

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

Krishna Harischandra Rao and four others -- Petitioners.

Versus

State of Maharashtra and four others -- Respondents

SYNOPSIS

A. “It is necessary that the Court may draw a line which the executive may not cross in their misguided desire to take over bit by bit judicial functions and powers of the State exercised by the duly constituted Courts. While creating new avenue of judicial forums, it is the duty of the Government to see that they are not in breach of basic constitutional scheme of separation of powers and independence of the judicial function.” This remark made by Hon’ble Chief Justice of India KG Balakrishnan in paragraph 8 of his judgment, in the case of WP no. 634 of 2007, Pareena Swarup Versus Union of India, sums up the spirit of this present petition.

B. The petitioners invoke Article 14, 16(1), 21, 38, 50, 226 and 227 to file the present petition in public interest, to seek remedies for enforcement of the Fundamental Rights of the general public of Maharashtra and citizens of India. The petitioners earnestly urge this Hon’ble to exercise its jurisdiction under Article 226 and 227. This petition is filed in order to quash the prejudicial selection and appointment by State of Maharashtra of a new Chief

State Information Commissioner (Chief SIC) in violation of Right to Information Act 2005, the Constitution of India, and the Principles of Natural Justice, particularly, "*Nemo iudex in causa sua*" i.e. "*No man is permitted to be judge in his own cause*". The person appointed as Chief SIC, Mr Ratnakar Gaikwad (hereinafter referred to as Respondent no 2 or R2), was former Chief Secretary of Maharashtra, and enjoyed a privileged and influential position vis-à-vis the high powered committee that selected him for this appointment. Indeed, he was the *de facto* appointing authority, as the Hon'ble Governor of Maharashtra is only nominally the appointing authority. R2 used this position to his own advantage, and virtually selected and appointed himself as Chief SIC, with the help of other respondents.

C. R2 was himself at the center of a small inner circle responsible for conducting the selection process whenever vacancies arose. R2 deliberately neglected this duty by leaving the office of the Chief SIC vacant for over 10 months, and left as many as three other benches of SICs vacant for periods ranging from 4 to 16 months. The sequence of events leading to the impugned selection and appointment, and the documents available, indicate that this was a deliberate action, so that that R2 could himself be appointed to that position. Exactly six days after his retirement from the post of Chief Secretary, a meeting of the High Powered Committee (Respondent 5) was convened, exclusively for the purpose of selecting R2 for the post of Chief SIC.

D. The appointment of R2 as the chief of Maharashtra Information Commission, which is intended to an independent watchdog institution for enforcing disclosure of government information to citizens, undermines this statutory institution, and a flagrant violation of the Fundamental Rights of citizens guaranteed by Articles 14 and 21. The respondents have neglected the duty cast upon them by Article 50 to ensure the separation of the Executive and the Judiciary.

E. Given the nature and functions of the Chief SIC's post, it is unconstitutional to fill up this post through a closed process of in-house selection from within the state government over which this quasi-judicial tribunal is expected to exercise jurisdiction. It is even more so to fill up this post from within the circle of the selectors themselves. The posts of Chief Information Commissioner and Information Commissioners are by their nature functional positions, requiring the appointed persons to conduct at least 10 hearings and dictate 10 orders daily. These posts are very different from technical or advisory posts, such as Chiefs of armed forces or Scientific Advisor to the Govt. of India, or even constitutional positions such as that of Governor or President, where eminence is the main qualification needed, and where in-house selection from within the circle of selectors may be acceptable.

F. Although the Right to Information Act is only seven years old, it has revitalized the citizens of our 65-year-old

democracy. The hopes of crores of people from different walks of life, including government employees, aged pensioners, members of underprivileged sections of society, and anti-corruption crusaders, are now pinned on the use of Right to Information (RTI) for actively seeking “Justice – social, economic and political” as guaranteed by the Constitution. For example, government servants who have been unduly victimized or discriminated against are using RTI to seek crucial documents for defending their own rights before the relevant tribunals and quasi-judicial authorities. Also, underprivileged people who are unjustly denied the benefits of government schemes, services and deliverables such water connections or ration cards are using RTI to seek information in order to make their petitions and representations more effective, and get their work done by the proper authorities. The quality of people’s access to such information under RTI is therefore a matter concerning their fundamental right to Life and Liberty. The appointment of the Chief Information Commissioner is therefore a life-and-liberty issue, and not a trivial matter.

G. Hence, the injustice does not end with the appointment of R2 to his present post. It is the beginning of a long series of unjust decisions that will corrode the fundamental rights of citizens, fabric of our democracy. In his present capacity as Chief SIC, R2 is poised to be “*judge in his own cause*” during his five-year tenure. R2 will directly hear cases relating to the Maharashtra government departments in Mantralaya, which he himself

headed in earlier years as Chief Secretary, who is the topmost bureaucrat of the state government. He will also hear cases against MMRDA (Mumbai Metropolitan Region Development Authority) and other state government bodies that he headed in earlier years, violating the principles of natural justice. His continued proximity with the state government is evident from his correspondence.

H. Without any cooling-off period, R2 was appointed immediately upon his retirement from the position of Chief Secretary. This removes the necessary at-arms-length distance between the State Government and the Maharashtra State Information Commission, and leaves the citizens with a biased tribunal, depriving them of equality before the law and equal protection of the law in the case of Right to Information Act. This infringes on the Life and Liberty of the common man.

I. In the exercise of this Hon'ble Court's powers of judicial review and superintendence under Articles 226 and 227, urgent orders of stay and quashing of appointment are sought to prevent grave miscarriage of justice with the general public of Maharashtra, and to protect their fundamental rights. Strictures and penalties are sought against the respondents for performing their duties in bad faith, and without due diligence. Other appropriate orders and writs are also sought to protect and restore the rights of Citizens of Maharashtra in respect of the lawful implementation of the RTI Act.

J. The relief prayed for, i.e. quashing of appointment, has an ample precedent in 'Centre for PIL versus Union of India' [WP 348 & 355 of 2010], wherein the Hon'ble Chief Justice of the Supreme Court reviewed and quashed the appointment of Mr PJ Thomas as Chief Vigilance Commissioner as the grounds of his selection was "non-est in law". The petitioners urge that the facts of the present case are similar, and that the selection of R2 violates many guidelines articulated by Hon'ble Chief Justice of India SH Kapadia in his judgment.

K. The Hon'ble Apex Court has directed High Courts to entertain petitions challenging such appointments and their legality. In the words of the Hon'ble Chief Justice, "We reiterate that Government is not accountable to the courts for the choice made but Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction." (para 45)

L. Hon'ble Supreme Court has remarked that prima facie, State Information Commissioners (SICs) are selected non-transparently, in respect of Tamil Nadu Information Commission. While issuing notice in SLP 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”. This SLP is in the matter of Madras High Court quashing the appointments of three Information Commissioners on November 25, 2011, but the question raised by the Hon’ble Supreme Court may well be applied to the present case also.

M. The present petition is also filed for calling into question the last clause in Section 15(5) of the Right to Information Act 2005, viz. “or administration and governance”. The petitioners aver that this diabolical clause is a legal loophole that encourages the respondents to conduct selections in a way that is prejudicial to public interest and against the principles of natural justice. It creates excessive scope for appointing favoured candidates, especially IAS officers and senior civil servants on the verge of retirement, as SICs and Chief SIC. A majority of appointments to the Maharashtra Information Commission (and for that matter, Information Commissions of other states and Government of India also), have been carried out in this way. We urge the Hon’ble Court to strike down this clause as being *ultra vires*, contrary to the Constitution’s stated purpose of securing “Justice – social, economic and political” for the people of India, in violation of Fundamental Rights enshrined in Articles 14, 16(1) and 21, and against the mandates of Directive Principles of State enshrined in Articles 38 and 50.

N. To ensure the necessary separation of Executive and Judiciary, many quasi-judicial bodies formed by Acts

of the Parliament such as the Press Council of India, the Central Administrative Tribunal and the National Consumer Commission are headed by a retired High Court or Supreme Court Judge. It is essential that persons with judicial background, such as former High Court or Supreme Court Judges, be appointed for the post of Chief SIC. This petition seeks directions and suitable writs from this Hon'ble Court in this respect also.

LIST OF DATES

Dates	Events
15 June, 2005	Right to Information Act was passed by Parliament.
11 October, 2005	Dr Suresh V Joshi, an IAS officer who held several important state government positions, was sworn in as the first Chief State Information Commissioner (Chief SIC) of Maharashtra Information Commission. He had previously held the post of Metropolitan Commissioner of MMRDA (Mumbai Metropolitan Region Development Authority), and Principal Secretary of Urban Development Department, Govt. of Maharashtra.
12 October 2010	Dr Suresh V Joshi retired upon attaining the age of 65.
14 October 2010	Mr Vilas B Patil, SIC of Nagpur bench, was sworn in as Chief SIC. He had previously served as Secretary, Maharashtra State Legislature, and also Law and Judiciary Department. Earlier, there was reportedly a move to appoint another retired bureaucrat as Chief SIC. However, after Mr Vilas Patil lodged a strong protest saying that the government should follow the principle of seniority, he was appointed Chief SIC.
3 January 2011	Mr Ratnakar Gaikwad (Respondent 2 or R2) became the Chief Secretary of Maharashtra. As such, it became his responsibility to fill up the posts of Chief SIC and SICs whenever

	they fell vacant. Previously, Mr Ratnakar Gaikwad had been held the dual posts of Additional Chief Secretary of Metropolitan Commissioner of MMRDA.
22 July, 2011	Mr Vilas Patil retired from the post of Chief SIC upon attaining the age of 65.
23 July 2011 to 8 June 2012	The post of Chief SIC was not filled up, and was inexplicably kept vacant, and neither the Chief Minister (Respondent 3 or R3), nor Mr Ratnakar Gaiwad, Chief Secretary, took any significant steps to fill up this post. Maharashtra Information Commission was headless for nearly 11 months. As the posts of other SICs also fell vacant one by one and were not filled up, the total strength of Maharashtra Information Commission fell from eight in October 2010 to four. During this period, pendency of cases doubled from about 12,000 to over 24,000.
1 August, 2011	Mr Vijay Kuvalekar of Pune bench assumed the role of Acting Chief. He started shuttling back and forth between Pune and Mumbai on a daily basis, as his request for a guest house accommodation in Mumbai was repeatedly turned down by Mr Ratnakar Gaikwad (R2), who was then the Chief Secretary.
7 February, 2012	Mr Vijay Kuvlekar retired from his post as SIC, having completed his 5-year term
10 February, 2012	Mr Bhaskar Patil, SIC of Amravati, took over as the Acting Chief, and started frequently visiting Mumbai to hold hearings.
29 May, 2012	Mr Ratnakar Gaikwad (R2) wrote a letter addressed to the Chief Minister (R3) that as he would be retiring from the post of Chief Secretary on 31 May, 2012, he would like to apply for the Post of Chief Information Commissioner.
31 May, 2012	Mr Ratnakar Gaikwad retired from the post of Chief Secretary and from Indian Administrative Service.
5 June, 2012	A letter was sent by the administration to the Deputy Chief Minister and the Leader of the Opposition, calling for an urgent meeting of

	the High Powered Selection Committee for selection of the Chief Information Commissioner on 6 June, 2012.
06 June, 2012	High Power Committee (R5) held its meeting. It was chaired by R3, and comprised three members, namely the Chief Minister, Deputy Chief Minister Ajit Pawar and Leader of Opposition Eknath Khadse. Although the selection had been already made for all practical purposes, R5 now officially selected R2 as Chief SIC.
07 June, 2012	A notification was issued in the name of the Governor, signed by Jayantkumar Banthia, Chief Secretary of Maharashtra (Respondent 1 or R1), appointing R2 as the State Chief Information Commissioner.
08 June, 2012	R2 was sworn in as Chief SIC by the Governor of Maharashtra.
1 August 2012	Hence this writ petition is filed by way of Public Interest Litigation, to safeguard the Fundamental Rights of the public, which are injured by this prejudicial appointment.

ACTS TO BE CITED

- (i) Constitution of India
- (ii) Right to Information Act, 2005

IV. AUTHORITIES TO BE CITED

- (i) Judgments and Orders of the Hon. Supreme Court
- (ii) United Nations Declaration of Human Rights
- (iii) Principles of Natural Justice

POINTS TO BE URGED

- (i) Does Section 15(5) of RTI Act 2005 mandate a broad-based selection of eminent citizens as Chief

State Information Commissioner (Chief SIC) or State Information Commissioners (SICs)?

- (ii) Does Section 15(5) confer upon all “eminent citizens” the right to offer themselves for selection and appointment as Chief SIC or SIC, and/or to nominate other “eminent citizens” for such selection and appointment?
- (iii) Does Section 15(5) confer any special rights or privileges upon those who are serving in the government or administration, in respect of selection to the post of Chief SIC or SIC?
- (iv) Does Section 15(5) cast a special responsibility on the Respondents (who represent “State”) to approach the selection process in public interest with sanctity and honesty, to keep out extraneous private interests and influences?
- (v) Do the respondents’ actions conform to legal and ethical requirements of Section 15(5) of RTI Act 2005?
- (vi) Are the actions and/or procedures followed by the respondents for selection of Chief SIC, transparent, fair and just, in consonance with Articles 14, 16(1), 21, 38 and 50 of the Constitution?
- (vii) Are the selection procedures followed by the respondents proper and adequate for fulfilling the

role of Chief SIC as a quasi-judicial authority and avoiding potential conflict of interest?

- (viii) Is the last clause of Section 15(5), viz. “or administration and governance” intrinsically in consonance with accepted principles of law, constitutionality and good governance? Alternatively, is it *ultra vires* of the Constitution of India, and hence liable to be struck down?
- (ix) By appointing R2 as Chief State Information Commissioner, have the respondents upheld the Fundamental Right guaranteed under Article 16(1), viz. “equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State”?
- (x) By appointing R2 as Chief State Information Commissioner, have the respondents enabled the State Information Commission to uphold the common man’s Fundamental Right guaranteed under Article 14, viz. “equality before the law or the equal protection of the laws”?
- (xi) By appointing R2 as Chief State Information Commissioner, have the respondents enabled the Maharashtra Information Commission to uphold the common citizen’s Fundamental Right under Article 21, i.e. “Protection of life and personal liberty”?

- (xii) Is the respondents' appointment of R2 as Chief State Information Commissioner according to the mandate of the Directive Principle under Article 38? Will their actions go towards "securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life"? Do their actions "minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people... engaged in different vocations"?
- (xiii) Is the respondents' appointment of R2 as Chief State Information Commissioner according to the mandate of the Directive Principle under Article 50, viz. "The State shall take steps to separate the judiciary from the executive in the public services of the State".
- (xiv) Is it necessary to make it mandatory for the Chief SIC to have a legal or judicial background, in order to uphold the character of the State Information Commission as a quasi-judicial body and an effective watchdog institution over the State Government?
- (xv) Is it necessary to make it mandatory for a certain proportion of State Information Commissioners (SICs) to have legal and judicial backgrounds, to

maintain quasi-judicial functioning in the State Information Commission?

(xvi) After considering the above-mentioned questions of law, is it necessary for this Hon'ble High Court, in exercise of its jurisdiction under Article 226 and 227, to issue writs and directions accordingly to the State Government and State Information Commission?

Petitioner No. 1

(In person)