# The Right to Information: An Aid for Litigation

Case Studies of use of the right to information (RTI) for litigation in India

Compiled by Commonwealth Human Rights Initiative

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# Environment

## Balachandra Bhikaji Nalwade Vs. Union of India (UOI) and Ors.

High Court of Delhi
Writ Petition (Civil) No. 388 of 2009
18.09.2009

### Facts

JSW Energy Ltd a private sector company proposed to construct a 1200 MW coal fired thermal power station at Jaigarh Maharashtra. This area is flush with mango orchards. Under the Environment Impact Notification of 1994, issued by the Government of India such a power station can only be constructed after obtaining environmental clearance from the Ministry of Environment and Forests (MOEF). Applications for environmental clearance must include an Environmental Impact Assessment Report (EIA Report). The purpose of this report is to predict the adverse impact that the proposed project may have on the environment.

JSW Energy applied to the MOEF for environmental clearance, and they referred the matter to a committee of experts. JSW Energy told the committee that a university would undertake a study of the environmental impact, within six months. The committee decided that the proposal may be considered further only after the study on the impact of the project on alphonso mango plantations has been completed. Three months later, the committee reconsidered the matter. Even after noticing that an interim report from Konkan Krishi Vidyapeeth Dapoli a University hired for the study, stated that it "is necessary to undertake a detailed study for a period of 4 years to evaluate impact", the project was still conditionally approved.

Petitioner BB Nalwade, who owned a mango orchard in the area, challenged the conditional approval on multiple grounds, including erroneously relying on the inconclusive University report.

### Use of RTI

BB Nalwade filed before the Court information he obtained under the *Right to Information Act, 2005* (RTI Act) from the University. Among this information was correspondence between JSW Energy and the University. JSW Energy had requested the University to give their expert opinion on the impact of the proposed power station on mango plantations near the project site. The University declined the request. They stated that they had neither generated the necessary data, nor have the expertise to undertake such studies, and that such studies required collaboration with government or semi-government institutes. They would only provide limited assistance by observing mangoes and vegetation. JSW Energy subsequently requested that the University conduct a detailed study, with JSW bearing the expenses and arranging for collaboration with government or semi-government institutes.

Science and Technology Park, Pune was brought in to collaborate with the University in a joint study of the impact of the proposed power plan on the environment, particularly the mango plantations. BB

Nalwade had sought information under the RTI Act months after the committee granted approval. The response revealed that the two organizations met and there was a list of equipment required for the study, but the impact survey had not started, no samples had been collected, and no equipment had been received.

## Decision

The Court directed the committee to re-examine the approval after considering the reports of the University on the basis of data actually collected and analyzed by them, and keeping in mind the principles of sustainable development. The court also directed that until this approval is granted, if at all, the power plant cannot be made operational. JSW Energy was allowed, however, to undertake tests and operational trials while awaiting the committee's decision.

While deciding the matter the Court reemphasized the doctrine of sustainable development that has acquired a high degree recognition and acceptance at the international level since 1990s. The Court observed:

> "Sustainable development, simply put, is a process in which development can be sustained by nature with or without mitigation (Rio Conference of 1992). The doctrine accepts requirement to industrialise and develop, at the same time accepts that it is necessary to protect environment and ecosystems. The need is to harmonise development and nature but the pollution and damage to the ecosystem and environment must not exceed the carrying capacity of nature. The Supreme Court has accepted doctrine of sustainable development as Law referring to Articles 14,21,48-A and 51-A(g) of the Constitution of India. Said doctrine has been justified on "intra-generational equity or responsibility" and "public trust". The concept of "public trust" accepts nature and ecosystems belong to the people and the State as a sovereign holds them in trust for public use and benefit. The doctrine does not prohibit alienation of the property held in public trust but requires that the alienation should be in a manner consistent with the nature of the said trust. Natural resources like air, water, forest, vegetation etc., are of great importance to the people as a whole and should not be subjected to private ownership or commercialisation, when public interest suffers a greater damage due to over exploitation of the nature. Lastly, Laws of Nature have to respected and for the benefit of people and human race require observation and compliance."[1] (Para 22)

[1] Article 14 guarantees every person the right to equality and equal protection of the law. Article 14 reads: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Article21 guarantees every person the right to life and liberty. The Supreme Court has in several earlier decisions recognised that the right to life includes the every person's right to live in a safe and healthy environment [for example see: *Bandhua Mukti Morcha v Union of India*(1984) 3 SCC 161*)]* Article 48-A lays down a directive principle of State Policy requiring the State to take action for protecting the environment. Article 48-A reads: "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country." Article 51-A(g) makes it a fundamental duty for all citizens to protect the environment as well. Article 51-A(g) reads in part as follows: "(*g*) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;"

The Court recognized that the 'precautionary principle' is an essential part of the doctrine of sustainable development. The Court observed:

> "…Precautionary principle makes it mandatory for the Government to not only anticipate and prevent but also attack the causes of environment degradation. Where there is an indefinable risk of serious or irreversible harm, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment and that lack of scientific certainty should not be used as a reason for postponing measures to prevent such harm to the environment…" (Para 23)

> "Precautionary principle has been adopted and applied requiring that when there are reasonable or irreversible chances of ecological damage, lack of full scientific certainty should not be used as reasons for postponing cost effective measures to prevent environment degradation..." (Para 24)

> "The precautionary principle makes it mandatory for the Government to not only anticipate and prevent but also attack the causes of environment degradation. Further, "there is nothing to prevent decision-makers from assessing the record and concluding that there is inadequate information on which to reach a determination. If it is not possible to make a decision with "some" confidence, then it makes sense to err on the side of caution and prevent activities that may cause serious or irreversible harm. An informed decision can be made at a later stage when additional data is available or resources permit further research. (…quote from *A.P. Pollution Control Board Vs. Prof. M.V. Nayudu* (1999)2 SCC 718)" (Para 26)

## Ec Pocket Maya Enclave Residents Welfare Associaiton and Ors. Vs. Delhi Development Authority and Ors. [sic]

High Court of Delhi
2006 (92) DRJ 562
22.08.2006

### Facts

Indraprastha Gas Limited (IGL), a public sector company, applied for and received the necessary clearances from local authorities in Delhi to convert 3000sq.m. of green area into a CNG mega bus filling station. IGL received this authorization from the Delhi Development Authority (DDA) in 2006. Although the space had been allocated as a green area under the Delhi Master Plan, DDA had earmarked the area for the purpose of a petrol pump in 1999, through a resolution.

The petitioner in this case was an association of residents of three blocks located near the affected green area (Association). They were seeking to prevent the DDA and IGL from converting the green area into a filling station as Delhi's green area is rapidly dwindling and the authorities have not made an adequate effort to protect the green area.

### Use of RTI

The Association relied on certain information obtained from DDA under the *Right to Information Act, 2005*. The information obtained revealed that more than Rs. six lakhs (approximately 12,000 USD) was spent planting trees in the park in the previous year. Petitioner Association used this in conjunction with several Supreme Court decisions that say that an area earmarked and used as a park by the public is vested in the community, and the use of the land cannot be altered for any other purpose.

Access to this information was crucial to prove two points. One point was that significant amounts were spent by the public authorities to maintain the park every year. The other point was that the Supreme Court had in several previous cases frowned upon the diversion of green areas for commercial purposes. DDA and IGL had ignored these precedents and gone ahead with the conversion of a park into a commercial gas filling station.

### Decision

The Court directed the DDA to consider the matter afresh, paying due regard for the money spent on developing the park, and the impact of a change in the use pattern of that plot of land on the lives of people and institutions located in the vicinity. During that time, IGL and DDA were restrained from disturbing the current status of the green area. Environmental concerns had won the battle.

# Utkarsh Mandal Vs. Union of India (UOI)

High Court of Delhi
Writ Petition (Civil) No. 9340 of 2009
26.11.2009

## Facts

Mining projects in India require prior environment clearance before commencement. Such environmental clearances are granted by the Government of India through its Ministry of Environment and Forests after evaluation by a specially constituted Expert Appraisal Committee (EAC).

Panduranga Timblo Industries (PT Industries), a private sector company, sought environmental clearance to re-start mining operations in Goa. The EAC evaluated and accepted the proposal for environmental clearance, and the Government of India granted clearance to PT Industries. The petitioners appealed the environment clearance to the National Environmental Appellate Authority (NEAA), but the appeal was dismissed. Subsequently the petitioners approached the Delhi High Court through a write petition, challenging the grant of environmental clearance and the dismissal of their appeal by the NEAA on the following grounds:

a) The public hearing held in the villages affected by the mining operations prior to the grant of environmental clearances was a farce as many people did not get an adequate opportunity to raise their objections;

b) The environmental clearance had been granted by the Goa State Pollution Control Board without due application of mind;

c) The entire procedure was affected by a lack of fairness because the Chairperson of the EAC was himself on the board of four other mining companies, so the Chairperson of the EAC had a conflict of interests.

## Use of RTI

In order to support their contention about conflict of interests the petitioners sought and obtained documents from the Ministry of Environment and Forests under the *Right to Information Act, 2005* (RTI Act) that clearly showed that the Chairperson of the EAC was simultaneously serving on the board of four mining companies. When these documents were placed before the Court it found “an obvious and direct conflict of interest.” (Para. 44).

The reply also revealed that the EAC had cleared about 410 mining proposals in just six months but had made only four site visits to evaluate the environmental impact of the mining leases. The Court found the large number of approvals in such a short period of time to be “unsatisfactory” and an “unseemly rush to grant environmental clearances”. (Para. 45). The small number of site visits suggested to the Court that site visits may not have been conducted in the current case. The Court ordered the EAC to undertake site visits in order to evaluate the past operations of a mine before granting clearance for reopening it.

## Decision

The Court set aside the grant of environmental clearance by the Ministry of Environment and Forests, and remanded the matter to a freshly constituted EAC. The Court directed the EAC to evaluate the matter under further directions specified in the judgment.

## CHRI's comments

Records obtained under the RTI Act proved crucial in drawing the Court's attention to procedural impropriety in the grant of environmental clearance. The Court held that procedural impropriety is a valid basis for seeking judicial review of an executive decision. Under clauses (iv) and (v) of Section 4(1)(b) of the RTI Act, every public authority is mandated to disclose the rules, regulations, guidelines and norms used by it to discharge its functions. However there is no similar requirement to disclose the educational or professional background of officers empowered to make decisions under a public authority.

The petitioners, being aware of the rules and norms regarding qualifications required of an individual for serving as a Chairperson or member of the EAC, used the RTI Act strategically to seek information about the professional background of the Chairperson. Armed with this information about the professional background of the Chairperson, they successfully challenged the EAC's decision to grant environmental clearance for restarting mining operations. Strategic use of information can aid litigation enormously and assist the Court in reaching its conclusions without delay.

# National Mineral Developmnet Corporation Vs. Government of India and Ors. [sic]

High Court of Delhi
2008 (101) DRJ 339
18.02.2008

## Facts

The Government of India (Central Government) has the power to grant licenses for mineral prospecting to public and private sector companies under the *Mines and Mineral (Development and Regulation) Act,* 1957 (MMDR Act). However, before forest land can be used for non-forest purposes, such as mining, the State and Central Governments are required to follow certain clearance procedures under the *Forest Conservation Act, 1980*.

In 2002, the petitioner National Mineral Development Corporation (NMDC), a public sector enterprise under the Central Government, applied for permission to undertake mineral exploration in an area in the Bailadila forest reserve in the largely tribal district of Bastar in Chhattisgarh—a mineral and forest rich State. In November 2006, the State Government of Chhattisgarh recommended to the Central Government that a prospecting license in the same area be given to Tata Iron and Steel Company (TISL), who had proposed to set up an iron and steel manufacturing plant in the State. In February 2007, the Central Government conveyed its approval to the State Government, provided the State Government ensured that TISL complied with the applicable rules and regulations and obtained environmental clearance under Section 2 of the *Forest Conservation Act*.[2] Subsequently the State Government granted a prospecting license to TISL for two years, but waived the conditionality of setting up the iron and steel plant on the advice of the Central Government. NMDC challenged this decision through a writ petition

[2] Section 2 of the *Forest Conservation Act*, reads in part as follows:

*"2. RESTRICTION ON THE PRESERVATION OF FORESTS OR USE OF FOREST LAND FOR NON-FOREST PURPOSE. Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-*

*(i) That any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved.*

*(ii) That any forest land or any portion thereof may be used for any non-forest purpose.*

*. . .*

*Explanation : For the purpose of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-*

*. . .*

*(b) Any purpose other than reforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."*

before the Delhi High Court submitted under Article 226 of the Constitution.[3] The petition was based on the following grounds:

(a) the Central Government had not given the mandatory environmental clearance through its Ministry of Environment and Forests under Section 2 of the *Forest Conservation Act*, and

(b) NMDC ought to have been given preference over others because it is a public sector company.

## Use of RTI

In its petition NMDC claimed that it had originally filed a revision petition before the Mines Tribunal against the grant of license by the State Government to TISL. It was during these revisional proceedings that NMDC became aware of the impugned order. NMDC alleged that the impugned order was kept secret, but they were able to access the order from the Ministry of Environment and Forests through the *Right to Information Act, 2005* (RTI Act). Using this information NMDC was able to show that the Central Government's approval letter was treated as an order for grant of license, even though the mandatory environmental clearance was not obtained by the company.

## Decision

The Court held that the Central Government had failed to comply with Section 2 of the *Forest Conservation Act* before issuing its approval for the grant of license to TISL by the State Government. Therefore the Central Government's approval, and all the proceedings under the MMDR Act leading up to the order of grant of the prospecting license, were quashed as contrary to law and outside the Union Government's jurisdiction.

## CHRI's Comments

It is ironic that a public sector enterprise had to make use of the RTI Act in order to obtain information about the State of Affairs regarding the grant of licence to a private company. According to Section 41(b)(xiii) of the RTI Act, every public authority is required to proactively disclose all details about recipients of concessions, permits, and authorisations every year. Had the Central and State Governments complied with this requirement NMDC would not have had to formally seek this information through a written request. Section 4(2) of the RTI Act requires proactive disclosure of "as much information *suo motu* to the public . . . through various means of communications, including internet, so that the public have minimum resort to the use of the Act to obtain information." If the respective orders had been disclosed through the Internet or other means, NMDC would have had no need to file an RTI application for information.

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[3] Article 226 empowers all High Courts to issue writs to any public authority, or even private bodies, for the purpose of protecting fundamental rights and also for other purposes of public interest. Article 226 reads in part as follows: "(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."

# Family Matter

## Sau. Sushama Vs. Shri Pramod

High Court of Bombay
AIR 2009 Bom 111, 2009(3) BomCR 753, 2009(111) BomLR 1804, 2009(4) MhLj 81
17.03.2009

### Facts

In India divorce by mutual consent is allowed under the *Hindu Marriage Act, 1995*, but several requirements must first be satisfied. Section 13B(1) of the Act requires the parties to live separately for at least one year.[4] Section 23(1)(bb) of the Act requires the family court to satisfy itself that the consent was not obtained by force, fraud, or undue influence.[5]

Ms. Sushama Taksande is the wife of Mr. Pramod Taksande. Ms. Sushama challenged a judgement affirming an order granting divorce by mutual consent. Under this order, Ms. Sushama was recorded as giving custody of two sons to the father, and waiving her right of maintenance. Ms. Sushama contended that her signature in the petition for divorce and supporting affidavits were obtained under false pretences and compulsion, and the condition of one-year separation had not been satisfied.

Mr. Pramod contended that Ms. Sushama had an affair with another person during their marriage. She had changed her position only recently as the third person had refused to marry or reside with her. Mr. Pramod submitted that Ms. Sushama should be charged with perjury and contempt of court.

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[4] Section 13(1) of the *Hindu Marriage Act, 1955* reads:

> "13B. Divorce by mutual consent. —(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved."

[5] Section 23(1)(bb) of the *Hindu Marriage Act, 1955* reads in part as follows:

> "(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that—
>
> . . .
>
> (bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence,…"

## Use of RTI

Mr. Pramod claimed that he had obtained four documents from the office of the Sub-divisional Police Officer (SDPO) under the *Right to Information Act, 2005*. These documents were related to a police investigation conducted by the SDPO based on a complaint filed by the appellant's father. One of these documents was a statement given by Ms. Sushama two months after the divorce, stating that she had a love affair with another man- a police constable, had applied for a divorce because of this, wanted the case to be decided within a month so that she could live with him, would give custody to her mother-in-law and father-in-law, and would waive the right to maintenance payable by her husband. The documents also showed that she had not been able to contact the other man via mobile phone for more than 2-3 months in more recent times. However, the Court found that "unless and until all these facts [in the documents] are proved on record, no reliance can be placed upon the same". (Para. 7).

## Decision

The Court held that lower court failed to record satisfactory compliance with Section 23(B) of the *Hindu Marriage Act*. The Court decided that claim of perjury was premature. Ms. Sushama could appeal the lower court's judgment, and there was "no compliance with the provisions of Section 23[1][bb] of the Hindu Marriage Act." (Para. 13). The lower court's judgments were set aside and the case was restored to the Civil Judge for further trial.

## CHRI's comments

It must be pointed out in this case that Mr. Pramod was able to acquire documents relating to a police investigation. Section 8(1)(h) of the RTI Act exempts from disclosure any information that may impede the process of investigation into an offence. This clause is frequently used by the police to deny access to documents relating to a case even though in many cases it is not shown how disclosure would adversely affect the investigation process. The SDPO could have mechanically rejected Mr. Pramod's request also and compelled him to go through the appellate process. However in this case the applicant was spared of this harassment. This case is illustrative of the manner in which RTI applications must be dealt with. The effect of disclosure of a document rather than its nature must be taken into account while making a decision on a request. Rejecting a request merely on the basis that it relates to an ongoing police investigation is not good practice.

## Nandkishor Vs. Kavita and Anr. and Atharva

High Court of Bombay
Criminal Application No. 2970 of 2008
05.08.2009

### Facts

Nandkishor and Kavita are husband and wife, respectively, and have a son named Atharva. Kavita, the aggrieved party presented an application seeking relief under Section 23 of the *Protection of Women from Domestic Violence Act, 2005* (Domestic Violence Act).[6] The trial Judge passed an interim order directing Nandkishor to pay 1,200 INR (approximately 24 USD) per month to his wife, Kavita, and 600 INR (approximately 12 USD) per month to his son, Atharva. Nandkishor filed an appeal but it was dismissed, so he filed a criminal application before the High Court of Bombay.

Nandkishor argued that Section 12 of the Domestic Violence Act requires that a domestic incident report must be taken into account before passing an order.[7] Nandkishor also argued that he actually makes less than 1,000 INR (approximately 20 USD) per month, rather than the claimed 25,000 INR (approximately 500 USD) per month, so the ordered maintenance amounts were unreasonable.

### Use of RTI

Nandkishor sought information under the *Right to Information Act, 2005* (RTI Act) from Krushi Vidhnyan Kendra an organisation where Kavita was employed about her employment status. This organisation which is also a public authority under the RTI Act replied that Kavita was working as a junior stenographer for 8,000 INR (approximately 160 USD). The Court held that because this information was not presented to the trial Judge, it could not have been considered, and is thus irrelevant to the Court's

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[6] Section 23 of the *Protection of Women from Domestic Violence Act, 2005* reads:

> 23. Power to grant interim and ex parte orders.
>
> (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.
>
> (2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

[7] Section 12 of the *Protection of Women from Domestic Violence Act, 2005* reads in part as follows: "12. Application to Magistrate.-(1) An aggrieved person . . . may present an application to the Magistrate seeking one or more reliefs under this Act: Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider."

consideration of the trial Judge's order. The Court suggested that if Nandkishor wished to modify the order in light of the additional information, he could do so by applying to modify the order.

## Decision

The Court confirmed the trial Judge's interim order for payment of monthly maintenance. The Court also declared that Nandkishor was free to apply for modification of the order according to the provisions of the Domestic Violence Act.

## CHRI's Comments

This case has been included to show that use of the RTI Act will not always lead to successful litigation. RTI is only a means for obtaining relevant documents for supporting one's arguments or claims before a Court. Ultimately it is for the Court to decide whether or not the relief or remedy claimed by a party will be awarded based on the merits and facts of the case.

# Licenses, Permits and Authorizations

## Sonalaxmi Machhimar Sahakari Soc. Ltd. Vs. The State of Maharashtra and Ors.

High Court of Bombay
2011(2) Bom CR 77, 2010(112) Bom LR 4052
08.09.2010

### Facts

The Petitioner, a Cooperative Society of fisherfolk in the State of Maharashtra, was given a lease agreement for boating in a lake in the heart of the city of Thane. When the lease was about to expire, the Municipal Corporation of Thane executed a lease agreement with a private company- Precision Fisheries for fishing, cleaning, and boating in the same lake. This later lease agreement was granted for 25 years, at less than half the fee charged from the Cooperative's Society in the earlier lease agreement. The lease was granted in complete violation of the financial rules relating to procurement and award of leases. Tenders were not invited or auction held to award the lease to the highest bidder.

The Cooperative Society filed a writ petition in the Bombay High Court seeking the Court's intervention to strike down the lease agreement as being illegal and unconstitutional. It also prayed that the Municipal Corporation be directed to invite bids through a tender process.

### Use of RTI

The Municipal Corporation argued before the High Court stating, among other things, that Precision Fisheries was given a long lease of 25 years because it was required to make a large investment in order to fulfil its obligation of cleaning up the lake as per the lease agreement. Precision fisheries claimed that they had already spent 6.7 million INR (approximately 134,000 USD @ 1USD = ₹50) on this job.

The Cooperative Society produced before the High Court a copy of an official document obtained under the Right to Information Act, 2005 from the Municipal Corporation. According to the document the Corporation had spent Rs. 30 million (approximately 600,000 USD) beautifying the lake. This showed the hollowness of the long term investment argument posited by the Municipal Corporation and the Company. The Court compared the expenditures made by both entities and concluded that "the theory that sufficient investment is made by the Respondent [Precision Fisheries] is questionable." (Para 19)

### Decision

The Court held that "the action of the Corporation to execute the lease agreement in favour of respondent [Precision Fisheries] for a period of 25 years, without inviting tenders and without holding any auction is arbitrary and unconstitutional and the same is accordingly quashed and set aside." (Para. 30)

## CHRI's comments

But for the RTI Act, the Cooperative Society would have had a tougher time obtaining crucial documents through the regular judicial process. The Corporation could also have withheld access on some technical ground or the other. The RTI Act sets the standards for information that cannot be disclosed, and no other ground for denial of information is valid.

# Prof. G. Shainesh and Ors. Vs. The State of Karnataka

High Court of Karnataka
ILR 2008 KAR 4265
30.06.2008

## Facts

A liquor shop was opened allegedly within 50 meters of a hospital and an educational building. Under the *Karnataka Excise Licenses (General Conditions) Rules, 1967* (Licenses Rules), licenses cannot be granted for the sale of liquor within 100 meters of certain places, including educational buildings and hospitals.

The petitioners in this case were a local resident, and the professors, staff, and students of the Indian Institute of Management, Bangalore (IIMB), one of India's premier management training institutes. The liquor store was located within 50 meters of IIMB and a hospital. The respondents were the State authorities charged with enforcing the Licenses Rules, and Sarovara's Wine Paradise, licensee of the liquor shop. This petition was filed as a Public Interest Litigation suit under Article 226 of the Constitution seeking compliance with the Licenses Rules.

## Use of RTI

The Chief Administrative Officer of IIMB filed two complaints with the State Government and local authorities against the liquor shop about violation of the Licenses Rules, requesting they take action with regards to the liquor shop. However, there was no response or action taken.

At the same time, the local resident applied under the *Right to Information Act, 2005* (RTI Act) with the State Department of Excise for a certified copy of the licence that was granted to Sarovara's Wine Paradise, and the information was disclosed. The authorities provided the requested information, including a copy of the notification of grant of license and a copy of the actual license given to the licensee. These documents revealed that Sarovara's Wine Paradise was granted a licence, and was also permitted to shift its shop from another location to its current location near IIMB in violation of the Licenses Rules.

Access to this information was crucial to prove either one of two things. If the liquor shop had been opened without a valid license the State authorities would have been liable to shut it down. On the other hand, if there was a valid license issued by the appropriate authority, the petitioner could demonstrate that it had been issued in violation of existing rules. Therefore, the effect of seeking information under either circumstance would have been in the favour of the aggrieved parties.

## Decision

The Court held that the liquor shop license was "given in utter disregard to the intention of Article 47 of the Constitution[8] and restriction imposed under the rules" (paragraph 52). The State authorities were directed to shift the liquor shop from its location near IIMB to one that is legally permissible. The Court warned the State authorities to abide by the Licenses Rules, by letter and spirit.

## CHRI's Comments

Under the Licenses Rules, liquor licenses must be displayed prominently. However, Sarovara's Wine Paradise is not a public authority, so it was not obligated under the RTI Act to provide copies of their license to the litigants. Therefore it was necessary for the litigants to seek copies of relevant documents under the RTI Act from the licensing authorities.

However, mere disclosure of licenses to a single party was not adequate. CHRI believes that the license-related information ought to have been proactively disclosed under Section 4(1)(b)(xiii) of the RTI Act. This crucial provision in the Act requires all public authorities to publish "particulars of recipients of . . . permits or authorizations granted by it". The license issued to the liquor vendor was in the nature of an authorisation to legally sell liquor. Had the relevant documents been available on the Internet, and duly catalogued and indexed, as required under Section 4(1)(a), the aggrieved parties need not have filed the RTI application with the public authority. They could have simply downloaded them from the website. Section 4(2) of the RTI Act requires proactive disclosure of "as much information *suo motu* to the public . . . through various means of communications, including internet, so that the public have minimum resort to the use of the Act to obtain information."

The State Government authorities had not implemented the letter and spirit of the RTI Act in relation to the licenses they had issued. Had the State licensing authority complied with these provisions of the RTI Act, the grievances of the litigants would have likely been rectified much sooner.

[8] Article 47 reads as follows: **"**47. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

# Seed Association of M.P. Vs. Union of India (UOI) and Ors.

High Court of Madhya Pradesh
2009(4) MPHT 453, 2009(3) MPLJ 261
02.04.2009

## Facts

The Seed Association of Madhya Pradesh (Seed Association) is an association of plant seed producers and sellers. Some members of this association produce a variety of hybrid cotton seeds known as "Bt cotton", which have been genetically engineered to be more resistant to insects. These members have obtained valid licenses under the *Seeds Act, 1966*.

Genetically engineered organisms are regulated by rules framed in 1989 under the *Environment (Protection) Act, 1986*. These rules require sellers of Bt cotton seeds to obtain prior permission from the Genetic Engineering Approval Committee (GEAC), a body appointed by the Government of India. The rules also require the constitution of a State Bio-technology Coordination Committee (SBCC) to inspect, investigate, and punish violations of the statutory provisions.

The Government of Madhya Pradesh issued an order in 2007, constituting the SBCC in Madhya Pradesh. Clause 3 of this order required permission to be obtained from the SBCC prior to the sale of Bt cotton seeds. Seed Association argued that clause 3 of the order is illegal because there is no statutory basis for such a requirement. In other words, Seed Association argued that since permission had already been obtained from GEAC under the 1989 rules, no further permission was required under any other provision of law.

## Use of RTI

Seed Association made an information request under the *Right to Information Act, 2005* (RTI Act)to the GEAC, seeking clarification as to whether members of Seed Association who sold Bt cotton seeds needed to obtain permission from any State Authority or SBCC. The response received from the Government of India stated that "there is no provision in Seeds Act, 1966 and Seeds Rules, 1968, to obtain prior sale permission of the State Government for selling the seeds". (Para. 6).

At trial, the Government of India, although a respondent in this case, stayed true to what it said in response to the RTI application and supported the challenge by petitioner Seed Association. The Government of India argued that no prior permission was required under the *Seeds Act* or *Rules*, and while prior permission by the GEAC was required under the *Environment Act, 1986* and its rules, the State Government and committees like the SBCC had no such power to require prior permission. Specifically, the Government of India stated that the 2007 order, requiring prior permission from SBCC, was not in conformity with statutory provisions.

Seed Association also made the same request to the Director of Agriculture, Government of Madhya Pradesh. The response stated that permission was required under the 2007 order. It was this 2007 order that Seed Association challenged in this petition.

## Decision

The Court held that "[t]he order . . . containing the impugned clause 3, requiring a prior permission has absolutely no statutory basis . . . thus cannot be sustained." (Para. 33). The Court allowed the petition and "[c]lause 3 of the [2007 order], requiring the manufacturers/sellers of the Bt cotton hybrid seeds, to obtain prior permission from the State Authorities . . . is hereby quashed, being illegal, null and void and without any authority of law." (Para. 36).

# Land and Housing

## Shailesh Gandhi Vs. State of Maharashtra

High Court of Bombay
2010(2) Bom CR 408
17.09.2009

### Facts

The State Government of Maharashtra empowered the Slum Rehabilitation Authority (SRA) to create a scheme to provide inexpensive housing to 800,000 slum dwellers in Mumbai— India's commercial capital where land is one of the most sought after of resources. Mr. Shailesh Gandhi (now serving as Information Commissioner, Central Information Commission) filed a public interest litigation suit alleging that the housing scheme was being hijacked to benefit a few at the expense of the public at large, and praying that the respondent, State of Maharashtra, set up a special investigation team to investigate complaints of corruption in the implementation of the scheme.

### Use of RTI

Mr. Gandhi filed applications under the *Right to Information Act, 2005* (RTI Act) with the Anti Corruption Bureau (ACB) of the State Government, requesting details of investigations made into allegations of corruption in the implementation of the slum rehabilitation programme. Information obtained under the RTI Act revealed that the ACB had received 89 complaints of criminal misconduct against officials of SRA who colluded with the land developers. Only three of these complaints had been effectively investigated with the registration of first information reports. By filing this public interest litigation in the Bombay High Court, Mr. Gandhi revealed this unsavoury reality about the State Government's laxity in bringing the corrupt to book. The Court found that adequate action had not been taken by the ACB or the State Government in more than 10 cases.

### Decision

Refusing to monitor the action taken in these cases on its own, the Court ruled as follows:

(a) All these 87 complaints, except the ones which are already before the Court of Competent Jurisdiction, would be examined by the members of the High Powered Committee constituted by the State and the Committee upon the inquiry and examination of the relevant records shall record its opinion.

(b) While examining these complaints, the High Powered Committee shall take assistance of the police officers not below the rank of an Additional Commissioner.

(c) The collective opinion of these Authorities shall be recorded and the concerned departments shall take action in furtherance thereto in accordance with law.

(d) Wherever departmental or administrative action is called for, the concerned department whether the State of Maharashtra or statutory bodies like MHADA, BMC and SRA shall take action in accordance with the disciplinary rules applicable to its officers and employees without any further delay.

(e) Wherever element of criminality is involved, particularly in cases of fraud, impersonation or like cases, the investigation would be handed over to an appropriate agency which shall then proceed with the matter in accordance with law and without being influenced in any manner whatsoever by the position or status of the person involved in the case.

(f) All these complaints would be examined by the High Powered Committee assisted by the Additional Commissioner of Police nominated by Director General of Police, Maharashtra, expeditiously. In the event this Committee finds that illegalities or irregularities coupled with the element of criminality justify passing of certain interim directions with regard to stopping, regulating or even cancelling the development schemes, in order to achieve the object of settlement of genuine slum dwellers and the public interest, it would be free to do so, subject to the orders that may be passed by the Courts of Competent Jurisdiction. Rule is made absolute in the above terms, without any order as to costs.

## Rajiv Pujari and Ors. etc. etc. Vs. State of Orissa, represented through its Secretary, Revenue and Excise Department, Govt. of Orissa and Ors. etc. etc.

High Court of Orissa
2010(II) ILR CUT 1008
16.11.2010

### Facts

In June 2006, Vedanta Resources Limited filed an application with the State Government of Orissa proposing to create a private university in Orissa. The next month a Memorandum of Understanding was signed where the State Government confirmed the availability of about 8000 acres, and committed to provide an additional 7000 acres for this purpose. The Law Department under the State Government gave an opinion that the Government could acquire land for a Public Company under the *Land Acquisition Act*.[9] Subsequently, Vedanta Resources Limited changed its status from a Private Company to a Public Company, and its name from Vedanta Resources Limited to Anil Agarwal Foundation.

Exercising its power of eminent domain under the *Land Acquisition Act*, the Government of Orissa obtained additional land in favour of Anil Agarwal Foundation to establish a University. Owners of the land acquired by the Government filed a writ petition in the High Court of Orissa challenging the acquisition.

### Use of RTI

Rules 4(1) of the Land Acquisition (Companies) Rules, 1963 requires that an enquiry be conducted by the head of the district administration before the acquisition of land for a company. Petitioners obtained from the Government of Orissa a document under the *Right to Information Act, 2005*, which showed that the mandatory enquiry was never conducted. The Court agreed with this contention. (Para. 48).

### Decision

The Court held that the acquisition proceedings were "in flagrant violation of statutory provisions . . . of the Land Acquisition Act, . . . and liable to be quashed". (Para. 67). The Court directed the acquisition of land to be quashed, and the land restored to their respective owners. The Court also quashed the initial grant of public lands to Anil Agarwal Foundation.

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[9] The *Land Acquisition Act, 1894* empowers the Central and State Governments to acquire land in rural areas for a public purpose of for a company registered under the Companies Act provided certain procedures and conditions are complied with.

## Sudama Singh and Ors. Vs. Government of Delhi and Anr.

High Court of Delhi
Writ Petition (Civil) No. 8904 of 2009, No. 7735 of 2007, and 9246 of 2009
11.02.2010

### Facts

Rapid urbanisation has also brought about a rapid growth in urban poverty. Urban poverty has been exacerbated by the increased migration of rural folk in search of livelihood opportunities since the 1990s. Many of the urban poor live in informal squatter settlements in and around cities and towns also known as "slums".

The Supreme Court of India has held the right to shelter to be a part of the right to life guaranteed under Article 21 of the Constitution. The Government of Delhi has framed binding guidelines requiring the relocation of slum dwellers when they are displaced from their settlements in order to make space for public works. The Master Plan for Delhi, which is valid until 2021, lays down the land use pattern for the whole of the city. It also emphasises that squatter settlements should be rehabilitated or relocated.

As part of the plans for building infrastructure facilities for the Commonwealth Games held in 2010, the Government of Delhi evicted Sudama Singh and other slum dwellers and demolished their dwellings. The Government did not bother to ensure their rehabilitation or relocation despite binding guidelines. Sudama Singh and others petitioned the Delhi High Court against the actions of the Delhi Government. They claimed that they had valid identity cards proving their residency status in the slum clusters and that they provided essential services to the middle class and upper class colonies all over Delhi. They claimed their right to be rehabilitated or relocated as per the existing guidelines. The Government of Delhi argued that the slum dwellers had been squatting on land belonging to "right of way" category and therefore had no rightful claim to compensation or alternative land under the rehabilitation schemes.

### Use of RTI

The petitioners filed an application with the Public Works Department under the *Right to Information Act,* 2005 seeking information such as policies, orders, guidelines and rules that indicate the government's policy about slum dwellers occupying land categorised as "Right of Way". The Public Works Department, in its response, stated that the office did not possess any file which defines a land category specifically as "Right of Way", the policy regarding "Right of Way", or the entitlements of persons evicted from such categories of land. The petitioners produced this reply from the Public Works Department before the Court in support of their claim. They also argued that the Delhi Master Plan also did not recognise any exception to the Government's obligation of rehabilitating/relocating slum dwellers who were evicted from lands belonging to the "Right of Way" category. This crucial evidence helped the Court reach the conclusion that there is no "Right of Way" exemption that the Government can claim against providing resettlement benefits for evicted slum dwellers.

## Decision

The Court declared that the "decision of the respondents holding that the petitioners are on the "Right of Way" and are, therefore, not entitled to relocation, is hereby declared as illegal and unconstitutional." (Para. 62). The Court allowed the petitions and directed the cases of the petitioner slum dwellers to be considered for relocation to sites with basic civic amenities within four months of the Court's decision.

# Criminal Law

## Thenthamizhan alias Kathiravan alias Dakshinamoorthi Vs. State of Tamil Nadu

High Court of Madras
Writ Petition No. 20511 of 2008
24.11.2009

### Facts

In 1988m Thenthamizhan a resident of Tamil Nadu was convicted of multiple offences by competent trial courts. In the first case he was sentenced to death, and rigorous imprisonment for five years on each of two counts. The Principal Sessions Judge directed that the all the prison terms would merge with the death sentence and run concurrently. The Madras High Court modified the sentence of death to life imprisonment a year later. In 2002 he was convicted by another trial court for an earlier crime and sentenced to simple and rigorous prison terms between one month and two years. The trial judge directed that these prison terms would also run concurrently.

In 2006 on the occasion of the birth anniversary of a former Chief Minister of the State and a popular leader, the Government of Tamil Nadu ordered the release of all life convicts who had completed ten years in prison. The premature release was conditioned on the convicts having shown good behaviour in prison, being safe if released, and being accepted by family upon release. They were also required to execute personal bonds guaranteeing good behaviour. On this occasion, 472 life convicts including, 16 women, were released. In 2007 another 190 life convicts, including five women, were released on similar grounds to commemorate the same event. In 2008, during the birth centenary year of the same leader, the Government ordered the release of all life convicts who had completed seven years of imprisonment. Convicts aged 60 and above who had been in prison for five years were also ordered to be released. A total of 1406 prisoners obtained their freedom in this manner. However Thenthamizhan continued to languish in prison despite having served more than 14 years of the sentences awarded to him.

### Use of RTI

In October 2007, Thenthamizhan sought to know from the State Government why he was not given the benefit of premature release like other prisoners, by filing an application under the *Right to Information Act, 2005* (RTI Act). The Government replied that he could not be released because he had overstayed his leave from prison in 1995 and did not return until he was recaptured by the police and brought back to prison in connection with another case.

Aggrieved by this reasoning and the refusal of the Government to give him the benefit of the premature releases orders Thentamizhan filed a writ petition in the Madras High Court alleging discriminatory treatment. He claimed that he had not been given equal treatment by the law–a right guaranteed under Article 14 of the Indian Constitution.

The Government argued that Thenthamizhan had been convicted for a crime under the *Explosive Substances Act, 1908*. People convicted of such crimes were not eligible for premature release according to the scheme laid down by the Constitution and the Code of Criminal Procedure. The Government also argued that the conduct of Thentamizhan was not satisfactory.

## Decision

The Court held that the State Government had not raised any grounds that would disqualify Thenthamizhan from premature release. The Court observed that Thenthamizan had already served the full term of imprisonment under the *Explosive Substances Act, 1908*. Had he not been also convicted for the offences of murder and criminal conspiracy, he would have been released from prison long ago. Therefore the State Government was wrong in arguing that it could not consider Thenthamizhan for premature release. If any person falling under the scheme of premature release does not obtain a satisfactory decision, he or she may approach the courts on grounds of violation of the fundamental right to equality. The Government had failed to show which conditions making a convict eligible for premature release had not been satisfied in the case of Thentamizhan. Therefore the Court directed that the State Government will consider Thenthamizhan's petition for premature release under the scheme announced earlier within a period of two months and communicate the decision to him without fail.

## CHRI's comments

Under Section 4(1)(d) of the RTI Act, every person has the right to know the reasons behind a quasi-judicial or an administrative decision affecting him or her. So even if the Tamil Nadu Government were to reject Thentamizhan's representation for premature release it would have to justify its decision. He would then be able to seek judicial review of that decision before the Madras High Court. In the current case the Court also explained the well settled law that the power of judicial review extended to decisions of the President, the Governor, and the Governments granting pardon or commuting a sentence or ordering premature release of a prisoner.

## Hitesh Verma Vs. State of Jharkhand through Secretary (Home) and Ors.

High Court of Jharkhand
Writ Petition (Criminal) No. 304 of 2008
10.07.2009

### Facts

The wife of petitioner Mr. Hitesh Verma was found dead. An informant suspected it was a case of homicide, and lodged a case alleging that Mr. Verma and his parents demanded money and a car from Mr. Verma's now deceased wife, subjected her to cruelty to compel her to comply, and through this cruelty, killed her. Accordingly, the police investigated Mr. Verma and his parents. The police submitted a charge sheet for murder against Mr. Verma. Investigations into Mr. Verma's parents revealed that the deceased had been admitted to a hospital to be treated for acute bronchial asthma and non-sensitive pneumonia. After investigations of Mr. Verma's parents were complete, a supplementary charge sheet was filed against Mr. Verma. The supplemental charge sheet included a post mortem report, but did not include records showing the hospital admission.

Mr. Verma called for the production of a report which contains the treatment records but was refused by the Additional Judicial Commissioner. Mr. Verma alleged that this evidence was vital to his case, and would go to show his innocence. Mr. Verma filed this writ application to quash the refusal order of the Additional Judicial Commissioner and direct the production of the report at his hearing.

### Use of RTI

Mr. Verma's parents obtained the report at issue under the *Right to Information Act, 2005* from the police department. The documents they received included the treatment records of the deceased. Armed with this information, Mr. Verma prayed that the Court direct the report to be called for and considered at his hearing.

### Decision

The Court held that "it is the duty of the prosecutor as well as the Court to ensure that full materials facts are brought on the record so that there might not be miscarriage of justice." The Court quashed the Additional Judicial Commissioner's refusal, and directed the Commissioner to call for the report and consider it at the hearing.

# Recruitment

## Minakshi Chakraborty Vs. Registrar General, High Court and Ors.

High Court of Calcutta
Writ Petition No. 1730 of 2008
24.08.2011

### Facts

Ms. Minakshi Chakraborty and Ms. Chaitali Kundu both took the West Bengal Judicial Service Examination, 2007 for recruitment to the post of Civil Judge (Jr. Division). After the results were published and the viva-voce was complete, a final merit list was published in 2008. Ms. Chakraborty's position in the merit list was 76. Ms. Kundu's position was higher at 56. A decision was made to fill only 75 posts. So, Ms. Kundu—being ranked 56—was placed on the select list, while Ms. Chakraborty—being ranked 76—was not placed on the select list because she fell short by one ranking.

The advertisement for the examination required candidates to fill out application forms which included a column that required candidates to declare any previous employment that he or she may have held. The forms also instructed candidates who were in Government service or in service of any local or statutory body to submit an undertaking. This undertaking must state that they had informed the head of their office or department, in writing, that they were applying for the examinations for judicial service. Candidates were instructed to solemnly declare that if any information in their application were false, then their candidature would be liable to be cancelled.

Ms. Chakraborty alleged that Ms. Kundu had been employed as an assistant controller for the Women's Correctional Home,[10] Purulia since 2005, but did not mention anything regarding this employment in her application. It is on these grounds that Ms. Chakraborty filed this petition to the High Court of Calcutta and prayed for the cancellation of the selection of Ms. Kundu. Because that would free one spot on the select list, and Ms. Chakraborty is next on the merit list, Ms. Chakraborty prayed that she then be selected to be appointed to the post of Civil Judge.

### Use of RTI

Ms. Chakraborty sought information under the *Right to Information Act, 2005* from the State Public Service Commission (the Commission) of West Bengal. She received a response from the Commission stating that Ms. Kundu had mentioned nothing regarding her employment in her application for the examination. Subsequently, Ms. Chakraborty filed her next RTI request with the Prisons Directorate to ascertain Ms. Kundu's employment status. She received a response stating that Ms. Kundu was employed as an Assistant Controller of the Women's Correctional Home, Purulia since 11 April 2005.

[10] Correctional homes in West Bengal are governed by the West Bengal Correctional Services Act, 1992.

Ms. Chakraborty submitted the two responses to the Court to establish that Ms. Kundu failed to include required information and therefore her candidature was liable to be cancelled. The Court agreed, finding that it was "established beyond doubt that Chaitali Kundu suppressed an absolutely relevant fact and therefore will be deemed to have submitted a defective Application which cannot be considered to be a proper Application at all." (Para. 16).

## Decision

The Court held that Ms. Kundu's selection was illegal and directed that "the next candidate in waiting, being Minakshi Chakraborty, is given the appointment." (Para. 19).

## Md. Najrul Hassan Vs. State of Jharkhand and Ors.

(decided along with two other writ petitions of 2007)

High Court of Jharkhand
2008 (57) BLJR 34
12.08.2008

### Facts

The *Water (Prevention and Control of Pollution) Act, 1974* passed by Indian Parliament provides for the establishment of pollution control boards at the Central and State level throughout the country. The Act prescribes the minimum qualifications necessary for an individual to be appointed as Secretary of the pollution control board.[11] In Jharkhand, the State Government appointed Mr. S K Singh as the Member Secretary of the State Pollution Control Board on a temporary basis in 2006. Later, in 2007, the State Government replaced him with Mr. R K Sinha. Mr. Singh petitioned the High Court of Jharkhand in 2007 claiming that Mr. Sinha did not possess the requisite knowledge, experience and qualifications to occupy that post. He also pointed out that Mr. Sinha was accused in several pending criminal cases. A social worker also filed a public interest litigation suit seeking orders quashing the appointment.

### Use of RTI

Mr. Singh obtained several documents from the Government of Jharkhand under the *Right to Information Act, 2005* that showed that Sinha only possessed an M.Sc. Degree and did not have the requisite qualifications, knowledge, and experience in scientific disciplines such as engineering and pollution control management to be appointed to the post. This information was crucial to prove that Mr. Sinha did not have the appropriate qualifications to hold the post. The petitioners also pointed out an earlier decision of the Supreme Court, which it was held that persons must possess the statutorily required qualifications to be appointed to this position.[12]

### Decision

The Court quashed the notification appointing Mr. Sinha to the post of Member Secretary, because he lacked the required qualifications and had criminal cases pending against him. The Court emphasized that the post should be filled "by the most competent person having a clean record". (Para. 35).

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[11] Section 4 of the Water Act prescribes the necessary qualifications as follows: The Board shall comprise of "a full-time Member Secretary processing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, appointed by the State Govt."

[12] *Akhil Bharat Gosewa Sangh Vs. State of A.P. and Ors.* (2006) 4SCC 162.

# Anita Vs. The Union of India (UOI)

High Court of Bombay
2010(3) Bom CR 580
09/03/2010

## Facts

Respondent agents of Indian Oil Corporation, a public sector company under the Government of India, issued an advertisement inviting applications for the allotment of a retail dealership for someone belonging to "Scheduled Tribe category". The advertisement specifically states that candidates would be rejected unless they produced a certificate attesting to their identity as a member of a Schedule Tribe (ST).[13]

Petitioner Ms. Anita Koli and respondent Ms. Ujwala Palspkar both applied for the dealership and were called for the interview. Ms. Palspkar was selected for the dealership by the Indian Oil Corporation and the Central Government. Ms. Koli filed a complaint with the officers of Indian Oil Corporation, claiming that the selection of Palspkar was improper as she had not been able to produce a valid certificate of her ST identity. When no action was taken on the complaint, Ms. Koli filed this Writ Petition.

## Use of RTI

When Ms. Koli learnt that Ms. Palspkar was allotted the dealership, she sought a copy of Ms. Palspkar's ST identity certificate from the Caste Scrutiny Committee under the *Right to Information Act, 2005*. The Committee was set up to scrutinise all caste and tribal identity certificates submitted during the selection process. In response to her application Ms. Koli was informed that Ms. Palspkar's caste claim was pending with the Committee. Armed with this evidence Ms. Koli approached the Bombay High Court (Aurangabad bench) challenging the grant of the dealership to Ms, Palspkar. The advertisement for applications for dealership and the interview call letter, both clearly mentioned that possession of a valid tribal identity certificate was an essential qualification for being considered eligible for the dealership. Despite failing this precondition, Ms. Palspkar was still awarded the dealership.

## Decision

The Court allowed Ms. Koli's petition and held that "when [the] interview was held, the petitioner was the only candidate eligible for selection since he [sic] possessed the caste validity certificate", so "petitioner [Koli] is bound to succeed in this petition." (Paras. 16, 17). The Court quashed the allotment

[13] The Constitution of India guarantees members of identified Scheduled Castes and Scheduled Tribes reservation of a specific number of seats in Parliament and State Legislatures and also a percentage of jobs in the public services based on population figures. These provisions have been enshrined in the Constitution in order to increase the participation of these historically disadvantaged communities in public life. This reservation policy has been extended to the grant of various dealerships by government owned oil and gas companies in order to provide livelihood opportunities for the enterprising members of these communities.

to Ms. Palspkar and directed the Government of India and the officials of Indian Oil Corporation to allot the retail outlet dealership to Ms. Koli instead.

# Rights of the Marginalised

## Sewerage Employees Union (Regd.) M.C. and Anr. Vs. Union of India (UOI) and Ors.

High Court of Punjab and Haryana
Civil Writ Petition No. 1983 of 2008
10.12.2008

### Facts

Underground sewage systems need to be cleaned regularly, but most municipalities in India are not equipped with machines to clean them. Therefore, manual workers are employed to clean up this mess. More often than not, people belonging to the lowest of castes are employed for these purposes. They are treated as untouchables even though the practice of untouchability is prohibited by the Constitution and manual scavenging is prohibited by statute.

The petitioner Sewerage Employees Union filed a public interest litigation suit in the Punjab and Haryana High Court seeking directions to the respondents, namely—Union of India, State Government of Punjab, and the State Government of Haryana—to take specific steps to improve the working conditions of workers employed to clean up sewers.

### Use of RTI

The petitioners obtained information under the Right to Information Act, 2005 from the Government of Punjab about fatal accidents that occur during the sewage cleaning process. The Court cited this information as one factor in its judicial finding that "the working conditions of those employed for cleaning sewage lines are wholly incompatible with human dignity and hazardous for their health and safety." (Para. 4). This finding was key to the Court concluding that the issue of the case bears on "the right of Sewerage Workers to live with human dignity as guaranteed under Article 21 of the Constitution of India". (Para. 9).

### Decision

The Court directed the respondent governments to constitute and provide funding to an expert body to address the problems raised in this public interest litigation.

## Prof. I Elangovan Vs. Govt. of Tamil Nadu rep. by its Secretary Dept. of Higher Education and Bharathiyar University rep. by its Registrar Bharathiyar University

High Court of Madras
(2010) 2 MLJ 775, 2010 Writ LR 41
13.10.2009

### Facts

The *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995* (PWD Act) requires the Central and State Governments to reserve 3% of seats in educational institutions, and a similar proportion of jobs in government and public sector bodies, for physically disabled persons. These provisions are often not followed. Prof. I Elangovan is a well known crusader for the promotion and the protection of the rights of the disabled. He had brought Tamil Nadu Government's non-compliance with the provisions of the PWD Act to the notice of the Madras High Court on two earlier occasions. In the current case Bharathiyar University had issued an advertisement calling for applications for 29 faculty posts (one professor, nine readers, and nineteen lecturers). While the advertisement mentioned the availability of reservations for people from the scheduled castes, scheduled tribes and other backward classes it was silent on the issue of reservations for persons with disabilities. Prof. Elangovan filed a writ petition against Bharatiyar University in the Madras High Court challenging this omission.

### Use of RTI

Prior to filing the writ, Prof. Elangovan sought to know from Bharathiyar University under the *Right to Information Act, 2005* (RTI Act) whether it had appointed anybody to the faculty under the disabled quota. The University replied that no one had been appointed from that category to any post from lecturer to professor grade. Prof. Elangovan submitted this information to the Court through his writ petition.

### Decision

The Court reasoned on the basis of the clear provisions contained in the PWD Act that the University had no option but to set aside seats for physically disabled persons. The statute did not allow any scope for discretion. The Court reiterated earlier decisions from the Supreme Court which held that these provisions of the PWD Act were mandatory. Accordingly, the Court directed Bharathiyar University to comply with the provisions of the PWD Act, and direct all of its departments and institutions to identify posts for reserving them for persons with disabilities.

### CHRI's Comments

Through the RTI Act, Prof. Elangovan was able to obtain compelling evidence that Bharathiyar University was not complying with the provisions of the PWD Act. Without the RTI Act it would have been difficult

for Elangovan to find out how many people the University employed under the disabled quota. However, it must be pointed out that information about reserved posts and the occupants of such posts should have been proactively disclosed under the RTI Act. Section 4(1)(b) of the RTI Act requires all public authorities to disclose the rules and regulations applicable to them and details of recipients of concessions. If this information were disclosed voluntarily Prof. Elangovan would not have needed to file a formal information request and University would have saved the time and resources required to process and respond to the request.

# Access to Court Records

## Bheemacharya Balacharya Varakhedakar Vs. Executive Officer, Shree Vithal Rukhminhee Mandir Samiti and Ors.

High Court of Bombay
Writ Petition No. 10226 of 2009
02.08.2010

### Facts

The Bombay High Court had directed a trial court in Maharashtra to decide a suit within a specified time. The trial court then applied to the High Court for extension of time limits. The High Court granted the extension. Petitioner Varakhedakar applied for certified copies of this correspondence. The petitioner also applied for certified copies of documents produced by the Charity Commissioner in the original suit. The trial court rejected the application on the grounds that the civil manual does not include any provisions that allow for providing of certified copies of such correspondence between courts or also the documents produced in a trial. Petitioner Mr. Varakhedakar filed a writ petition in the Bombay High Court under Article 226 of the Constitution challenging the rejection of his application for copies of the correspondence between the trial court and the High Court and other documents relating to the trial.

### Decision

The Bombay High Court found that that certified copies of the correspondence between the trial court and the High Court would have been granted if Mr. Varakhedakar had applied under the *Right to Information Act, 2005* (RTI Act). Therefore the Court held that access could not be refused merely on technical grounds as the civil manual was drafted several decades before the enforcement of the RTI Act. As regards other documents the Court refused the petitioner's request to be allowed to photocopy the documents outside of the trial court premises. Instead it permitted the grant of certified photocopies of documents copied on the photocopier machine situated on the trial court premises. However, the Court permitted photocopy of only such documents that had been proved in the trial and not those which had not been proved yet.

### CHRI's comments

The RTI Act does not bar disclosure of documents related to court proceedings if none of the exemptions are attracted. So in theory a litigant or a stranger to a suit can obtain copies of documents related to a judicial proceeding under the RTI Act. Unlike in other countries India's RTI Act does not bar a requester from seeking copies of judicial records just because there are other Court Rules governing these matters. Yet it is commonplace for many courts in India to refuse access to documents related to decided or pending cases under the pretext that copies must be sought under the rules of the court only and not under the RTI Act. In this case, the Bombay High Court has moved away from this trend, and

correctly recognised that what can be given under the RTI Act cannot be refused under the other rules applicable to courts.