

**THIRD PARTY AUDIT ON
PRO-ACTIVE DISCLOSURE U/S 4 OF RTI ACT 2005 IN RESPECT OF THE PUBLIC
AUTHORITY OF BACKWARD CLASSES WELFARE DEPARTMENT**

1. Before embarking on point to point observation of the audit, the following few initial pre-audit observations are relevant:
2. Hon'ble Supreme Court in its Order dated 17-08-2023 in WP(Civil)No990 of2021 in the matter of Kishan Chand Jain-vs-Union of India has stated that "25. Having examined the Right to Information established by the statute under Section 3 in the context of the obligations of public authorities under Section 4, we are of the opinion that the purpose and object of the statute will be accomplished *only if the principle of accountability governs the relationship between 'right holders' and 'duty bearers'.*"(emphasis added by this auditor).

Apex Court has further stated that "26. For the reasons stated above, we direct that the Central Information Commission and the State Information Commissions shall continuously monitor the implantation of the mandate of Section 4 of the Act *as also prescribed by the Department of Personnel and Training in its Guidelines and Memorandums issued from time to time. The directions will also include instructions under O.M dated 07.11,2019 issued by the Department*", (emphasis added by this auditor).

3. It follows from what has been stated above, it is amply clear that responsibilities of the public authorities do not end, as far as they relate to pro-actively disclose information as mandated u/s 4(1)(b) of the Act, but such disclosure *shall* meticulously be made abiding by the Guidelines issued by DoPT in their O.M dated 07.11.2019. Therefore, the said O.M, armed by the Order of the Apex Court, assumes extra-ordinary importance which needs to be read, understood and followed thoroughly.
4. Unfortunately, such understanding of the Order of the Apex Court is seldom reflected in the disclosure made u/s 4(1)(b). The present reports presented by the above mentioned public authorities are no exception.
5. What is the function of the Third Party Auditor? The Apex Court in its Order at paragraph 9 found it relevant to refer to Clause 4 of O.M. dated 15.04.2013 issued by DoPT which deals with the compliance of the mandate under Section 4 of the

Right to Information Act, 2005, In the sub- paragraph 4.4 of the referred paragraph, it is stated that "4.4 Each Ministry/ Public Authority should get its proactive disclosure package audited by third party every year. The audit should cover compliance with the proactive disclosure guidelines as well as adequacy of the items included in the package. The audit should examine whether there are any other types of information which could be proactively disclosed. Such audit should be done annually and should be communicated to the Central Information Commission annually through publication on their own websites. All Public Authorities should proactively disclose the names of the third party auditors on their websites,"

6. Any remark of the third party auditor should be viewed keeping in mind what has been stated above.
7. Another important problem needs to be mentioned here. While disclosing information u/s 4(1)(b)(xvii), the public authority of West Bengal Information (WBIC), under the sub-head '**Observation and Recommendation of the Commission**' has made some brilliant and insightful observations. One of those is : "The RTI Act has been described as an effective instrument to promote transparency and accountability in administration. But there is still lack of awareness among the applicants. Majority of the Public Information Officers suffer from the lack of competence to handle the RTI application in right manner." This is amply verified in at least one case as noted below :
8. WBIC has circulated a format titled 'A Consolidated Report for Transparency Audit, 'along with the copy of the Order of the Hon'ble Supreme Court and other related papers to all principal public authorities. This format of WBIC is for their internal assessment and random checking about how the public authorities are performing in the implementation of the mandate of the Act under Section 4. All public authorities whose reports this auditor has come across, invariably consider that the proactive disclosure has to be made as per this format. This Auditor visited many offices of the public authorities or made telephonic communication with them to impress upon them that the proactive disclosure u/s 4(1)(b) and the format of WBIC are two entirely different matter, but to no avail.

Proactive disclosure u/s 4(1)(b) has to be made in accordance to the sub clauses i, ii, iii, iv etc serially and sequentially. The Act has not devised any other format for this purpose separately.

Third Party Audit of Backward Classes Welfare Department(henceforth BCW Deptt) is undertaken in pursuance of the direction of the Supreme Court Of India vide Writ Petition (Civil) No990 of 2021 along with the Guide Rule of DoPT, Govt of India contained in their O.M No 1/6/2011-IR dated 7 November, 2019.

After perusal of the suo motu disclosure u/s 4(1) (b) of the RTI Act 2005 made by above stated public authority, i.e. BCW Deptt in their website, the observations of the third party auditor are as under:-

In sub paragraph (l) of paragraph 2.2 of the O.M. of DoPT dated 07.11.2019, it has been suggested that *every webpage displaying information or data proactively disclosed under RTI Act should, on the top right corner, display the mandatory field 'Date last updated(DD/MM/YYYY)'*. The public authority of BCW Department has mentioned the date of updation in end of their presentation, while it should be mentioned in every webpage on the top right corner of every page of their presentation.

Section	Comments
4 (1) (b) (i)	<p>the particulars of its organization, functions and duties,-</p> <ol style="list-style-type: none">1. Unlike many other public authorities, BCW Deptt has disclosed the full address of the public authority <i>including website and telephone number</i> which most of the public authorities whose audit has already been performed did not.2. Under the sub head 'Functions and mandate of the Department', there arises a confusion as to whether the general nomenclature 'backward classes, scheduled tribes are also included or not. For example, in paragraph marked 'c)', it is written that one of the functions of the public authority is 'implementation of schemes for economic upliftment of SCs/STs and OBCs. But in paragraph 'a)', there is no mention of

	<p>scheduled tribes along with SCs and OBCs for promotion and implementation of educational schemes, capacity building and skill upgradation. In paragraph 'b)' also there is no mention of STs as regard to issuance of certificate. Is there any other authority who issues ST Certificate? This needs to be categorically explained in respect of all the functions of the public authority.</p>
4 (1) (b) (ii)	<p>the powers and duties of its officers and employees;</p> <p>1. Under this sub clause, powers and duties of officers and employees, nothing has been mentioned what powers and functions are being exercised or performed respectively of 20 types of officers and employees out of a total 35 of such categories. Does it mean a whopping 57% of the functionaries have no power to exercise or functions to perform? This is surely an example of lack of sincerity on the part of the public authority in preparing this proactive disclosure.</p>
4 (1) (b)(iii)	<p>the procedure followed in the decision making process, including channels of supervision and accountability;</p> <p>The auditor has no particular observation to offer in this regard. The disclosure appears to be in order.</p>
4 (1) (b)(iv)	<p>the norms set by it for the discharges of its functions;</p> <p>1. The word 'norm' means in the present context means a standard pattern or practice which is being developed and followed in the discharge of the specific functions of a public authority. For example, in case of issuance of a Sc Certificate, an inspector inquires into the family tree and such other local evidence he gathers from field visits ascertains whether or not a person, who has applied for obtaining such a certificate, actually belongs to any of the</p>

	<p>scheduled caste notified by the prescribed authority. On the basis of such inquiry report the competent authority issues a certificate declaring the person indeed belongs to a specific caste group. This is the norm set by the public authority.</p> <ol style="list-style-type: none"> 2. Instead, here the public authority has described quite a number of schemes and their specific purpose. These may be additional information – no doubt important information as far as these explain the 'norm', but not the 'norm' proper. 3. Prescribed Guidelines for the schemes mentioned should be disclosed below each scheme which may be considered as the norm for implementation of the scheme.
4 (1) (b)(v)	<p>the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;</p> <ol style="list-style-type: none"> 1. The public authority has disclosed a list of 26 Acts and Rules which are held by it or used by its employees in discharging its functions. 2. The public authority should have also disclosed whether or not these Acts and Rules are uploaded in its website and if some of these are yet to be uploaded, where they are available.
4 (1) (b)(vi)	<p>a statement of the categories of documents that are held by it or under its control;</p> <ol style="list-style-type: none"> 1. Ideally there should be two separate tables, one containing a list of documents which are electronically available and the other containing documents physically available in the office of the public authority. 2. Efforts must be made to computerize as much documents as possible.

	<p>3. It is needless to reiterate that all documents of a public authority are within the ambit of 'information' as defined u/s 2(f) of RTI Act, 2005.</p>
<p>4 (1) (b)(vii)</p>	<p>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 of implementation thereof;</p> <p>1. Though the public authority has disclosed a commendable description of two State level monitoring committees to prevent manual scavenging which contain some members of NGOs who are working in this field, the moot point of this sub clause is whether there is any arrangement that exists for consultation with members of the public at large <i>in relation to the formulation of its policy and implementation thereof</i>. If we consider members of NGOs as public representatives, they obviously has no role in the formulation of the policy. This should have been mentioned in clear terms.</p>
<p>4 (1) (b)(viii)</p>	<p>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,</p> <p>1. It is a commendable exercise on the part of the public authority to disclose a brief description of 18 Development & Cultural Boards with a mention of the location of Head Quarter for each Board (except for the Kurmi Development & Cultural Board).</p>

	<p>2. But a few shortcomings cannot escape a closer scrutiny:</p> <p>A. Address, phone number and website of each Board should have been given keeping in mind the user's perspective.</p> <p>B. Composition of the Boards, lists of the members along with their contact details.</p> <p>C. Remunerations received by the members including the Chair persons/ Directors etc.</p> <p>D. Traditional games and festivals of the communities for whose development and preservation of whose culture these Boards are constituted.</p> <p>E. Similarly the traditional folk songs and folk dances should also have to be mentioned as a part of their culture.</p>
4 (1) (b)(ix)	<p>a directory of its officers and employees;</p> <p>1. Preparation of the directory of the officers and employees is a simple exercise.</p> <p>2. It would be a table consisting of mainly 5 columns—serial number, name of the officer/employees, designation, official phone number and email id. Additionally, there may be a remark column. Since it is a directory, nobody should be left out.</p> <p>3. The public authority of BCW Department, which have so brilliantly disclosed information under sub clauses (i) and (viii) has shown a poor understanding in disclosing information under this sub clause:</p> <p>A. First, they have not included the names of the employees below the rank of Liaison Officer. Therefore the directory is incomplete. No name appears against the designation of PS to Hon'ble MoS. Why? Does no officer work against that post? In that case there should be a remark 'vacant'</p>

	<p>as has been done in case of an Assistant Secretary.</p> <p>B. There is no mention of any phone number or email address.</p> <p>C. It may so happen that no separate phone number is available for each and every officer and there is no separate email address. In such cases the extension number and the mother phone number is to be mentioned.</p> <p>D. If no separate official email address is available, the official email address should be mentioned against each such officer/employee.</p>
4 (1) (b) (x)	<p>the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;</p> <p>1. Here, under this sub clause again, the public authority of BCW Department has failed miserably to understand what actually the mandate of the Act intends the public authorities to disclose information under section 4(1)(b)(x). The Auditor fails to understand even in spite of explaining in details what specific information needs to be disclosed under this sub clause, in a face to face discussion the Auditor had with the Special Secretary of BCW Department, the public authority follows the same pattern of disclosure adopted by some of the public authorities including WBIC which is patently wrong.</p>

	<p>2. There is serious objection to the information disclosed under sub clause (x). The Act mandates that under section 4(1)(b)(x), "the monthly remuneration received by each of its officers and employees" is to be disclosed. Instead the public authority has mentioned the scale of pay of each officers and employees. Can a common man decipher the remuneration of any of the officer or employee? The answer is plain and simple NO. Does a scale of pay or the pay matrix by whatever you may call it, carries the same meaning of the term <i>the monthly remuneration</i>? Again the answer is an emphatic NO.</p> <p>3. What is the meaning of the term 'monthly remuneration'? According to Oxford Dictionary, remuneration means 'money paid for work or service'. A sum of money paid for service given. 2. A salary. What is the difference between remuneration and salary? The answer is 'the main difference between salary and remuneration is that the former is a subset of the latter. Recompense includes salary wages, bonuses, commission, overtime pay and other social and economic compensation, while salary is a fixed and regular payment that remains excluded from any additional perks.' From what has been said above, it is clear that monthly remuneration is the monthly salary received by any officer and employees which is a quantum of money. Pay scales does not reflect any of these requirements.</p> <p>4. A question may be asked that under section 8(1)(j), it is enjoined that "personal information having no public activity or interest" need not be disclosed. The moot question is salary or pay or remuneration is personal information having no public activity or interest involved? From which fund the remuneration/salary is generally being paid? In general terms, salary is being paid from the state</p>
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	<p><i>exchequer, i.e., from tax payers' money. Therefore there is very much public interest involved with the remuneration received by the officers and employees.</i></p> <p><i>5. Most importantly, in framing the RTI Act, the law makers whose collective wisdom guided them to incorporate section 4(1)(b)(x) in the package of proactive disclosure, also framed section 8(1)(j) where certain conditions were incorporated to disclose personal information, yet they preferred to retain sub clause(x) under section 4(1)(b) for proactive disclosure. The auditor has doubts whether at all 'monthly salaries,' of the officers and employees of a public authority should be regarded as personal information having no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of an individual In any case a quantum of money expressed in numerical figure in Indian Rupee has to be given instead of merely referring to a scale of pay.</i></p> <p><i>6. Moreover, one must not forget the provision of section 8(2) of the Act which states that "Notwithstanding anything in the Official Secret Act,1923 nor any of the exemptions permissible in accordance with sub-section (1) [of section 8], a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interest."The moot point is whose interest the public authority is protecting especially when the employees of a public authority are paid from the State Exchequer where public interest is paramount?</i></p> <p><i>7. All the public authorities whose proactive disclosures are being reviewed in this audit report may kindly take note of what has been explained above.</i></p>
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<p>4 (1) (b)(xi)</p>	<p>The budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;</p> <ol style="list-style-type: none"> 1. With a few lines on the functioning of the public authority (which is unnecessary for the specific type of disclosure of information required under this sub clause) has disclosed a very cryptic figures relating to total budgetary provisions, funds released and expenditure incurred as on the date of presentation of this report. This is not what the Act mandates. This is in essence a futile exercise. 2. The general guideline in respect of disclosure of information under this specific sub clause has been given great importance by DoPT in their O.M. dated 07.11. 2019 which has been upheld by the Apex Court and instructed the public authorities to follow the same. In paragraph 3.5 of the O.M. under reference it has been stated that "3.5.1 The public authorities while disclosing their budgets shall undertake the following: (a) Keeping in view of the technical nature of the government budget, it is essential that Ministries/Departments prepare simplified versions of their budget which can be understood by general public and place them in public domain. Budgets and their periodic monitoring reports may also be presented in a more user-friendly manner through graphs and tables etc. (b) Outcome budget being prepared by Ministries/Departments of Government of India (in our case, the Government of West Bengal –auditor) should be prominently displayed and be used as a basis to identify physical targets planned during the budgetary period and the actual achievement vis-à-vis those targets. A monthly programme implementation calendar method of reporting being
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	<p><i>followed in Karnataka is a useful model.</i></p> <p><i>(c) Funds released to various autonomous organizations/statutory organizations/attached offices/ public sector enterprises/Societies// NGOs/Corporations etc should be put on the website on a quarterly basis and the budgets of such authorities may be made accessible through links from the website of the Ministries/Departments. If a subsidiary does not have a website then the budgets and expenditure reports of such subsidiary authority may be uploaded on the website of the principal public authority.</i></p> <p><i>(d) Wherever required by law or executive instruction, sector specific allocations and achievements of every department or public authority (where feasible) must be highlighted. For example, budget allocation and target focusing on gender, children, Scheduled Castes and Scheduled Tribes and religious minorities must be specifically highlighted. The sector-wise break-up of these targets and actual outcomes must be given in simplified form to enable the vulnerable segments of society to better understand the budgets of public authorities."</i></p>
4 (1) (b)(xii)	<p>the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;</p> <ol style="list-style-type: none"> 1. It appears from the activities of BCW Department that they have quite a few subsidy programme as well as periodic grants to deserving candidates. 2. The public authority of BCW Department has avoided disclosure of details of such information and has shifted the onus to the shoulder of West Bengal Scheduled Castes, Scheduled Tribes and Other Backward Classes Development & Finance Corporation.

	3. In all probability, BCW Department is the controlling or nodal Department of the said Corporation. If that be so, BCW Department cannot shake off the entire responsibility of disclosure of information under this sub clause. Even if the said Corporation is a separate public authority, the mother Department cannot escape. In that event the minimum the department could do is to provide the links from where people could fetch the information.
4 (1) (b)(xiii)	particulars of recipients of concessions, permits or authorisations granted by it; Same goes true in respect of disclosure as has been discussed under 4(1) (b)(xii) as above.
4 (1) (b)(xiv)	details in respect of the information, available to or held by it, reduced in an electronic form; A list of documents / information which has been reduced in an electronic form should have been given along with the website address.
4 (1) (b)(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; 1. The public authority should have mentioned the working hours when public can meet the officials of the Department. 2. The public authority should have categorically mentioned whether or not there exists library or reading room facility.
4 (1) (b)(xvi)	the names, designations and other particulars of the Public Information Officers; The email address of both SPIO and Appellate Authority should also be disclosed.
4 (1) (b)(xvii)	such other information as may be prescribed; and thereafter update these publications every year; The Auditor has no specific observation about the information disclosed.

4 (1) (c)	publish all relevant facts while formulating important policies or announcing the decisions which affect public; No observation of the Auditor.
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If any error or mistake has occurred due to limitation on the part of the Auditor to comprehend what the disclosure intend to convey, the same may be condoned. The Matter may kindly be brought to the knowledge of the Auditor for improvement of his skill.

NSATI, Salt Lake

Date :- 04/03/2024


NANDAN RAY

THIRD PARTY AUDITOR