) the Head of every Administrative Department of the State Government;

(ii) the Administrative Heads of the public and other authorities in the State;

(iii) the Registrar of Co-operative Societies for the Co-operative Societies registered under the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961);

(iv) the Registrar of Societies for the Societies registered under the Societies Registration Act, 1860 (21 of 1860);

(v) the Charity Commissioner for Charity Commissioner's Office and the Public Trusts registered under the Bombay Public Trusts Act, 1950 (Bom. XXIX of 1950);

(vi) the Commissioner of Labour for the trade unions registered with him;

(vii) the Secretary of the Maharashtra Public Service Commission for the administrative wing of the Maharashtra Public Service Commission;

(viii) the Registrar of the Lokayukta and Upa-Lokayuktas for the administrative wing of the Office of Lokayukta and Upa-Lokayuktas;

(4) "Government" means the Government of Maharashtra;

(5) "Information" means information relating to any matter in respect of the affairs of the Government and of any public authority and includes a copy of any record in the form of a document, diskettes, floppy or any other electronic mode;

(6) "public authority" means any authority or body established or constituted by any Central or State law and includes any other body owned and controlled by the State or which receives any aid directly or indirectly by the Government and shall include the bodies whose composition and administration are predominantly controlled by the Government or the functions of such body are of public nature or interest or on which office bearers are appointed by the Government.

Explanation - For the purposes of this clause the expression "aid" shall include Government aid in the form of Government land at concessional rates or any other monetary concessions like exemption from tax, etc., by Government as specified by Government, from time to time;

(7) "Public Information Officer" means an Officer designated by any

Competent Authority under sub-section (1) of section 5 and shall include such Officer or Employee whose assistance has been taken by the Public Information Officer for the performance of his duties under this Act;

(8) "prescribed" means prescribed by rules made under this Act;

(9) "record" means and includes,-

(i) any document, manuscript or file;

(ii) any microfilm, microfiche and fascimile copy of a document;

(iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

(iv) any other material produced by a computer or by any other device;

(10) "State" means the State of Maharashtra.

3. Right to information :-

Subject to the provisions of this Act, every citizen shall have the right to get information.

4. Obligation on public authorities :-

Every Competent Authority shall,-

(a) maintain all its records, in such manner and form, as is consistent with its operational requirements duly catalogued and indexed;

(b) publish in the manner prescribed, from time to time,-

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

(ii) the powers and duties of its officers and employees and the procedure to be followed by them in decision making process;

(iii) the norms set by the public authority for the discharge of its functions;

(iv) the rules, regulations, instructions, manuals, government resolutions, orders and guidelines and the list of record in the office, which can be made available to the citizens;

(v) the details of facilities available to citizens for obtaining information;

(vi) the name, designation and other particulars of the Public

Information Officer; and

(viii) such additional information as may be prescribed by the Competent Authority concerned from time to time;

(c) publish all relevant facts concerning important decisions whether administrative or quasi-judicial and policies that affect the public while announcing such decisions and policies;

(d) before initiating any project, publish or communicate to the public generally and to the persons affected by the project in particular, the facts available to it or to which it has reasonable access and which in its opinion should be known to the affected persons.

5. Appointment of Public Information Officers :-

(1) Every Competent Authority shall for the purposes of this Act, designate one or more officers as Public Information Officers in all administrative units and offices under such authority.

(2) Every Public Information Officer shall deal with a request for information and shall render reasonable assistance to any person seeking such information.

(3) The Public Information Officer may seek the assistance of any other Officer or Employee as he considers necessary for the proper discharge of his duties.

(4) Any Officer or Employee whose assistance has been sought under sub-section (3), shall render all assistance to the Public Information Officer seeking his assistance.

6. Procedure of getting information :-

(1) A person desirous of obtaining information shall make an application to the Public Information Officer in the prescribed manner along with such fees, in such form and with such particulars, as may be prescribed.

(2) On receipt of an application requesting for information under sub-section (1), the Public Information Officer shall, as expeditiously as possible and in any case, not later than fifteen working days from the date of receipt of the application, either provide the information as requested or reject the request for any of the reasons specified under the provisions of Act:

Provided that, in a suitable case for the reasons to be recorded and communicated to the applicant, the time limit may be extended by another fifteen working days :

Provided further that, where it is decided to provide the information on payment of any additional fees than the fees prescribed representing the cost of providing the necessary information, the Public Information Officer shall send an intimation to the applicant giving the details of the additional fees determined by him, requesting him to deposit the additional fees, and the period intervening the dispatch of the said information and payment of such additional fees, if any, shall be excluded for the purpose of calculating the period of fifteen working days or the additional period of fifteen days, as the case may be, referred to in this sub-section :

Provided also that, the fees prescribed or the additional fees payable, as the case may be, shall not exceed the actual cost of supplying the information.

(3) Where a request is rejected under sub-section (2), the Public Information Officer shall communicate in writing to the persons making the request, -

(i) the reasons for such rejection ;

(ii) the period within which an appeal, against such rejection may be preferred; and

(iii) the officer or authority before whom the appeal shall be preferred by the applicant.

(4) The information shall be provided in the language and in the form in which it is maintained by the public authority.

(5) Whenever and wherever the information applied for, involves the life and liberty of a person, such information shall, subject to the provisions of section 7 , be supplied to the applicant within twenty-four hours of the receipt of the application.

7. Exemption from disclosure of information- Notwithstanding anything contained in this Act, no person shall be given the :-

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security or interests of the

State, relation with foreign State or lead to incitement of an offence
:

Provided that, whenever any information sought is to be withheld on the aforementioned grounds, the request for such information shall forthwith be put up by the Public Information Officer through the Competent Authority to the Committee for consideration and decision :

Provided further that, the Public Information Officer shall, after obtaining the approval from such Committee for rejection of the request, while communicating such rejection to the applicant mention that such rejection is with the approval of the Committee;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the Competent Authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the Competent Authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information pertaining to service record of a person ;

(g) information received in confidence from foreign government or International Organization;

(h) information the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(i) information, the disclosure of which is prohibited under the provisions of the Official Secrets Act, 1923 (19 of 1929);

(j) information which would impede the process of investigation or apprehension or prosecution of offenders; and

(i) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Competent Authority is satisfied that the larger public interest justifies the disclosure of such information.

8. Grounds for refusal to supply of information in certain cases :-

Without prejudice to the provisions of section 7 , the Public Information Officer may also reject the request for supply of information where,-

(a) the information is already published in the Official Gazette or otherwise, and is available to public or is of such a nature. that the volume of information required to be retrieved or processed, would involve disproportionate diversion of the resources of a public authority : Provided that, where such request is rejected on the aforesaid ground, it shall be the duty of the Public Information Officer to render help, as far as possible, to the person seeking information to reframe the request in such a manner as may facilitate the supply of information;

(b) it relates to information that is required by law, rules, regulations or order to be published at a particular time.

9. Other information :-

(1) Without prejudice to the provisions of section 7 , -

(a) the information pertaining to decision making in a case, shall be made available to any applicant after the decision has been taken or deemed to have been taken in such case and the matter is complete or over ;

(b) any information relating to any occurrence, event or matter which has taken place, occurred or happened fifteen years before the date on which any request is made under sub-section (1) of section 6 , shall be provided to any person making such request.

(2) any information which cannot be withheld from the Parliament and the State Legislature shall necessarily be made available to the applicant under the provisions of this Act.

10. Severability :-

No request for an information shall be totally rejected on the ground that it is in relation to an information or record which is

exempted from the disclosure, if it is possible to give that information from the part of the record which does not contain any information that is exempted from disclosure under this Act, and which can reasonably be severed from any part of the record that contains the exempted information.

11. Appeals :-

(1)

(i) Any person aggrieved by an order of the Public Information Officer may, within thirty days from the date of receipt of such order; or

(ii) any person who has not received any communication within the period of fifteen working days as specified in sub-section (2) of section 6 or the extended period as specified in the second proviso to the said sub-section (2), from the date of making such application, may appeal to the appellate authority, within a period of thirty days of the lapse of such period in such form and with such fees, as may be prescribed :

Provided that, when the order of the Public Information Officer is passed under clause (a) of section 7 with the approval of the Committee referred to in the proviso to the said clause (a), the appeal against such order shall lie only to the Lokayukta or Upa-Lokayuktas.

(2) The appellate authority may, after giving the person or persons affected a reasonable opportunity of being heard, pass such order as it deems fit.

(3) Any person aggrieved by the order of the appellate authority under sub-section (2), may within thirty days from the receipt of such order, prefer second appeal to the Lokayukta or Upa-Lokayuktas, as the case may be, of the State.

(4) The appeals referred to in sub-sections (1) and (3) shall, as far as possible be disposed of within thirty days of the receipt of such appeals or within such extended period not exceeding a further period of thirty days, after recording the reasons for such extension of period.

(5) The decision of the Lokayukta or Upa-Lokayuktas, as the case may be, in appeals shall be final.

12. Penalty :-

(1) Where any Public Information Officer has without any reasonable cause, failed to supply the information sought, within the period specified under sub-section (2) of section 6, the appellate authority may, in appeal impose a penalty of rupees two hundred fifty, for each day's delay in furnishing the information, after giving such Public Information Officer a reasonable opportunity of being heard.

(2) Where it is found in appeal that any Public Information Officer has knowingly given,-

(a) incorrect or misleading information, or

(b) wrong or incomplete information, the appellate authority may impose a penalty not exceeding rupees two thousand, on such Public Information Officer as it think appropriate after giving such officer a reasonable opportunity of being heard.

(3) An appeal shall lie against the order of the appellate authority, with the Lokayukta or Upa-Lokayuktas, and the provisions of sub-sections (3), (4), and (5) or section 11 shall mutatis mutandis apply to such appeal.

(4) The penalty under sub-sections (1) and (2) as imposed by the appellate authority, shall be recoverable from the salary of the Public Information Officer concerned, or if no salary is drawn, as an arrears of land revenue.

(5) The Public Information Officer on whom the penalty under sub-sections (1) and (2) is imposed shall also be liable to appropriate disciplinary action under the service rules applicable to him.

13. Constitution of Councils :-

(1) The Government shall set up a Council for monitoring the working of this Act, at the State level under the Chairmanship of the Chief Secretary, or any Additional Chief Secretary and for every Revenue Division, under the Chairmanship of the concerned Divisional Commissioner. Such Council shall generally comprise such members who are the persons of repute and standing in society including representatives of media and non-government organisations, and academicians, as may be prescribed.

(2) The Councils may take review of the working of the Act, not

less than once in six months and make suitable recommendations to the Government.

14. Constitution of commission of Record :-

(1) The Government shall set up a Commission of Records comprising the representatives of the Government, persons of repute and standing in society including academicians, as may be prescribed. It shall be the duty of the Commission of Records to advise the Government on release of the old record for being made available for public information.

(2) The decision of the Commission of Records shall be binding on the Government and it shall be implemented within three months unless the Government, for reasons to be recorded decides to overrule the decision of the Commission.

(3) In each such case of overruling of the decision of the Commission of Records, the Government shall lay a statement on the table of the State Legislature at the earliest.

15. Protection of action taken in good faith :-

No suit, prosecution or other legal proceeding shall lie against any Government servant or officer for anything done or purported to have been done in good faith in pursuance of the provisions of this Act, or the rules made thereunder.

16. Bar of jurisdiction of courts :-

No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

17. Act to have overriding effect :-

The provisions of this Act, shall have effect notwithstanding anything inconsistent therewith contained in any other law made by the State Legislature or any rules, regulations or order made thereunder.

18. Power to make rules :-

(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) Except when the rules are made for the first time, all rules made under this Act shall be subject to the condition of previous

publication.

(3) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in rule or both Houses agree that the rule should not be made, and notify their decision to the effect in the Official Gazette, the rule shall from the date of publication of such decision in the Official Gazette, have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

19. Power to remove difficulties :-

(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arises, by an order published in the Official Gazette, do anything, not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for removing the difficulty :

Provided that, no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid as soon as may be, after it is made, before each House of the State Legislature.

20. Repeal of Mah. XXXVIII of 2000 :-

The Maharashtra Right to Information Act, 2000 (Mah. XXXVIII of 2000) is hereby repealed.

21. Repeal of Mah. Ord. X of 2002 and saving :-

(1) The Maharashtra Right to Information Ordinance, 2002 (Mah. Ord. X of 2002) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken (including any notification or order issued) under the said Ordinance, shall be deemed to have been done, taken or issued, as the case may be, under this Act.