Right to Information and Good Governance

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Lecture No. 31

Public Information Officers - III

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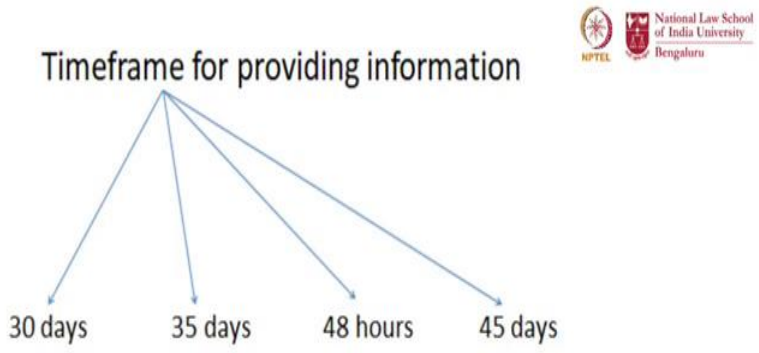

Friends, we will continue with the discussion on the role of Public Information Officers in processing the RTI applications. We have covered section 5 and section 6 of the Right to Information Act. Section 6 talks about what actions should be taken on the right information application. And as I said in the past that the PIO may consider providing information, may consider rejecting the same or may consider transferring the same. So, these are the actions that the public information officer ought to take under the law.

Now, following the provisions of Section 6 is Section 7, which I think is a very critical section that integrates the duties of the public information officer with the rights of the citizen to seek information under the Right to Information Act. Section 7 stipulates in brief, if I can give an overview, the timeframe for providing information. It is the duty of the public information officer to provide information on an RTI application in a time bound manner. If the application is received by the public information officer, then he must provide the information within 30 days.

If the application is received by the assistant Public Information Officer, he should provide the information within 35 days. In case the information that is sought is pertaining to life and liberty, then said information the law says should be provided within 48 hours. Interestingly, if the said information sought by the applicant is regarding a third party, then it should be provided within 45 days. So, this is broadly the timeframe that is fixed under the Right to Information Act. And the public information officer is expected to adhere to this time frame and provide the information within the stipulated time frame.

What you see in the slide is about the number of days that can be taken or hours as the case may be for the public information officer to process the application and provide the said information. Now, there are two pertinent challenges that arise from the slide that is presented before you. First and foremost, the law says 30 days, 35 days and 45 days, nowhere the law has provided this as working days or calendar days.

Hence, the interpretation should be working days or should it be calendar days. Now the importance here lies with the fact that if it is working days, then probably Saturdays and Sundays when the public authority is not functioning will be excluded in the calculation of the number of days. And suppose there are some vacations that are announced in between, they will not be included in these 45 or 35 days.

And hence for the first time when it came for the central information Commission on how the days should be inferred or interpreted, and should it be interpreted or inferred as working days or calendar days, the central information commission declared it as calendar days, which means that if the application is received on the first of April, then the information should be provided before the thirtieth of April whether in between there are holidays, vacations or any other factor, all of these will have to be then clubbed and provided within the thirtieth of April.

Now, this creates some kind of difficulty at times when information that is sought is quite bulky in nature and it takes some while for the PIO to collate and provide the same information. However, that is how the law would probably take the days as just calendar days.

Second, when you look at the timeframe for providing the said information, when we say 30 days or 35 days, the second important challenge is whether these 30 days includes the postal time for the information to reach the citizen. Which means is this 30 or 35 days for a PIO to consume for responding or is it that the information should reach the application within the 30 days? Which means probably the information if it has to be posted should be posted by the twenty fifth day on the receipt of the application.

Now all of these are something that the information Commission has laid down from time to time so that there is clarity in the functioning of the public information officer. So, the central information Commission has said that 30 days means that the information must reach the citizen within the thirtieth day and should not be posted by the public information officer on the thirtieth day.

So, I think this is how the functioning of the right to information is being laid out and it is quite interesting to know how the timeframe for providing said information is stipulated under the Act.

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However, if one perceives and looks at the Right to Information Act, I think Section 7 is the most unique part of the law, it is unique because I do not think before this law that is before the Right to Information Act there was any statutory law that clearly stipulated a time bound delivery of service. There are many legislations that provided rights to citizens, there are

many legislations that provided various services to citizens.

However, I think what the right information act through Section 7 did was it revolutionized the delivery of service in a time bound manner. Fixation of time is an important and integral part of delivery of service. It brings in a greater degree of accountability for the service and the right that is provided in the Right to Information Act. And hence, what I believe is, the time that is proposed to be fixed under Section 7 and enacted under that is probably bringing the law to its most successful part.

Because I think it is unique in terms of the design, it is unique in terms of the time that is fixed and it is unique in the fact that once the time is fixed, there is a penalty. So, time is the essence of the delivery of service, non fulfillment of the time will involve a penalty of 250 rupees per day for the delay. So, if a PIO takes more than 30 days in providing the said service, for every day of delay, he shall personally pay a penalty of 250 rupees per day under Section 20 of the Right to Information Act.

And hence, the conclusion is that probably this is a law that proposes to deliver service and the service is information as the case may be in a time bound manner, and time is the essence of the Right to Information is what we conclude on drawing section 7. If one reads Section 7, one clearly understands that it says something like this, “Subject to the proviso of subsection 2 of Section 5 or the proviso to subsection 3 of Section 6, The PIO in either the state of the center as the case may be on receipt of requests under Section 6 shall as expeditiously as possible and in any case within 30 days”.

So please note, the maximum time to give the information is 30 days “of the receipt of the request, either provide the information of payment of such fees as may be prescribed, or reject the request of any information as specified under Section 8 or Section 9.” Very clearly, all actions on an application are supposed to be taken by the public information officer within the stipulated time of 30 days. Either he accepts or rejects, provided that where the information sought for the concern of life or liberty of a person, the same shall be provided within 48 hours of the receipt of the request.

Now, what is or what is the said information that pertain to life and liberty, we will talk about that slightly later. I will discuss a couple of cases and give you some instances on when an

application is covered under this part and when it covers life and liberty. But to briefly answer over here, you will notice that information shall be provided within 48 hours from the receipt of the application in case the information concerns the life and liberty of a person.

So, this could be details of arrest, detention, medical details required in terms of diagnosis or ailment, you know, probably some of this information, the public information officer cannot take his sweet time of 30 days, he should provide the said information within 48 hours. Now, my belief is that sometimes practically the information may not be provided within 48 hours, it is probably impossible to do the same.

However, I think these are cases where there is what is known as emergency information request, means it is the duty of the PIO to evaluate the purpose for which the information is sought by a citizen if provided, if stated, and if the citizen has justified that this information is required on the concerns of life and liberty, then the Public Information Officers should provide the said information as early as possible. So, this should be an emergency or urgency application and hence, the law prescribes a time limit of 48 hours.

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Now, at this point of time, it is important for us to discuss the rules that are applicable to the Right to Information Act. Now, as I told you, the Right to Information Act 2005 is a substantive law and it prescribes what the right is, who can seek this information and what are the obligations of different organizations, including penalties and sanctions. So, this is the sum and substance of what is there in the act. Every act will have rules and as I told you

earlier, there are two agencies under the RTI Act that can enact rules.

First is the appropriate government and second is the competent authority you can train rules regarding the implementation of the Right to Information Act. Now, for central government institutions and public authorities, under the RTI act has drafted the RTI rules. Please note, the initial rules came about in the year 2006, however those rules were replaced by the RTI Rules of 2012.

Under these rules to facilitate the functioning of the Right to Information Act and especially under Section 6, Section 7, the rules say something like this. First and foremost, they prescribe the application fee and the application fee is Rs 10, we must know this and hence you will notice that the rules will be applied when the application is either accepted or processed or rejected. But what is more pertinent and important and this has not been covered before is that every application shall not exceed 500 words.

So, your application should be within the 500 words, you can seek information in an application within that 500 words only. Interestingly, when you compare the central rules to some of the state rules like Karnataka, the Karnataka RTI rules says that the application shall not be more than 150 words. So, if you are seeking information from the Karnataka government or from Karnataka public authorities, your application should be within 150 words. However if you are seeking from central government institutions, your application shall not exceed 500, so this is rule 2 of the rules of 2012.

Now to be honest and frank, suppose it exceeds 500 words, can the public information officer reject that application? Or suppose if the application fee is more than 10 rupees that is deposited by the citizens, can the PIO reject the application? These are two questions that we will come to and I will address those same with the help of a few case laws.

Second, the fee for providing information is the following. So please note, under the Right to Information Act, the fees are of two categories. One is the application fee, the second is the information fee. Information fee is the number of pages that you actually seek through the application, and hence, if you see the Right to Information law, it says that it is Rupees 2 per page for A 3 and smaller size. So, the fee for providing information under the RTI rules is first Rupees 2 per page, I would say for A3 and smaller size, it could be Rupees 50, in case

you are seeking this information in a floppy in soft copy, so so Rupees 50 is what is a prescribed fee.

Interestingly, if you are seeking a sample there is no actual fee, it is not prescribed. So, what the rules say is the actual cost or price of the sample. So, whatever is the cost of the sample you will have to bear it. So, it will be assessed when the sample is ready to be given and if there is a cost that can be determined from the sample, the same has to be provided. So, it is subjective in nature in that sense. So, the PIO can determine what is the actual cost of the sample.

Now, it is pertinent to note over here, when you look at the RTI rules of 2012, Rupees 2 per page, Rupees 50 per floppy and actual cost of the same. These are the only fees that can be charged by the public information officer.

There have been instances when Public Information Officers have calculated what is known as the collection cost. Sometimes they have calculated travel cost, sometimes they have calculated the cost of petrol, diesel, container and so on and so forth. The information Commissions have very clearly said, the PIO cannot be creative in charging the citizen the cost of sample or the cost of information. What is provided by the rules is only what can be charged by the public information officer, no greater no bigger than what is there.

The RTI rules under Section 4(4) of the rule 4(4) also says that there is an inspection fee. However, you will appreciate that inspection fee for the first 1 hour is free. So, 1 hour in any public authority you can inspect without any cost. For every subsequent hour there is a Rupees 5 fee. So that is what is the inspection fee as well. Finally, you will notice that there can the postal charge up to Rupees 50 and not more than that. So, in case the PIO is giving this information or posting the information and it is quite bulky in that sense, up to a maximum of Rupees 50 is what he can charge as postal charges, not more than that.

Next, rules also say that if the applicant is below poverty line, in the bracket we say usually (BPL) that is what we refer to, then no fee shall be charged. So, rule 5 very clearly says that a person who is below the poverty line shall not be charged any fee. However, the proof of BPL may be something that the appropriate government may fix from time to time. So, who is BPL? It is not the one who claims in his application, he has to support his application with

the proof of being BPL. And if that is the case, then in those circumstances the Public Information Officer cannot charge any fee from the applicant.

The rules also stipulate the mode of payment of these fees, right. So, they say and if you refer to rule 6, it says that this fee, the application fee, the information fee can be paid either in cash or electronically or through demand drafts, so that is the prescription the rules have.

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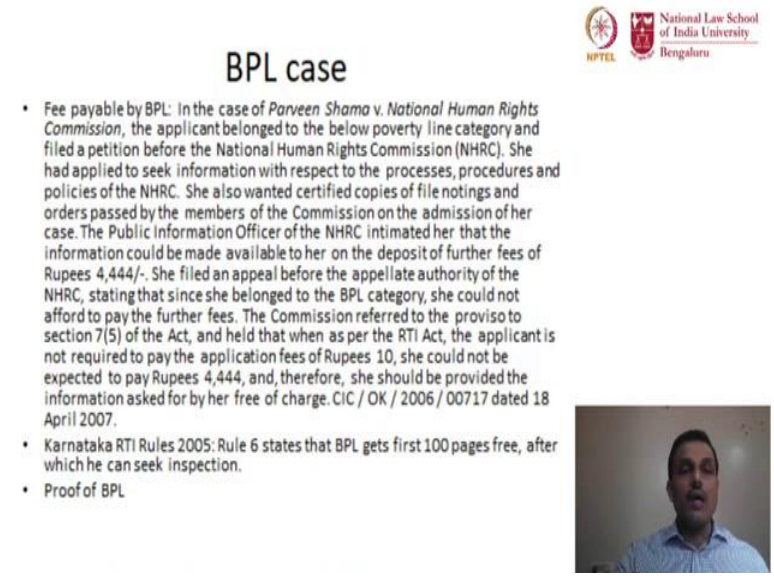

Now, coming to this very interesting case of Praveen Sharma versus National Human Rights Commission. This was a case pertaining to BPL applicant and the BPL applicant in this case, wanted certified copies of file notings that were passed by the members of the National Human Rights Commission. So, when a case is admitted, generally the National Human Rights Commission members do write a note sheet on the merits of the case and whether the case has to be perceived or not. And she wanted this information and that is why Praveen Sharma, a lady, applied to the National Human Rights Commission.

Then interestingly, the public information officer who was there in the National Human Rights Commission intimated that the said information shall be given, however she has to deposit nearly Rupees 4444 for seeking that said information. Now what she did was she objected to this high cost and she appealed. Now please note, the cost of information is also something that can be disputed and that can be appealed for. And then she appealed and in her appeal she said that she is from the BPL category, and she cannot pay that kind of a high fee. The matter came before the commission as well and the Commission had to determine whether the appeal can be sustained or not.

In this case, the Commission held that the applicant, if she proves herself to be a BPL candidate must pay the application fee of Rupees 10. There is no discrimination regarding that, everybody has to pay the application fee, however the information fee is something that she should be exempted from. So, you will notice that in this case, the commission said that she should be provided the information free of cost. So, the cost of Rupees 4444 could not be

fined because the applicant was a BPL candidate.

Now this is something that Public Information Officers must take note of, they are supposed to know that they cannot charge information fee from BPL candidates and they must verify whether the applicant is entitled to that waiver of fee or not, and after which they should take the appropriate decision as well. Now interestingly, you will notice that the state RTI rules for example, in Karnataka, there are various states that have passed RTI rules.

I am just giving you the example of the state of Karnataka, says that a BPL candidate can get only 100 pages free, that is a limit so that there is no misuse or abuse of the BPL provision. Which is what may happen is that if I who is not a BPL candidate may put the application in the name of BPL candidate so that I can get information free of cost. So, to avoid that kind of misuse, I think the Karnataka RTI rules very clearly stipulated and said that a BPL candidate gets first 100 pages free, after which if he wants more information, he should come for inspection.

He can come, see the documents and then he can probably verify the information as the case may be but more than that BPL candidate is not entitled to, 100 pages free and not more than that. The last point in case of BPL is the fact that please note, when it comes to below poverty line what is the test of the below poverty line and what is the proof that is required for below poverty line. Various government agencies issues various certificates on BPL, for example, health department has a different categorization and criteria for earmarking people as BPL to claim health benefits.

The revenue department will have a different categorization for creating a BPL candidate. However, the commission from time to time as given the direction that the income proof is the only proof to ascertain whether an applicant is a BPL candidate or not. Generally, the income proof is issued by the revenue department and that should be the sole proof to determine whether an applicant is a BPL candidate or not and whether he is supposed to be entertained for waiver of information fee as the case may be.

So, these are very important provisions under the Right to Information Act which PIOs must know, I believe even the citizens opt to know because they must not unnecessarily without knowing the provisions of law without knowing the application and the scope and ambit

challenging and increase the number of litigations before the information commission.

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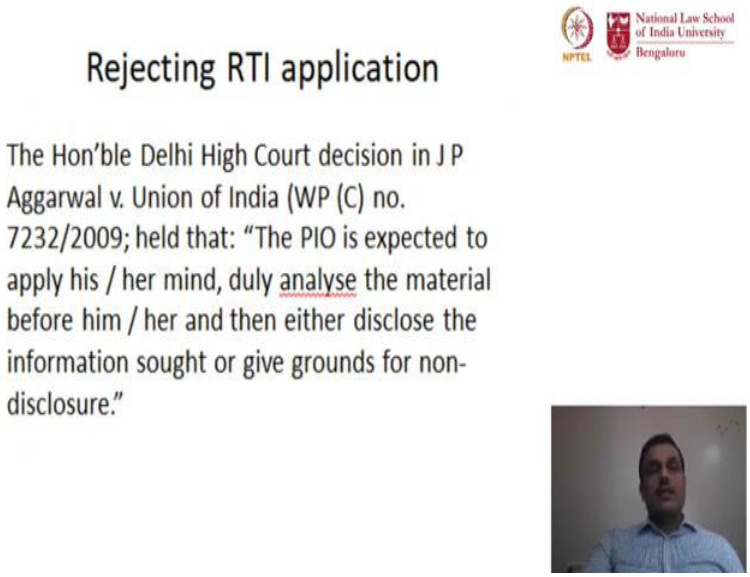

The Delhi High Court, in JP Agarwal versus Union of India, decided in 2009 has held that the PIO is expected to apply his or her mind duly analyze the material before him or her, and then decide to disclose the information or give the grounds for non disclosure. So, I think the public information officer is supposed to know the law, supposed to analyze the law, supposed to interpret the law and in each application, he must apply his or her mind.

And it is important for the public information officer to know every aspect and angle of the law that is in the statute and as the law is interpreted by the information conditions. That is where we say the PIO must not only know the law, he must know the working of them, how the law applies, how is it interpreted. So, the BPL case is a very classic case about how the PIO must act. In the National Human Rights Commission, would you expect a PIO not to know that a BPL candidate should not be charged.

So, I think these are some issues that one should raise from time to time and it is not the business of the commission to every time tell a PIO what he must do and what he must not. You know, if you ask me the BPL part is very clear. Now, what happens if the PIO does not apply the BPL part properly and effectively? Look at the time that is wasted in taking the first step. Look at the time taken by the information commission to decide this matter.

Now, when time is taken in the appeal process and adjudicating process, it creates that much harassment of the citizen as well. So, I think it is a lost situation for both parties and I do not think this is an excuse that the PIOs can take and say that they did not know the law, and

hence they misapplied it in the given situation.

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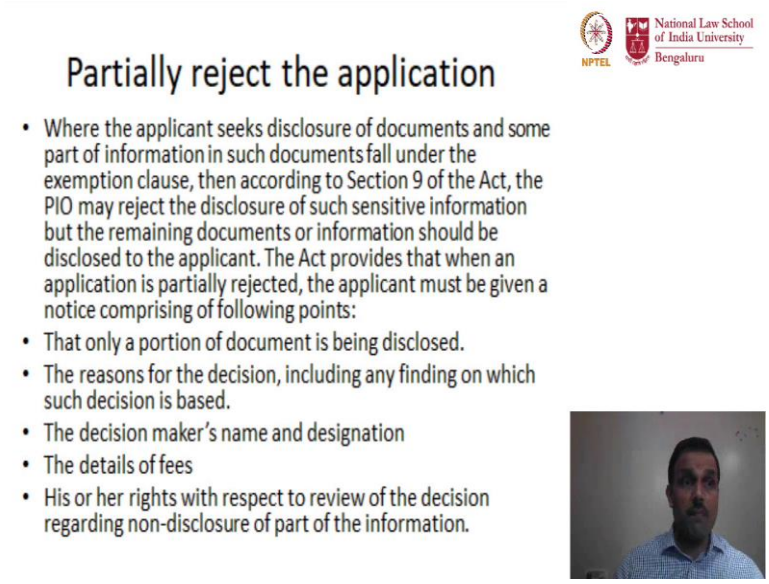

Now coming to another part of the role of the PIO, and that part is that, you know, accept application and give the information is one or reject application. Now, these are two very opposite directions that the PIO normally takes. These are extreme actions that he takes, either he accepts the application and gives the information or he rejects it and informs the citizen about the grounds of rejection. Can there be a middle path?

Now, this situation is very, very critical and important because here is where you will notice that under the Right to Information Act, the public information officer is expected to apply what I call as the doctrine of severability, what do I mean by the doctrine of severability? It clearly means that, if a partial information can be given and partially need not be, then the public information officer is expected to apply his mind.

So, when the applicant seeks certain documents, some of which are exempted or cannot be given, and some of which should be given or entertained to be given, then in those cases, it is the duty of the public information officer to apply his mind, evaluate in the said application, what can be partially rejected and what can be partially provided for.

Now, it is the duty of the PIO to inform the citizen that this is the action that he is supposed to take, he will apply the doctrine of severability on certain parts and certain categories of

information, and in certain other categories of information, probably, he will give or disclose the information. So, this is what we call as partially rejected applications. So, certain documents can be disclosed, certain portions of certain records can be disclosed.

However, please note, for every decision that the PIO makes on this partial disclosure he has to provide reasons, he has to provide reasons especially when he decides not to disclose a document and that is something that he has to justify as well. So, the burden of proof when a PIO takes any action on any application is on the PIO himself or herself, they have to justify why the said information was completely rejected or why it was partially rejected.

Kindly note, in his reply, the public information officer must give his name and designation, he must provide the fees that has to be paid for those information that he has decided to disclose partially and he must also communicate that his decision is not final. Now when a PIO makes a decision not to disclose an information partially, that partial decision to partially not disclosed can also be challenged and appealed for so that is something that one will have to take due note and consideration.

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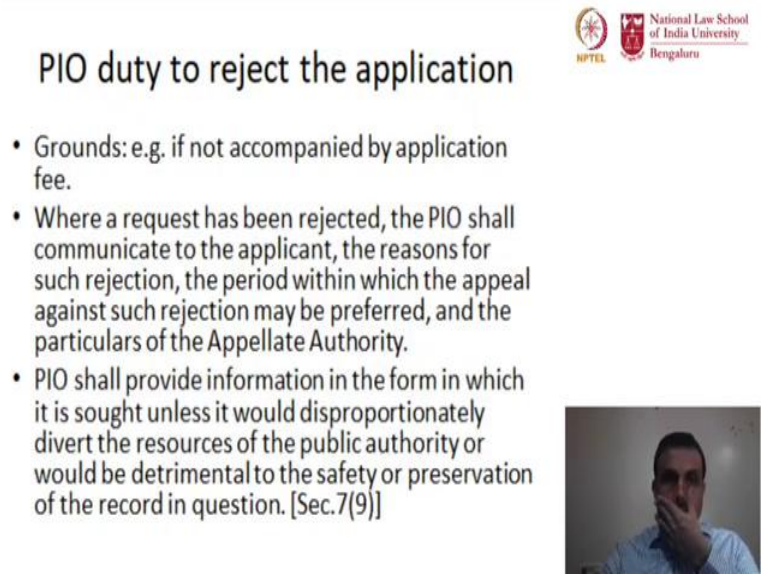

The PIO's duty to reject the application, as I told you has to be on certain grounds. Now, in one case, and I can tell you the case here. This is Satish Kumar versus regional passport office Ghaziabad. It is a decision decided by the central information commission in 2007. Now, what happened in this case was, the applicant, he wanted certain information and he

sent it to the regional passport office Ghaziabad and what he did was he put cash in the application itself.

Now, this was a currency note that was sent by post and the PIO rejected it. He said, look, we do not accept cash. If you come physically and deliver the application, and you deposit cash in the accounts department, you can get an acknowledgement and the receipt of the same. However, it is not right for a government officer to accept cash by envelopes or by postal order. So in this case, I think the public information officer rightly decided to reject this application.

And you will notice that there are instances when the Public Information Officer rejects an application on such grounds for example, in one of the cases it was handwritten, it was not timed. So, the PIO said I cannot understand your handwriting, so you please type it and send it so hence I reject your application. I think some of these are very fruitless grounds, they are grounds which do not call for rejection.

See, if we go by the title which is given to the public information officer, Public Information Officer, a person who is obligated to the public as a public servant, I think it is his duty sometimes to coordinate with the citizen and remedy the fault that is committed in the application process. So, he could write to the citizen and say, look, your application is pending till you pay the fee in an appropriate manner. He need not have to reject that application completely. See, these are procedural lapses if you ask me.

Please note, hand written applications can also be introduced, but it should be legible and readable. If it is not legible and readable, how does the PIO process it? How does he know what the citizen is asking for? But I think these are procedural requirements which can be remedied by the PIO by the simple application of his mind, in terms of facilitating the right information, rather than acting as a bureaucrat, who normally rejects application for privileges from citizens.

So, the attitudinal change is something that has to be emphasized here from time to time so that the Public Information Officers do not reject application, rather facilitate their right to information as you can see. Please note, it is important for the Public Information Officers to continue their communication with the applicant. They have to provide reasons for rejection,

they have to also state in their reply what is the period within which the appeal has to be taken if somebody is interested, within what frame the appeal has to be done, and who is the appellate authority also has to be provided in the letter.

So, there is a lot of responsibility casted on the Public Information Officer under the right to Information Act. Kindly note, the PIO can reject an application under Section 7 (9) as well. Section 7(9) is quite interesting. It empowers the public information officer to reject an application. So, it is not about only section 8 which is exempted from section 9. One of the grounds on which a PIO can reject an application is on what we call a disproportionate diversion of resources of public authority. So, a public information officer may clearly stipulate that the information sought disproportionately diverts the resources of the public authority. How does information disproportionately divert the resources of the public authority?

To give an example, let us assume that a citizen and this was a case that did combine, probably ask information from the Life Insurance Corporation of India, and he says very randomly, please give me all the details of all policyholders who have taken your Jeevan Anand policy or some vague application without any purpose. For example, I applied to the local police station and say, give me the details of all crimes that happened in the last 5 years that have been reported in your police station.

Now, what happens is this information may be there however, it may be highly voluminous, it may be highly bulky, it may be scattered. And this information that is sought is so random without any purpose, without any direction, that providing the same would disproportionately diverts the resources of the public authority. Under such causes, the PIO under Section 7(9) is empowered to reject the application.

For example, sometimes the Public Information Officer receives applications on those information that are beyond the retention time or the retention schedule that is generally prescribed. So, suppose a record has to be kept for 10 years, as per the Public Records Act. This is the minimum time to retain that record. Now, citizens have the tendency of asking very old information not from the National Archives, they can ask the National Archives.

The basic duty of the National Archives is to keep only information and provide the same,

but other public authorities do not have that duty. Their minimum duty is to keep the file for the time of the record maintenance that is provided by law. Now, if I am asking such old information, probably, again the PIO may justify and say it may disproportionately divert the resources of the public authority. Within the 10 years that is stipulated by law, minimum time to keep the file to retain the file to maintain the file, there the citizen has a right to information, the citizen can say look within 10 years it is your duty to maintain the records.

You know, whether it disproportionally diverts or not, you have to provide the said information because that is a basic duty and obligation that the public authority through the PIO has. But beyond that time, if it is of such public interest, then it should be provided. If it pertains to corruption or human rights violation, then it should be provided otherwise I think it may disproportionately divert the resources. Now what is the disproportionate diversion of resources? This is not about any other but it is about the human resources that may be invested in facilitating the Right to Information.

So, unless a larger public interest is made out, voluminous bulk, vague information that is sought by citizens under the Right to Information Act may be subject to rejection under Section 7(9) of the Right to Information Act. Kindly note, section 7(9) says, "disproportionately diverts the resources of the public authority OR" very important, "would be detrimental to the safety and preservation of the records in question."

Because these are old records you know, they may be very fragile, they may crumble, it may be about some maps and designs so if you start photocopying it or providing the same, it may be detrimental to the record or to the safety and preservation of the record. So, these are justifications that can be provided to old records. And under Section 7(9) the PIO may duly reject these applications as well.

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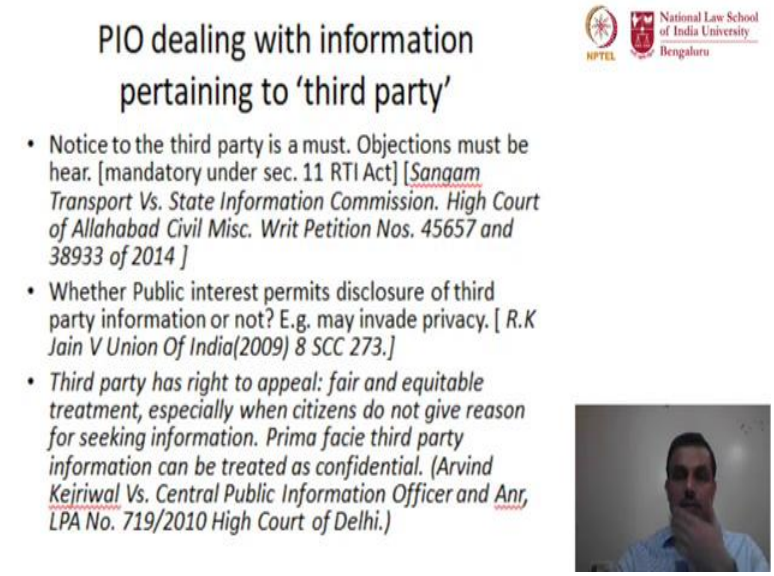

Now coming to another obligation, that obligation is definitely on the PIO. And this obligation is with information pertaining to a third party. Now, kindly note, I told you that third party information, the public information officer can take, how much time? Can he take 30 days? Can he take 35 days or can he take 45 days? 45 days. So, you will notice that there is an additional 15 days times when that applicant is seeking information regarding a third party, this is the first distinction between a normal application seeking information about the government and an application that is seeking information about third parties with the government.

First of all, kindly note, there is no definition under the Right to Information Act about who is a third party. However, the obligations that the PIO must undertake when dealing with third party information is provided under Section 11 of the Right to Information Act. Now, I believe that the third party is somebody who is not the government.Third party are those parties which are private in nature and whose information is with the government. So, whenever the government holds information about private bodies, that private body may be considered as a third party.

Whenever information that is held by the government is about their employees' personal information, then in those circumstances that information that the government holds is that of a third party, so a third party is apart from the government. And third party information means information pertaining to natural persons or information pertaining to legal persons. It could be a hospital, it could be about an industry, it could be about a restaurant, it could be about a university as the case may be or any other institution as well. Now, what is the duty

of the PIO when dealing with third parties?

Kindly note, section 11 says that whenever third party information is sought by any applicant, it is the duty of the PIO to send a notice to the third party that such information is sought for. Kindly note, that notice to the third party must be sent within 5 days from receipt of that application so that the third party has some time to respond. And hence you will notice, within 5 days. So let us assume that there is 45 days to provide the same information. So, first 5 days you have to send the notice to the third party, the third party probably has 10 days to respond.

After which the PIO within the next 30 days must provide the said information and that is why you will notice there is a logic behind providing 45 days for a third party information to be provided to the citizens. So, that communication time is what that 15 days extra is otherwise normal information, the public information officer must provide the said within 30 days. Now, let us ask ourselves the first question, and that is what was probably decided in the Sangam` transport versus State information commission, this was decided by the Allahabad High Court in the year 2014.

The first question that was asked in this case was, “look if third party information is asked, should notice be sent to the third party, is it mandatory or is it some kind of an option that the public information officer can exercise? Can you decide that this notice is not necessary? Or is it something that is mandatory to be followed?” I think the Allahabad High Court has made it very clear that once third party information is asked, it is not the PIO’s role to decide whether to serve notice or not. It is mandatory the duty of the public information officer to notify the third party that such information regarding you has been sought, so the notice is mandatory.

Now the notice being mandatory, the reply from the third party is optional. The third party may choose to reply or may not choose to reply, kindly note. The third party reply in this case, though discretion, is something that the third party must exercise within a time bound manner. Because if the third party replies after 2 months, the PIO cannot wait for it because his duty is to provide the said information within 45 days. So, it is the duty of the third party to get the notice, this is something that the PIO has to mandatorily do and it is the duty of the third party to reply to the notice within the time bound manner.

If the third party fails, then probably the third party may lose its right to object in sharing the said information. Kindly note, in this notice that is served to the third party it is not the consent of the third party that is sought. So you should understand within consent and objection. Because what is consent? Consent means that if the third party does not give consent, the PIO cannot share the information that is not the case. Here the opportunity is provided to the third party through the notice, stating that if the third party has any objections regarding the sharing of the said information, those objections can be put across to the PIO who then can take an informed decision.

And hence, we say the role of the public information officer in such cases is that of an adjudicating officer. Being an adjudicating officer, he has to follow the principles of natural justice, he should notify the third party, hear the third party and then properly decide whether to share the information or not to share the said information. Kindly note, third parties generally would raise objections on sharing of this information on certain grounds. For example, the third parties may say that it may breach confidentiality.

Many of the information that is generally shared with the government are in a confidential nature. For example, my income tax return which is filed with the income tax department is confidential in nature. Now, if the income tax department is keen to share this information, they must probably ask me and probably I have the right to raise those objections and I may say there is no public interest in disclosing the same. So, this is confidential information, this is shared in a fiduciary capacity with trust and confidence that it will not be given in the public domain unless there is a violation of law unless the court demands it or unless the investigating agencies want the said information.

So, in the normal course of things, this should not be shared. The same piece is about government hospitals. If somebody seeks patient related information that will not be shared because it is going to invade privacy of the patients' so government hospitals are not duty bound to share patient related information at all. However, they can again treat patients at third parties if they are commercial entities and seek their objections and decide whether to give the information or not.

And hence, in deciding third party objections, the public information officer will apply the

public interest test for disclosure as against the private interest test of protecting the said information. So, the third party rule is a very important rule, it must be complied by the PIO and if he fails to comply with it properly, the PIO may be found violating the provisions of the Right to Information Act and will be held answerable either in the first appeal or in the second appeal.

Now, you must fairly note this, that once notice is served to the third party, the third party can appeal, the third party can raise objections before the information commission as well. So, when you look at the term 'aggrieved person' in an appeal, it includes third parties as well. So, it is not that in the information commission, it is always a challenge between the citizen and the public authority, it is not necessarily the case.

The challenge can be purely between the public authority through the PIO with a third party, the third party may think that the PIO is not applying his mind adequately enough in terms of what is to be disclosed and what is not to be disclosed, and that it would be the interest of the third party to preempt any such disclosure before the PIO makes a decision. So, they may approach the commission and say please stop the PIO from disclosing our said information.

Now, you must notice that in this Arvind Kejriwal case before the Delhi High Court in 2010, the Delhi High Court made an observation, they said that prima facie when third party information is sought, generally it is the duty of the PIO to treat it as confidential because remember, the government is holding the third party information in trust. It is not government information, see government information, the government can decide, the PIO can decide. But this 'is government held information, and government held information of private bodies and hence the government has a responsibility to see whether the disclosure is necessary or not necessary.

And they must, when they hold the trust not to breach the trust, and they must evaluate whether this information can be disclosed or cannot be disclosed. However kindly note, the PIO has to decide and when he decides he has to notify or give the same to the third party. So, notice before disclosure, once he decides to disclose he must also notify the third party about his decision. Whether the objections are sustained, if they are sustained, he will decide not to disclose, but if the objections are not sustained and they are overruled, the PIO will decide to disclose.

The third party must know what the PIO has done on the objections, it is his duty to know what he has done on those objections. So, apart from giving his reasons for rejection to the citizen, the PIO must also give reasons to the third party so that the third party is informed about the actions of the public information officer as the case may be.