

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.
PUBLIC INTEREST LITIGATION NO. OF 2012
DISTRICT GREATER BOMBAY.

IN THE MATTER OF ARTICLE 14,
16, 21, 38, 50, 226 and 227 OF
THE CONSTITUTION OF INDIA

AND

IN THE MATTER OF ARTICLE 10
OF THE UNITED NATIONS'
UNIVERSAL DECLARATION OF
HUMAN RIGHTS

AND

IN THE MATTER OF SECTION 15
OF RIGHT TO INFORMATION
ACT, 2005

1. Krishna Harischandra Rao]
Residing at 12, Shiv Krupa, Kulupwadi]
Road, Borivali (E), Mumbai – 400066.]

2. Sulaiman Bhimani]
Carrying on business at Shop No 5,]
RNA Plaza, Somanigram,]
Goregaon (West), Mumbai 400 102.]

3. Gaurang R. Vora]
Residing at Plot No: 292 – A/8 Satguru]
Niwas, Sion (East), Mumbai 400 022.]
4. Mohammed Afzal]
Residing at C/508,]
Aakaar CHS Ltd, Kalyaan Complex,]
Yari Road, Versova, Andheri (W),]
Mumbai– 400061.]
5. Anil Vedvyas Galgali]
Residing at Old Kharwala Chawl, Kajupada,]
Saki Naka, Mumbai 400 072.]... Petitioners

Versus

1. The State of Maharashtra through]
Office of the Chief Secretary]
Government of Maharashtra,]
Mantralaya, Mumbai. 400 032.]
2. Mr Ratnakar Yashwant Gaikwad]
Former Chief Secretary and Present]
Chief State Information Commissioner]
Office of State Information Commission]
13th floor, New Administrative Building]
Opposite Mantralaya, Mumbai 400 032.]
3. Mr Prithviraj Chavan, Chief Minister of]
Maharashtra, Mantralaya,]

- Mumbai 400032]
4. General Administration Department]
 through the Secretary]
 Government of Maharashtra,]
 Mantralaya, Mumbai 400 032.]
5. High Powered Committee for selecting]
 the Chief State Information Commissioner]
 Government of Maharashtra,]
 Mantralaya, Mumbai 400 032.]... Respondents

To,

THE HON'BLE CHIEF JUSTICE AND OTHER HON'BLE
 JUDGES OF HON'BLE HIGH COURT OF JUDICATURE AT
 BOMBAY.

THE HUMBLE PETITION
 OF THE PETITIONERS
 ABOVENAMED

MOST RESPECTFULLY SHEWETH

1. The Petitioners are citizens of India, resident in the State of Maharashtra. Their rights, along with those of all other citizens of India and Maharashtra, are harmed by the prejudicial selection and appointment of former state Chief Secretary Mr Ratnakar Gaikwad (who is named herein as Respondent no. 2 or R2) as Chief State Information Commissioner (hereafter referred to as Chief SIC) of Maharashtra Information Commission, an independent watchdog or "integrity institution" for ensuring transparent disclosure of government

documents and other information to citizens to maximize transparency and accountability, and minimize corruption. Maharashtra Information Commission is a statutory body constituted under Right to Information Act 2005 (hereinafter referred to as RTI Act) to compel the state government to make necessary disclosures of documents and records to citizens of India, and uphold the rights of those who request specific information under the RTI Act. The respondents are State Government and officials working under the State Government. They are therefore responsible to act in accordance with Constitutional mandates, to safeguard the fundamental rights of individuals and the general public, and to follow Supreme Court orders.

2. PARTICULARS OF THE PETITIONERS

Petitioners nos. 1, 3 and 4 are collectively known for actively disseminating knowledge and practical inputs among Right to Information applicants, appellants and other citizens. They are widely networked with RTI activists around the country, and are opinion-leaders whose views on numerous civic issues are widely sought after and reported. They are frequently invited to impart training in RTI to various citizens groups, NGOs and government organizations such as the training centre of the Accountant General's office at Bandra, and YASHADA (Yashwantrao Chavan Academy of Development Administration) at Pune. Templates developed by them were published in the report on RTI implementation submitted by PriceWaterhouseCoopers in 2009, with recommendations for their assimilation at

all levels of RTI application and appeal process. Owing to pressures brought by them along with Petitioners nos. 3 and 4, the then Chief State Information Commission Dr Suresh Joshi issued elaborate directions to the State Government in 2009, which was published by government as Government Resolutions (GRs). They are accused in Case no. 800368 of 2010 for the so-called offense of singing the national anthem in protest along with 7 other activists at the office of the then Chief State Information Commissioner Dr Suresh V Joshi. They were arrested and charged with IPC sections 142, 145, 146, 448, 452 and 353. Since October 2009, when Shri Wajahat Habibullah resigned from his post as Central Information Commissioner, these three petitioners have been campaigning for transparent selection of Information Commissioners, and have mobilized the public opinion, prominent activists and national media to support this cause. Along with other national-level activists from Chennai, Hyderabad and Delhi, they were petitioners in a Writ Petition filed before Delhi High Court in 2009.

2.1 Petitioner no. 1, Krishna Harischandra Rao (known as “Krishnaraj Rao”) is a professional journalist, publisher, content creator and a nationally known RTI activist, and a journalist who issues press releases on behalf of other RTI activists and whistle-blowers. In October 2010, he went on an indefinite fast that lasted nine days at Ralegan Siddhi and in Mumbai to mobilize Anna Hazare's support for this cause, and to protest against the non-transparent round of selections

that were held in the State. His PAN numbers are AABPR8838A and AAJHR8221B (HUF), and his annual income is Rs 2.8 lakh approximately.

2.2 Petitioner no. 2, Sulaiman Bhimani, is an interior and civil contractor. He is a Project Affected Person who had a flourishing business until his office was displaced from Andheri West, and he was given alternative premises at in a degraded and disorderly area called Oshiwara, Goregaon West. He has taken up a running battle against the subhuman conditions and unhygienic environment provided by MMRDA in the rehab colony, without proper roads, street lights, storm water drains, adequate sewage system. He has organized public meetings, made video documentaries, and taken various measures to seek justice for the residents of this city. He has taken up his battle against MMRDA's negligence before various forums including the Human Rights Commission, the police, Chief Minister's office and Prime Minister's office. His exposes of various scams, especially those pertaining to the tenure of R2 as Metropolitan Commissioner, are widely published by the media. His PAN no. is ADEPB0688E, and his average annual income is about Rs 3 lakh.

2.3 Petitioner no. 3, Gaurang Rasiklal Vora is a pathologist, who, since 1998, has worked with prominent civil rights and environmental groups for transparency and accountability in government servants and elected representatives. He is a leading member of a group called F-North Ward

Citizen's Federation formed in 2007 for this purpose. Since 2002, he has used the Right to Information Act (Including the Maharashtra RTI Act) to expose dereliction of duty, mal-administration and corruption. In association with stalwarts of the RTI movement, he has given training in RTI to many Public Information Officers and First Appellate Authorities. His PAN no is AAPV5102E, and his annual income is about Rs 6.5 lakh.

2.4 Petitioner no. 4, Mohammed Afzal, is a landlord, and a Consumer, Human Rights and RTI activist for the past 32 years. He is associated with reputed NGOs working on civic, social and traffic issues. He is working on several Government Committees like the MCGM Apex Committee, District Road Safety Committee and Traffic Advisory Committee. He has taken up many public causes such as safe practices in petrol sampling, and has filed a PIL before this Hon'ble court for remedying shortage of government staff to conduct mandatory safety inspections of lifts. His Aadhar Card (UID) number is 374226837749, his PAN Number is AEDPA6164Q and his annual income is about Rs 3,09,000.

2.5 Petitioner no 5, Anil Vedvyas Galgali, is a government-accredited freelance journalist holding Press Accreditation Card no Mumbai/1505. Since 1994, he has been reporting issues of civic importance. He is also a well-known RTI activist whose findings and exposes are prominently

reported by vernacular as well as English media. He had filed a successful PIL before this Hon'ble court against Govt of Maharashtra & Airport authority of India for the removal of illegal encroachment and construction of permanent retaining wall in Jarimari area, to prevent breach of Airport security. His reports and exposes of various scams in MMRDA and the state government have been widely published by the media, including many pertaining to the tenure of R2 as Metropolitan Commissioner and Chief Secretary. His Aadhaar Card (UID) no. Is 9693 6023 3917. His PAN no. is AEOPG9121J, and his annual income is about Rs 4 lakh.

3. CAUSE OF ACTION

The cause of action for filing this Public Interest Litigation arises as the facts of the selection of R2 point to manipulation, nepotism and *mala fide* intentions on the part of the respondents. In his capacity of Chief Secretary from January 2011 till May 2012, R2 was himself a part of the inner circle responsible for conducting the selection process whenever vacancies arose. R2 neglected this duty by leaving the office of the Chief SIC vacant for over 10 months. The respondents neglected to convene a meeting of the High Powered Committee (R5), and the post of Chief SIC, as well as three other posts of SICs, were allowed to lie vacant for periods ranging from 4 to 16 months. Then, suddenly, two days before his retirement, R2 wrote a letter to the Chief Minister (Respondent 3 or

R3) seeking appointment as Chief SIC. See Exhibit A/1 (Page ___ to ___).

The offices of Chief Secretary and Chief Minister are extremely close in terms of their working relationship, and therefore, this job application letter may be seen as a letter written by the left hand to the right hand.

The application of R2 was fast-tracked by the respondents, who are all colleagues and close associates of R2, in such a way that within 6 days after his retirement from the post of Chief Secretary, a meeting of the High Powered Committee (Respondent 5) was convened. See Exhibit A/2 (Page ___ to ___).

R5 then selected R2 as Chief Information Commissioner. See Exhibit A/3 (Page ___ to ___).

The next day, i.e. on the 7th day after his retirement from the post of Chief Secretary, an appointment letter and notification was issued, signed by Mr Jayant Banthia, Chief Secretary, who was the successor of R2. This further establishes the petitioners' argument that the selection and appointment of R2 is really the case of a selector and/or appointing authority selecting and appointing himself. This is an incestuous selection and appointment, devoid of the necessary at-arms-length distance between the selector and the candidate. See Exhibit A/4 (Page ___ to ___).

No other selections were made in this round of selections, and other benches of Maharashtra Information Commission continue to lie vacant.

R2 was sworn in the next day by the Governor of Maharashtra held in Raj Bhavan, in the presence of Chief Minister Prithviraj Chavan, Chief Secretary

Jayantkumar Bantia and many other dignitaries. See Exhibit A/5 (Page ___ to ___).

The functions of the Chief SIC and of Maharashtra Information Commission are such that it is improper to fill this post through in-house selection from within the public authorities over which they will exercise jurisdiction. In this respect, this post differs from technical posts such as Chiefs of armed forces or Scientific Advisor to the Govt. of India, where in-house selection may be justified. This post also differs from constitutional positions such as that of Governor or President, where the eminence of a candidate is paramount, and where there is no daily pressure to perform any quasi-judicial roles. However, it is a regrettable fact that, in blatant disregard for the intent of the Right to Information Act 2005, such in-house selections for State Information Commission are currently the norm rather than the exception. The selection and appointment of R2 exemplifies the blatant abuse of dominant position, power and influence by those in government and administration. Sadly, such abuse of power is routinely practiced, and usually goes unnoticed and unopposed by civil society.

4. RELEVANT SECTIONS OF RTI ACT 2005

4.1 As per Section 15(3) of the RTI Act, "The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of the Chief Minister, who shall be the Chairperson of the committee; the

Leader of Opposition in the Legislative Assembly; and a Cabinet Minister to be nominated by the Chief Minister.”

- 4.2 As per section 15(4) of RTI Act 2005, “The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.”
- 4.3 As per Section 15(5), “The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance”.
- 4.4 The subtitle of the RTI Act elaborates the intent and purpose of this appointment: “An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information

Commissions and for matters connected therewith or incidental thereto.”

- 4.5 The preamble further clarifies, “Whereas the Constitution of India has established democratic Republic; And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed; And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information; And whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal; Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it...”
- 4.6 As per Section 16(5)(a) of the RTI Act, “The salaries and allowances payable to and other terms and conditions of service of — the State Chief Information Commissioner shall be the same as that of an Election Commissioner.” The Salaries, allowances and other perquisites are as per CEC and Other ECs (Conditions of service Act, 1991) and the Supreme Court Judges (Salaries and Conditions of Service) Act,

1958). The Scale of payments of allowances and perquisites paid to Chief SIC is also the same.

- 4.7 Sections 18, 19 and 20 have a detailed description of the court-like powers of the Chief SIC and other SICs to conduct hearings, give orders, impose monetary penalties, recommend disciplinary action and take many other actions necessary for securing timely and accurate information for the RTI appellant. All these sections indicate that the Chief SIC and other SICs are required to be judge several state government officials in the course of their day-to-day duties, and often to pass strict orders that are adverse to the individual interests of members of government and administration, in order to uphold the transparency, accountability and integrity of the government.

5. LEGISLATIVE INTENT

- 5.1 From a plain reading of the above-mentioned sections of the Act, the legislative intent or *ratio legis* is clear: Chief SIC and SICs are to be eminent and experienced citizens who are autonomous. The Chief SIC and SICs are not intended to be a part of the hierarchy of the state government. Section 15(3) and 15(5) are intended to ensure an open selection of an independent “person of eminence” who will have sufficient knowledge, experience in public life, and sufficient stature to stand up firmly to any pressures from the government, in order to help

the common man hold the government accountable under the RTI Act. Such a person is intended to bear a weighty responsibility, and is therefore given the stature equivalent to that of an Election Commissioner or a Supreme Court judge. In no way does the Act recommend or even imply that the person selected for this post should preferably have a civil service background. On the contrary, application of commonsense would suggest that anybody who enjoys closeness with the government should be appointed as SIC or Chief SIC only with utmost caution, only in exceptional cases, and with thorough screening and safeguards to ensure their objectivity and impartiality.

5.2 The lofty legislative intent is ignored and defeated by the respondents' repeated actions. It is the general practice in Maharashtra (and, indeed, other states, and often at the centre also) that only retiring bureaucrats and civil servants are selected as Chief SIC and also SICs. Till date, out of a dozen such appointments in Maharashtra so far, only one appointment has been the exception to this unwritten rule of retired civil servants being appointed as SICs and Chief SIC, viz. the appointment of Mr Vijay Kuvalekar, a former journalist, as SIC.

6. "JUDGE IN HIS OWN CAUSE" The appointment of R2 sets the stage for continuous violation of the universally

accepted Principle of Natural Justice, particularly, “*Nemo iudex in causa sua*” i.e. “*No man is permitted to be judge in his own cause*”. The stage is set for repeated violation of natural justice and Article 14, because the task before R2 is very largely to hear cases against the State Government in general, including many organizations that R2 himself headed. (This is not without precedent, as the predecessor of R2, Dr Suresh Joshi, who had earlier headed MMRDA and Urban Development Department (UDD), did likewise, and went unchallenged.) Many appeals and complaints before R2 will pertain to his own tenure because of the time-lag of 12 to 24 months caused by pendency of cases. Hence, R2 is now placed in a position where he will literally be a “*judge in his own cause*”.

7. VIOLATION OF COMMON MAN'S FUNDAMENTAL RIGHTS

The impugned appointment of R2 as Chief SIC raises important questions concerning Equality before the Law (Article 14) and Life and Liberty (Article 21). Lakhs of citizens in this state, and all over the country, are using Right to Information to seek enforcement of their collective and individual rights from the administration, including right to proper civic amenities, proper supply of foodgrains and other essentials of life under the Public Distribution System, their housing from agencies such as MHADA (Maharashtra Housing & Area Development Authority) and SRA (Slum Rehabilitation Authority), as well as their human rights from the police

and municipal authorities. Hence, improper implementation of Right to Information by the State is not an academic matter, but a matter concerning the Life and Liberty of citizens, and also a matter of Equality before the Law and Equal Protection of the Law.

The petitioners emphasize that Right to Information is not a matter concerning only intellectuals and anti-corruption crusaders. The RTI Act is being utilized by the common man to seek information concerning his day-to-day needs such as water, housing and pensions. Having the proper information and government documents enables the common man to seek his rights on the basis of rule of law. Hence, having an independent and unbiased Information Commission is a matter of Life and Liberty, guaranteed to all citizens under Article 21 of the Constitution. The common man who is currently forced to plead before a senior bureaucrat, namely R2, to take action against his own brother bureaucrats and political masters is acutely aware of the powerlessness and the pathetic futility of his own actions! The respondents have placed the common man in a pitiable and helpless situation indeed!

8. VIOLATION OF UNIVERSAL DECLARATION OF HUMAN RIGHTS

India is not only a signatory to the Universal Declaration of Human Rights passed by the United Nations in 1948, it reportedly participated in the drafting also. As per Article 10 of this declaration: "Everyone is entitled in

full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations..." But, sadly, citizens of Maharashtra and of India are persistently being deprived of this sacred right with respect to right to information. They are placed before a patently biased tribunal for determination of their rights under RTI Act 2005, and this is an ironic situation indeed!

9. EXECUTIVE-JUDICIARY SEPARATION IS VIOLATED

The doctrine of executive-judiciary separation is irreparably violated by the impugned appointment of R2. Article 50 of the Constitution says, "The State shall take steps to separate the judiciary from the executive in the public services of the State." This doctrine is crucial for proper functioning of our democracy, and for maintaining the system of internal checks and balances. The appointment of a state Chief Secretary as Chief SIC immediately upon his retirement removes any distinction between Maharashtra government and Maharashtra Information Commission, and damages the democratic fabric of Maharashtra. The petitioners humbly point out that this Hon'ble Court is duty-bound to protect the quasi-judicial tribunals from such infringements by the executive.

10. LOCUS STANDI OF PETITIONERS

The petitioners are national-level campaigners for the cause of transparent appointment of Information Commissioners since 2009. They were petitioners before Delhi High Court in a PIL (WP Civil no. 12918 of

2009) seeking directions for a due procedure for transparent and open selections of Central Information Commissioners. They are also well known for their initiatives in seeking to hold state government bodies like MMRDA answerable by the effective use of RTI, complaints to the proper authorities, and campaigning. Their sustained efforts are well reported by the media and well appreciated by the community of RTI users.

11. HOW PETITIONERS EXHAUSTED THEIR REMEDIES

11.1 In a PIL filed before Delhi High Court on 4 November 2009 (WP Civil no. 12918 of 2009), the Petitioners sought similar reliefs in respect of Central Information Commission. Their main prayers were: "(A) Direct the respondents to widely advertise the post of CCIC (Chief Central Information Commissioner) and give sufficient time and opportunity for submitting candidatures to a wide cross-section of those who may be eligible for the post, all over India and in all walks of life. (B) Direct the respondents to declare specific criteria of suitability for the post of CCIC, and use these criteria to conduct transparent, non-discriminatory screening procedures to select the best among candidates, who are less prone to conflict of interest."

11.2 In the present case, before approaching this Hon'ble Court, the petitioners conducted several public awareness campaigns in Maharashtra during 2010 and 2011. They wrote numerous representations to the respondents and many

other concerned persons including Governor of Maharashtra (the appointing authority) and Leader of Opposition (a necessary part of the High Powered Committee i.e. R5). They addressed them through direct petitions, open letters, and official meetings with them, urging them to perform the duties cast upon them by specific sections of the RTI Act. These petitioners repeatedly called upon them to invite applications from eminent citizens who are qualified to apply for the posts of SICs and Chief SIC, and also declare criteria of suitability. A sample of their representations and media coverage of their campaigns are seen in Exhibits B/1 to B/10 (Page ___ to ___).

- 11.3 Petitioner no. 1 protested by going on an indefinite fast in October 2010 in an attempt to prevent the appointment of SICs and Chief SIC who were then also selected in a non-transparent and arbitrary manner. The fast lasted nine days. Many leading social activists from the state, including Shri Anna Hazare, were motivated to write forceful letters to the respondents demanding transparent appointment of Chief SIC and SICs by a due procedure. See Exhibits C/1 and C/2 (Page ___ to ___).
- 11.4 The respondents' intention to select R2 as Chief SIC became known to the petitioners through their sources in Mantralaya in February 2012, about four months ahead of the actual selection.

The petitioners, along with many other citizens, wrote open letters to the respondents that specifically pointed out the deficiencies in such a pre-meditated appointment of R2. This is seen in Exhibit D1 (Page ___ to ___).

- 11.5 Even after the respondents made the selection on 6 June 2012, the petitioners made a last-minute effort to stop the appointment of R2, who was not yet sworn in. They addressed a letter to the Governor of Maharashtra, pointing out the deficiencies in the selection, drawing his attention to the lawful position as per the Supreme Court, and urging him not to appoint R2 as Chief SIC. This is also seen in Exhibit D2 (Page ___ to ___).

12. JURISDICTION OF THIS HON'BLE COURT

- 12.1 The litigants in this case are all permanent residents of this State and of Mumbai city. As per Article 226 of the Constitution, it falls within the jurisdiction of this Hon'ble Court to issue suitable directions, orders or writs to the State Government, including interim orders and stays. No other subordinate court has these powers.
- 12.2 As per Article 227, "(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. (2) Without prejudice to the generality of the foregoing provision, the High Court may— (a) call for returns from such courts; (b) make and issue

general rules and prescribe forms for regulating the practice and proceedings of such courts; and (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts”.

12.3 The present matter pertains to such a tribunal, namely Maharashtra Information Commission intended “for citizens to secure access to information under the control of public authorities” as per the RTI Act. The Chief SIC appointed as per Section 15 of the RTI Act heads this tribunal. Its court-like powers to hear appeals and complaints, and impose penalties, are set out in Section 18, 19 and 20. One may appeal the orders of Maharashtra Information Commission only before this Hon’ble court. Hence, it falls upon this Hon’ble Court to exercise its power of superintendence under Article 227, to safeguard its constitutional functioning.

12.4 Also, the present petition calls into question the last clause in Section 15(5) of the Right to Information Act 2005, viz. “or administration and governance”, and to consider the question of its being *ultra vires* the Constitution Articles 14, 16(1) and 21, and also contrary to the stated purpose of the RTI Act. Orders are sought for striking down this clause as being contrary to the Constitution’s purpose of securing “Justice – social, economic and political” for the people of India.

12.5 This Hon'ble Court is the only one empowered to provide such reliefs prayed for.

13. EXAMINING THE FACTS OF THE CASE

13.1 The posts of SICs and Chief SIC are public posts. As per documents available under RTI, about 60 persons, including some petitioners, had sent letters of application for this post before and after it fell vacant. See Exhibit E/1 (Page ___ to ___).

13.2 In pursuance of the respondents' legal duty to select the best possible candidate from all the available candidates (as opposed to choosing the one candidate who was close at hand), it was legitimately expected that the respondents should have announced suitability criteria, called for documents from the candidates, held interviews etc. But the respondents' pre-decided intention and zeal to select R2 as Chief SIC deprived all other possible candidates of their Fundamental Right of Equality of Opportunity in matters of Public Employment. The Biodata of R2 is the only detailed one present in the file. See Exhibit E/2 (Page ___ to ___).

13.3 The petitioners would like to stress that other than R2, nobody else's biodata or any other details were sought by the respondents. Even those whose names are in the shortlist of 20 persons along with R2, including three of the petitioners (G R Vora, Mohammed Afzal and Krishnaraj Rao alias Krishna Harischandra Rao)

were never contacted by the respondents for any reason whatsoever. See copy of shortlist in Exhibit E/3 (Page ___ to ___).

- 13.4 The petitioners would like to stress that, as R2, himself a selector, was the candidate, no other candidate stood a fair chance to get this post.
- 13.5 Prior to the impugned appointment, R2 occupied his position in the office of Respondent no. 3 as the then Chief Secretary. He retired from his post as Chief Secretary and as a member of the Indian Administrative Services (IAS) on 31st May 2012. Mr J K Banthia (R1), was an Additional Chief Secretary i.e. a subordinate of R2. Therefore, the relationship of R2 with R1 is not that of selectee and selector. On the contrary, it is a close relationship between two colleagues, and that continues to be the case, as demonstrated by the friendly language used in this official letter, where R2 addresses R1 as "Dear Jayant". See Exhibit E/4 (Page ___ to ___).
- 13.6 Exhibit E/4 is a very telling letter, as it also shows that the duty and responsibility to "move the government" to fill up the vacant posts of State Information Commissioners, besides Chief Information Commissioner, falls on the shoulders of the Chief Secretary. This letter from R2 to R1 says, "Dear Jayant, As you may be aware, 3 posts of state information commissioners are vacant for a long time. This has resulted into accumulation of huge pendency of appeals and

complaints filed under section 18 and 19 of RTI Act, in addition to poor monitoring of implementation of RTI Act by Commission. I would therefore request you to move the government to fill up these vacancies at the earliest. Regards, Yours Sincerely, Ratnakar Gaikwad.” **The petitioners wish to point out to the hon’ble court that to move the government to fill up the vacancies at the earliest is the very same duty that R2 neglected for nearly 17 months while he was the Chief Secretary.**

13.7 There is no evidence to indicate that the HPC (R5) considered the application of anybody other than R2. Although there are several vacancies in the Maharashtra Information Commission, and several State Information Commissioners are needed to be urgently appointed to curb the increasing pendencies, no other selection was made.

13.8 As Chief Secretary, R2 was the highest bureaucratic functionary of the state government and head of the state administration. He was placed in a superior role over General Administration Department (Respondent no. 4 or R4). R4 is in charge of implementation of Right to Information Act in the state, but operates only under directions, guidance and supervision of R1 and R3 i.e. Chief Secretary and Chief Minister.

13.9 **Numerous government documents show that the Chief Secretary exercises general**

superintendence and control over Maharashtra Information Commission. In all requests for staffing and other facilities made on behalf of the Maharashtra Information Commission, the Chief Secretary is either directly addressed, or a copy is marked to him. If such requests are received by the Chief Minister, Governor or General Administration Department i.e. the department in charge of RTI Act implementation in the State, then these letters are generally forwarded to the Chief Secretary for his attention.

13.10 In his earlier capacity as Chief Secretary, the duties of R2 included initiating steps to fill up the post of the Chief SIC, which fell vacant on 22 July, 2011, after the retirement of the previous Chief SIC, Mr Vilas Patil. R2 (as Chief Secretary) avoided giving appropriate directions to R4 for selection of suitable candidates, and thereby allowed the number of pending cases to mount alarmingly.

13.11 The circumstances of the appointment of R2 as Chief SIC indicate maladministration, gross abuse of state power and willful negligence with ulterior motives of personal gain. It is also a textbook example of favouritism, nepotism and biased selection process. Under these circumstances, the petitioners ask how R2 can be trusted to function “autonomously without being subjected to directions by any other authority” as the RTI Act now requires him to do for five years.

14. SELECTOR-SELECTEE NOT AT ARM'S LENGTH

Selectors are generally estopped from participating in the selections as candidates, as it is necessary for selectors to maintain an at-arm's-length distance from all candidates. Otherwise, it becomes impossible for selectors to perform their duty conscientiously. Selection of insiders is frowned upon, even in civil society, as it offends against the principles of natural justice and equity. But not only was R2 considered a candidate, but it appears that he was the only candidate. It is quite evident that he had already been selected even prior to the meeting of the High Powered Committee (R5), and the meeting was specifically held only to formalize this selection. No other candidate was even placed before R5 for consideration, it seems.

15. NO COOLING-OFF PERIOD

Cooling-off period was not observed. R2 was made Chief SIC within a week after he retired as Chief Secretary. Thus, there was not even the semblance of an effort to maintain at-arm's-length distance between the Executive and the Maharashtra Information Commission, a quasi-judicial body.

16. PRECEDENT FOR JUDICIARY SAFEGUARDING THE INDEPENDENCE OF QUASI-JUDICIAL BODIES

In the case of WP no. 634 of 2007, Pareena Swarup Versus Union of India, Hon'ble Chief Justice of India KG Balakrishnan issued detailed instructions for appointment of Chairperson and Members of the

Appellate Tribunal for the Prevention of Money Laundering Act 2002. His remarks are relevant here: “The Constitution guarantees free and independent judiciary and the constitutional scheme of separation of powers can be easily and seriously undermined, if the legislatures were to divest the regular courts of their jurisdiction in all matters, entrust the same to the newly created Tribunals which are not entitled to protection similar to the constitutional protection afforded to the regular Courts. The independence and impartiality which are to be secured not only for the Court but also for Tribunals and their members, though they do not belong to the ‘Judicial Service’ are entrusted with judicial powers. The safeguards which ensure independence and impartiality are not for promoting personal prestige of the functionary but for preserving and protecting the rights of the citizens and other persons who are subject to the jurisdiction of the Tribunal and for ensuring that such Tribunal will be able to command the confidence of the public. Freedom from control and potential domination of the executive are necessary pre-conditions for the independence and impartiality of judges. To make it clear that a judiciary free from control by the Executive and Legislature is essential if there is a right to have claims decided by Judges who are free from potential domination by other branches of Government.” (paragraph 8)

17. NON DISCLOSURE AND SECRECY

17.1 All the respondents maintain an evasive silence in matters of selection of SICs and Chief State

Information Commissioner. They shroud the selection process in arbitrariness and secrecy. Other than the pivotal role played by R3 in setting up a High Powered Committee (R5), and bare minimum compliance with the letter of Section 15 or the RTI Act, the mechanism for selecting SICs and Chief SIC is shrouded in secrecy and denials.

17.2 The Chief Secretary and R4 are definitely part of the inner circle of decision-making in this regard, but the exact role that they play in the selection process is not clearly defined. Despite persistent efforts of the petitioners and several others over many years to make the concerned government officials define their various roles and responsibilities in the selection of SICs and Chief SIC, the administration has resisted making the decision-making chain known. Also, the government is steadfastly not formulating and documenting any policy and due procedures, despite several representations by the petitioners and others.

17.3 The RTI Act itself envisages a remedy against such secrecy, which is well-defined in Section 4. Section 4(1)(b)(iii) mandates that the Public Authority shall publish... the procedure followed in the decision making process, including channels of supervision and accountability. Section 4(1)(b)(iv) further mandates that, "Norms set for it for the discharge of its functions" be similarly published. Section 4(1)(c) mandates

that the Public Authority “shall publish all relevant facts while formulating important policies or announcing the decisions which affect public”. It casts a duty on the Respondents, to regularly make mandatory disclosures to the public of rules, norms, procedures, manuals etc. that guide the decision-making process. The Respondents are mandated to make such public disclosures in all important decisions affecting the public, including the selections of Chief SIC and SICs.

17.4 But the Respondents are persistently and *mala fide*ly turning away from this duty. They persist in following a policy of keeping the public blindfolded in respect to the methods, procedures and guidelines, and even the date when they will select SICs and Chief SIC. Thus, they are actively disabling the “persons of eminence in public life” who are potential candidates, from participating in the selection process.

17.5 Even after the appointment is made, the respondents are reluctant to reveal the applications and nominations received, and the candidates shortlisted for consideration by R5. Any information that reaches the public is through news from the media or information brought out by the use of the RTI Act. This defeats the very purpose of the Act.

18. THE PETITIONERS ARE SEEKING NO PRIVATE RELIEFS

The unjust nature of the selection of R2 infringes on Article 16(1), and hurts the rights of the petitioners and many other “eminent citizens” in respect of their right to Equal Opportunity for Public Employment. They are aggrieved that as applicants for this post, they, along with dozens of others like themselves, were not given an opportunity to undergo a due procedure of selection. However, the petitioners emphasize that this is not their main contention. **This petition is emphatically not filed for the enforcement of the petitioners’ individual rights to be considered for the posts of SIC or Chief SIC. The petitioners seek no private reliefs for themselves.**

This petition is filed for seeking equity in selections for the post, and for the protection of the general public’s right to seek information, which has been severely injured by the appointment of R2 as Chief SIC. The circumstances of this appointment vitiate the impartiality of this tribunal, and violate Article 14 of the Constitution, which guarantees every citizen of India “equality before the law” and “equal protection of the law”. The present arrangement robs the common man of the rights given to him by the Right to Information Act, and handicaps him in seeking information from the administration in furtherance of all his other rights. It is for this reason that the petitioners urge the hon’ble court to quash the said selection and appointment, which is motivated by external considerations, mala fide, bad in law, and therefore null-and-void.

19. PRECEDENT FOR QUASHING SUCH MALA FIDE APPOINTMENT

19.1 A recent precedent for quashing was created in 'Centre for PIL V/s Union of India' [WP 348 & 355 of 2010], wherein Hon'ble Chief Justice of India reviewed and quashed the appointment of P J Thomas as Chief Vigilance Commissioner. Many facets of the present case are similar. While quashing the appointment of Mr P J Thomas as Chief Vigilance Committee, Hon'ble Chief Justice of India S H Kapadia gave his reasoning:-

19.2 "If a duty is cast ... on the HPC to recommend to the President the name of the selected candidate, the integrity of that decision making process is got to ensure that the powers are exercised for the purposes and in the manner envisaged by the said Act, otherwise such recommendation will have no existence in the eye of law." (Paragraph 2)

19.3 "The constitution of CVC as a statutory body under Section 3 shows that CVC is an Institution. The key word is Institution. We are emphasizing the key word for the simple reason that in the present case the recommending authority (High Powered Committee) has gone by personal integrity of the officers empanelled and not by institutional integrity." (Para 29)

19.4 **"We do not wish to discount personal integrity of the candidate. What we are**

emphasizing is that institutional integrity of an institution like CVC has got to be kept in mind while recommending the name of the candidate. Whether the incumbent would or would not be able to function? Whether the working of the Institution would suffer? If so, would it not be the duty of the HPC not to recommend the person.” (Para 30)

19.5 “The prescribed form of oath under Section 5(3) requires Central Vigilance Commissioner to uphold the sovereignty and integrity of the country and **to perform his duties without fear or favour**. All these provisions indicate that CVC is an integrity institution. The HPC has, therefore, to take into consideration the values independence and impartiality of the Institution.” (Para 30)

19.6 **“Appointment to the post of the Central Vigilance Commissioner must satisfy not only the eligibility criteria of the candidate but also the decision making process of the recommendation** [see para 88 of N. Kannadasan (supra)]. The decision to recommend has got to be an informed decision keeping in mind the fact that CVC as an institution has to perform an important function of vigilance administration.” (Para 33)

19.7 “No reason has been given as to why in the present case the zone of consideration stood restricted only to the civil service. We therefore direct that:... (ii) In future the zone of

consideration should be in terms of Section 3(3) of the 2003 Act. It shall not be restricted to civil servants... (iv) The empanelment shall be carried out on the basis of rational criteria, which is to be reflected by recording of reasons and/or noting akin to reasons by the empanelling authority... (vii) The Selection Committee may adopt a fair and transparent process of consideration of the empanelled officers.” (Para 55)

19.8 The above-mentioned deficiencies are applicable to the selection and appointment process followed by the state government for R2. The oath of office given in the First Schedule of the RTI Act is the same as that of the CVC. The service conditions are similar, as per Sec. 16(5)(a) of the RTI Act. Therefore, the reasoning articulated by the Hon’ble CJI in the case are applicable *in toto*.

20. SIC APPOINTMENTS QUESTIONED BY SUPREME COURT

In respect of Tamil Nadu Information Commission, Hon’ble Supreme Court has noted that SICs are selected non-transparently. While issuing notice to the respondents in the Special Leave Petition no. 12830 of 2012, the court asked, **“Whether selection of appointment of State Information Commissioners can be made without adopting a transparent and fair method of selection in which all eligible persons can participate for appointment to such**

post/office can be treated as private affair of a particular political set up.” It added, “Any appointment made hereinafter shall remain subject to final adjudication of the special leave petitions”.

21. ADMINISTRATIVE GUIDELINES VIOLATED BY STATE GOVT.

21.1 Department of Personnel & Training (DoPT) of Personnel Ministry guidelines titled ‘Search Committee’s Guidelines 1994’ Point no. 3 (1) (i) states **“It is to be kept in mind that as a rule, appointments in government are to be made on the basis of open advertisement.”** Further, Point No. 4.1 of the DoPT Circular No. AB 14017 / 11 / 2004 Est (RR) dated 30/7/2007 has given the detailed procedure to be followed for filling up of Government posts. Point No. 4.1 (ii) states “Since, as a rule, appointments in Government has to be made on the basis of open advertisements , this requirement has to be followed without fail, and it is only **in situations where advertisement may not result in adequate response that a Search Committee should normally be appointed**”. Copy of these circulars are given at Exhibit F/1 and F/2 (Page ___ to ___). R3 should be well aware of these guidelines, as he spent many years as Minister Of State (MOS) in charge of Personnel Ministry in the Central Government, before he became Chief Minister of Maharashtra.

21.2 A memo issued by the General Administration Department to the Chief Minister's Office No. GAD / KMA / 2010 / 895 / Pra.Kra / 328 / 10 / 6 of 2007 directed strict adherence to the procedure of inviting applications from citizens for filling up of the posts of Information Commissioners. See Exhibit F/3 (Page ___ to ___).

22. PROCEDURES FOLLOWED BY CENTRAL GOVERNMENT

The question may arise as to whether a due procedure is being followed in any degree by any other government. If so, this may give an example of what is the due procedure expected from the State Government, it is worth looking at the latest round of selections of three Central Information Commissioners in April 2012. This round of selections was held after issuing a circular inviting applications, and after the applicants were shortlisted by a Search Committee. This process is mentioned in this RTI reply from Central Cabinet Secretariat. The process followed may be briefly described as follows:

22.1 On Oct 29, 2011, DOPT issued this circular inviting applications from all eligible persons, including civil society. See Exhibit G/1 (Page ___ to ___).

22.2 From the applications received before the final date, a list of all 214 applicants was drawn up. See Exhibit G/2 (Page ___ to ___).

22.3 Most importantly, the Search Committee reportedly evaluated 214 applicants “on the basis of width, diversity, relevance and length of experience of the applicants, with some preference for legal background and strategic exposure”. Also, inputs were sought from Intelligence Bureau and Central Vigilance Commission. All this is stated in the minutes of the Selection Committee meeting on 23 February 2012. See Exhibits G/3 (Page ___ to ___).

23. SUPREME COURT DIRECTIONS DELIBERATELY IGNORED

Although ignorance of the law is not an excuse, the respondents do not have even this fig-leaf of ignorance. Repeated representations were made by the petitioners and others over the last year pointing out the Supreme Court’s directions laid out by the Hon’ble Supreme Court ‘Centre for PIL versus Union of India’ [WP 348 & 355 of 2010], the respondents did not follow due procedures.

24. GOVERNMENT CIRCULARS DELIBERATELY DISREGARDED

The petitioners and others repeatedly reminded the respondents of the government circulars that laid out proper guidelines. The Central Government’s Department of Personnel & Training (DoPT)’s guidelines say that “as a rule, appointments in government are to be made on the basis of open

advertisement,” and also, “... this requirement has to be followed without fail, and it is only in situations where advertisement may not result in adequate response that a Search Committee should normally be appointed”. The respondents neither issued advertisements, nor appointed a Search Committee. R3, who was earlier Minister Of State in charge of DOPT for several years, has every reason to be familiar with these circulars and guidelines.

25. QUESTIONABLE JUDGMENT OF R2

R2 played a fairly substantial role in the now-infamous Adarsh scam, which was a conspiracy among the state’s topmost bureaucrats and politicians. During his tenure as Metropolitan Commissioner of MMRDA, R2 displayed bad judgment if not mala fide intentions. He visibly acted against public interest by issuing Occupation Certificate to Adarsh building, brushing aside strenuous objections raised by Western Naval Commanding-in-Chief about national security issues, to avoid causing inconvenience to the Honorary Secretary of Adarsh Cooperative Society. The correspondence of R2 with Western Naval Command is given as Exhibit J/1. The only defense that R2 publicly offers for his negligent action of issuing the Occupation Certificate is that Western Naval Command did not adequately raise security concerns. As one can see from the letter written by Western Naval Command, this is clearly not the case. See Exhibit H/1 (Page ___ to ___). While the Adarsh correspondence may not be directly relevant to this case, the petitioners humbly urge this Court to

consider this as a question mark on the good judgment, impartiality and integrity of R2, and his fitness for appointment as Chief State Information Commissioner.

26. POWERS, RESPONSIBILITIES AND STATUS OF CHIEF STATE INFORMATION COMMISSIONER

26.1 Chief SIC is the head of Maharashtra Information Commission, which exists to hear second appeals of RTI against the State government. As chief, in his administrative capacity, he oversees the overall health of the Commission through budget and manpower allocations, and exercises control and superintendence.

26.2 Chief SIC has a supervisory and advisory role to push for compliance with RTI's section 4 (suo-moto disclosures) and proper appointment of public information officers, first appellate authorities etc. by all public authorities of the State government, from village panchayats, municipal wards and state-run organizations like BEST and MMRDA, right up to the top levels of Mantralaya such as Chief Secretary's office and Chief Minister's Office (CMO).

26.3 Chief SIC hears second appeals arising from RTI applications against MMRDA, Mantralaya, CMO, and passes orders. For example, if an RTI applicant feels that CMO has wrongly denied information, R2 will be the person who decides whether or not information should be given, and whether the public information officer, who is an officer of CMO, should be penalized.

26.4 Under Section 18(3) the commission has the powers as vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908, including (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things; (b) requiring the discovery and inspection of documents; (c) receiving evidence on affidavit; (d) requisitioning any public record or copies thereof from any court or office; (e) issuing summons for examination of witnesses or documents.

The selection of R2 is therefore a weighty matter that cannot be done blithely in a single meeting, without due formalities, and without empanelling and examining the suitability of several candidates.

27. ULTRA VIRES CLAUSE IN RTI ACT 2005

27.1 Section 15(5) says, “The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance”. The petitioners submit that the last clause in Section 15(5) of the Right to Information Act 2005, viz. “or administration and governance” is *ultra vires* the Constitution Articles 14, 16(1), 21 and in defiance of the mandates of Article 38 and 50 also. The petitioners urge this Hon’ble Court to

take a long, hard look at the various issues inherent in the operation of this clause, and to ask whether it satisfies various criteria of Constitutionality. Does this Hon'ble Court not consider it repugnant to the Constitution of India that as a matter of course, former bureaucrats are in fact given preference for appointment to the Information Commission? Is it not in the fitness of things that they should instead be debarred from being candidates?

27.2 This clause is commonly being abused by the respondents 1, 3, 4 and 5, who are the selectors, to justify making selections from among their own circles, of persons who are familiar to them, and even of an individual from among themselves. This is a phenomenon that occurs not only in Maharashtra, but in other states also, and also their counterparts in the central government where appointments are made as per the same clause in Section 12(5). The respondents' tendency to hold closed-door selections for pre-decided candidates belonging to their own circles, belonging to "administration and governance" deprives all other possible candidates of their Fundamental Right guaranteed under Article 16, i.e. Equality of Opportunity in matters of Public Employment.

27.3 This clause enables the respondents i.e. the top brass from the field of "administration and governance" to select themselves or someone close to them as Information Commissioners or

Chief SIC, and to hold closed-door selections from which other citizens are excluded.

27.4 The candidates selected under this clause are necessarily retired civil servants, usually belonging to the IAS cadre. It is natural that a bureaucrat approaching the age of 60 would seek extension of his tenure. A bureaucrat who is made an SIC or CSIC immediately upon retirement is most likely to see this five-year-tenure at the Information Commission as an extension to an administrative career, and as a parting gift from his political or bureaucratic bosses who directly selected them, or influenced others to select him. Naturally, such a person feels obliged to sympathize with the set of people who gave him such a prestigious and lucrative extension. While holding hearings and giving judgments on matters concerning the “administration and government”, which is the main role of the Information Commissioner, this sense of gratitude commonly expresses itself in the form of favourable orders. The candidates thus selected create a permanent bias in the Information Commission as an institution. This is obviously against the interest of the general public, as it infringes against the fundamental right to Equality before the Law and Equal Protection of the Law. Then how can such a clause be Constitutional?

27.5 R2, who headed the administration of Maharashtra state as Chief Secretary and

earlier, headed MMRDA, will now see cases relating to his own earlier jurisdiction as an administrator coming to his table again, this time in his capacity as Chief SIC. This is not an uncommon occurrence in Maharashtra Information Commission, as it has happened to the predecessors of R2 also, and happens to all SICs as well if they are former civil servants. Why then is it deemed to be permissible under the Constitution to appoint former bureaucrats as SICs and Chief SIC? Is this not repugnant to Article 14 of the Constitution?

27.6 The posts of Information Commissioners and Chief Information Commissioners are public posts, and as per documents available under RTI, dozens of people sent letters of application to the State for this post. In pursuance of their legal duty to select the best possible candidate from all the available candidate (as opposed to going immediately for the one candidate who was close at hand), the respondents are required to announce suitability criteria, call for further details from all the candidates, hold interviews and taken steps to gather further information about them. The impugned clause encourages the respondents, who are the selectors of Information Commissioners and Chief SIC under the statute, and who are also interested parties in all the disputes heard by the State Information Commission, to hold closed-door selections to appoint their friends and allies in order to bias

this tribunal. How can such a clause be acceptable under the Constitution?

27.7 Article 50 of the Constitution says, "The State shall take steps to separate the judiciary from the executive in the public services of the State." The appointment of bureaucrats as Information Commissioners or Chief SIC immediately upon their retirement erases the lines of distinction between the State Government and the State Information Commission, which is an arm of the judiciary so far as RTI Act is concerned. The impugned clause militates against this directive principle.

27.8 The impugned clause strikes at the heart of the Article 10 of the United Nations' Universal Declaration of Human Rights: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations..." How can a retired bureaucrat be deemed as "an independent and impartial tribunal" for hearing appeals against the administration? As the impugned clause works against the independence and autonomy of the State Information Commission, the petitioners urge this Hon'ble Court to strike it down as being ultra vires.

28. IMPUGNED APPOINTMENT OF R2 IS UNDER A CLAUSE THAT IS *ULTRA VIRES*

The petitioners aver that as the words, “or administration and governance”, enable and encourage the respondents to conduct selections in a way that is favourable to government insiders like R2, and adverse to all other candidates i.e. outsiders. By implementing this clause in the case of R2, the respondents pursued a course of action that militates against the rights of the general public, the principles of natural justice, the Fundamental Rights guaranteed by the Constitution, the Directive Principles of State, and the purpose and intent of the Right to Information Act. The impugned clause encourages the selectors (R1, R3, R4 and R5), who are politicians and bureaucrats, and interested parties in disputes heard by the Information Commission, to select their colleagues and allies, to favour them personally and bias this quasi-judicial tribunal in their own favour by casting the burden of gratitude on the selected candidate, namely R2.

29. GOVERNMENT REPORTS

29.1 Two government reports express concern at the iniquitous preponderance of civil servants, which is not envisaged in any form by the RTI Act: Report of Second Administrative Reforms Commission (ARC), June 2006 says this with regards to State Information Commissions. “5.2.4 The RTI Act 2005 visualizes a Commission wherein the Members represent different sections of the society. The State Governments are still in the process of appointing Information Commissioners, but an

analysis of the background of the State Chief Information Commissioners indicates the preponderance of persons with civil service background. Members with civil services background no doubt bring with them wide experience and an intricate knowledge of government functioning; however to inspire public confidence and in the light of the provisions of the Act, it is desirable that the Commissions have a large proportion of members with non civil services background.”

29.2 Price WaterHouse Cooper’s Report on RTI Implementation says: “5.6.3. The Information Commissioners who are ex-bureaucrats bring in the perception that they are “soft” while passing orders on the PIOs. As per the Section 12(5) and 15(5), the composition of the information commissions should be such that it should have people with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. To implement these sections in spirit, it is recommended that the people who have worked in Government should be restricted to 50% (if not less) as recommended in the ARC report.”

It is possible to fulfill the requirements of equitable selection of Information Commissioners only if vacancies are widely advertised with clear statements of appointment criteria, where and how to apply etc. Petitioners seek this Court’s directions for the same for

all future selections of Information Commissioners in Maharashtra.

The government has steadfastly ignored the findings of these two reports, and maintained complete silence over them.

30. NEED FOR JUDICIAL OFFICERS TO BE APPOINTED

30.1 The petitioners urge this Hon'ble Court to note that Supreme Court ruling in the case of R.K. Jain v. Union of India, 1993 (4) SCC 119 states, "personnel appointed to hold the office under the State are called upon to discharge judicial or quasi-judicial powers. So they must have judicial approach and also knowledge and expertise in that particular branch of constitutional, administrative and tax laws. The legal input would undeniably be more important and sacrificing the legal input and not giving it sufficient weightage and teeth would definitely impair the efficacy and effectiveness of the judicial adjudication. It is, therefore, necessary that those who adjudicate upon these matters should have legal expertise, judicial experience and modicum of legal training as on many occasion different and complex questions of law which baffle the minds of even trained judges in the High Court and Supreme Court would arise for discussion and decision."

30.2 The deficiencies in the impugned appointment of R2 highlight the need for an independent and strict judicial mindset, oriented towards the law,

as against the mindset of retired administrators, which is generally oriented towards obeying the diktats of powerful politicians, or at any rate, towards avoidance of conflict with them. The Chief SIC's position requires a judicial bent of mind and clear understanding of many other laws besides the RTI Act 2005, such as Civil Procedure Code and Indian Evidence Act. To overcome the administration's resistance to becoming transparent and accountable, the candidate appointed as Chief SIC must consistently function in a strict court-like manner, disregarding pressures from former political masters and brother bureaucrats. He must have experience in judicial skills, such as recording statements of both parties, maintaining records, understanding the case at hand from a judicial and legal point of view, delivering legally sound judgments and mentoring other Information Commissioners to do so.

30.3 When candidates lacking in judicial mindset and skills are appointed to this post because of their direct access to the deciding authorities, it proves to be a setback to the citizens' constitutionally guaranteed Right to Information. As it is virtually impossible to remove a Chief SIC from office even if he completely fails to perform, it is extremely unjust to appoint a candidate without rigorous defining of criteria and screening procedures to ensure his fitness for

the position, and ability to rise above partisan considerations and conflicts of interest.

- 30.4 We urge this Hon'ble Court to note that many quasi-judicial bodies formed by Acts of the Parliament such as the **Press Council of India, the Central Administrative Tribunal, The National Minority Education Institutions Commission and the National Consumer Commission, are headed by a retired High Court or Supreme Court Judge**. Likewise, it is necessary that persons with judicial background, such as former High Court or Supreme Court Judges, be strongly considered for the post of Chief SIC and SICs.
- 30.5 Having observed many hearings, the petitioners have no hesitation in saying that the practices of conducting hearings and recording statements at Maharashtra Information Commission are improper, and lack necessary elements of quasi-judicial proceedings. There is no mechanism for taking oral submissions on record, receiving evidence and examining witnesses and others under oath. Maharashtra Information Commission is in serious need of training in conducting hearings and writing orders with judicial rigour and discipline.
- 30.6 To this end, the petitioners urge this Hon'ble Court to issue guidelines for appointing Chief SIC and a certain proportion of Information Commissioners from judicial backgrounds, such as retired judges or senior advocates of the

Supreme Court and High Courts. This is a necessary and urgent step for breaking the unholy nexus between the State government and Maharashtra Information Commission, in order to establish proper separation of executive and judiciary.

31. The Petitioners state that they have made several representations to challenge the selection of Respondent No 2 as State Chief Information Commissioner. Now they have no alternative or efficacious remedy except invoking the Powers and Jurisdiction of this Hon'ble Court under Article 226 and 227 of the Constitution of India to prevent miscarriage and maladministration of Justice and gross abuse of powers by the respondents, which are detrimental to the interest of common people of India.
32. The Petitioners submit that they have not filed any other Petition before this Hon'ble Court or before Hon'ble Supreme Court of India. No Petition on the above cause of action is pending before this Hon'ble Court or any other court.
33. The Petitioners are residents and citizen of India and domiciled in state of Maharashtra and the Respondents are State Government and its officials. The selection of Respondent No 2 as State Chief Information Commissioner is made in a *mala fide* manner contrary to constitutionality and established principles of law, and therefore the entire cause of action has arisen at

Mumbai. Therefore this Hon'ble Court has jurisdiction to entertain this Petition.

34. The petitioners have paid court fee of Rs 250/- as applicable.

35. The petitioners shall crave leave to refer to and rely upon the documents annexed to the petition as exhibits.

36. PRAYERS

In view of the aforementioned facts and circumstances, the petitioners most respectfully pray as follows:-

36.1 That this Hon'ble Court be pleased to issue appropriate writ, direction or order quashing the selection and appointment of Respondent no. 2 as *non-est* in law, illegal, contrary to guidelines issued by the Hon'ble Supreme Court as well as the Central and State Government, contrary to the principles of natural Justice, and violative of Fundamental Rights enshrined in Articles 14, 16 and 21. Also, this appointment indicates the respondents' neglect of Directive Principles of State, viz. Articles 38 and 50.

36.2 That this Hon'ble Court be pleased to pass suitable strictures and writs against the respondents for acting against public interest, with *mala fide* intentions and biased minds.

36.3 That this Hon'ble Court be pleased to pass suitable strictures and writs against the respondents for eroding the integrity of Maharashtra Information Commission and the

office of Chief SIC, and for acting without due application of mind and/or in dereliction of their duty, and failing to follow due process for selection of candidates.

- 36.4 That this Hon'ble Court be pleased to direct the respondents to frame rules for open and transparent selections of SICs and Chief SICs as per guidelines framed by Hon'ble Supreme Court, and as per Department of Personnel & Training (DoPT)'s guidelines titled "Search Committee's Guidelines 1994' and DoPT Circular No. AB 14017 / 11 / 2004 Est (RR) dated 30/7/2007.
- 36.5 That this Hon'ble Court be pleased to strike down as *ultra vires* the last clause in Section 15(5) of the Right to Information Act 2005, viz. "or administration and governance", as it is inimical to public interest, principles of natural justice, Fundamental Rights guaranteed by the Constitution, Directive Principles of State mandating proper separation of executive and judiciary, and the purpose and intent of the Right to Information Act.
- 36.6 That this Hon'ble Court be pleased to issue clear guidelines for appointing Chief SIC and a certain proportion of Information Commissioners, as well as staff, from judicial backgrounds, including retired judges of the High Court and Supreme Court, in order to enhance the effectiveness and ensure the impartiality of Maharashtra

Information Commission as a quasi-judicial forum.

36.7 That cost of this petition be provided to the petitioners.

36.8 Such other or appropriate Orders or directions as it may deem fit, just and proper in the interest of Justice

INTERIM RELIEFS SOUGHT

Pending the hearing and final disposal of the above petition, the petitioners seek the following interim reliefs:

36.9 That this Hon'ble Court be pleased to stay the Respondent no. 2 from continuing to function as Chief SIC, in order to safeguard the integrity of the Maharashtra Information Commission from conflict of interest. It is the petitioners' humble submission that allowing R2 to function as Chief SIC would be a continuing violation the common man's Fundamental Rights guaranteed under Article 14 and 21, his human right to be heard by an "independent and impartial tribunal, in the determination of his rights and obligations...", and contrary to the principles of natural justice.

36.10 That this Hon'ble Court be pleased to stay the operation of the last clause in Section 15(5) of the Right to Information Act 2005, viz. "or administration and governance" in State of Maharashtra, as the same is causing lasting and irreparable damage to Maharashtra Information Commission, and violating the citizen's

Fundamental Rights under Articles 14, 16(1) and 21.

36.11 Such other and further reliefs as this Hon'ble Court may deem fit and proper, or as the facts and circumstances may require.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY

Petition Drawn by:

1)

(Krishna Harsichandra Rao)

2)

(Sulaiman Bhimani)

3)

(Gaurang R Vora)

4)

(Mohammed Afzal)

5)

(Anil Vevyas Galgali)

Petitioners

VERIFICATION

I, Mr. Krishna Harischandra Rao, Petitioner No. 1 aged 47 years Hindu Adult Indian Inhabitant of Mumbai Occupation freelance Journalist and residing at 12 Shiv Krupa, Kulupwadi Road, Borivli East, do hereby state and declare on solemn affirmation and declare that whatever is stated by me in foregoing paragraphs No 1 to 22 are true and correct to our own knowledge and belief.

Solemnly affirmed at Mumbai]

This ___ day of August, 2012.]
 Identified and explained by me Krishna H. Rao,
 Petitioner No: 1.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 ORDINARY ORIGINAL CIVIL JURISDICTION.

DISTRICT GREATER BOMBAY.

PUBLIC INTEREST LITIGATION NO. OF 2012

Krishna Harischandra Rao & Ors ... PETITIONERS

VERSUS

The State of Maharashtra & Ors ... RESPONDENTS

1. Krishna Harischandra Rao]

Residing at 12, Shiv Krupa, Kulupwadi]

Road, Borivali (E), Mumbai – 400066.]

2. Sulaiman Bhimani]

Carrying on business at Shop No 5,]

RNA Plaza, Somanigram,]

Goregaon (West), Mumbai 400 102.]

3. Gaurang R. Vora]

Residing at Plot No: 292 – A/8 Satguru]

Niwas, Sion (East), Mumbai 400 022.]

4. Mohammed Afzal]

Residing at C/508,]

Aakaar CHS Ltd, Kalyaan Complex,]

Yari Road, Versova, Andheri (W),]

Mumbai– 400061.]

5. Anil Vedvyas Galgali]
 Residing at Old Kharwala Chawl, Kajupada,]
 Saki Naka, Mumbai 400 072.]... Petitioners

Versus

1. The State of Maharashtra through]
 Office of the Chief Secretary]
 Government of Maharashtra,]
 Mantralaya, Mumbai. 400 032.]

2. Mr Ratnakar Yashwant Gaikwad]
 Former Chief Secretary and Present]
 Chief State Information Commissioner]
 Office of State Information Commission]
 13th floor, New Administrative Building]
 Opposite Mantralaya, Mumbai 400 032.]

3. Mr Prithviraj Chavan, Chief Minister of]
 Maharashtra, Mantralaya,]
 Mumbai 400032]

4. General Administration Department]
 through it's Secretary,]
 Government of Maharashtra,]
 Mantralaya, Mumbai 400 032.]

5. High Powered Committee for selecting]
 the Chief State Information Commissioner]
 Government of Maharashtra,]

Mantralaya, Mumbai 400 032.

]... Respondents

To,
The Prothonotary and Senior Master,
High Court of Judicature ,
Original side , Mumbai

MEMORANDUM OF APPEARANCE

We, the abovenamed five petitioners, do hereby declare with mutual consent, that we hereby authorize Krishna Harischandra, Rao, Petitioner no. 1, to act, appear and plead on all our behalf in the above matter.

IN WITNESS WHEREOF, we have affixed our signature to this writing as under:-.

Mumbai dated this _____Day of August, 2012.

Accepted

1)

(Krishna Harsichandra Rao)

2)

(Sulaiman Bhimani)

3)

(Gaurang R Vora)

4)

(Mohammed Afzal)

5)

(Anil Vevyas Galgali)

Petitioner