

ANALYSING VICTIMISATION OF RTI APPLICANTS AND STRATEGIES FOR THEIR PROTECTION

***Research report submitted to DoPT, Ministry of Personnel,
Public Grievances and Pensions for the
fulfilment of a research fellowship***

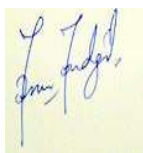
MANU MOUDGIL

2012

ACKNOWLEDGMENT

It is a pleasure to thank those who made this research possible; first of all I would like to express my gratitude to Ms. Anuradha Chagti, Deputy Secretary (RTI), DoPT and Ms. Sarita Nair, Under Secretary (IR) for giving me the opportunity to conduct this research. I am also indebted to faculty members of Indian Institute of Public Administration, including Prof Sujata Singh, Prof Pranab Banerji, Prof Dolly Arora and Dr Roma Mitra Debnath not only for their regular guidance but also for providing the library facilities for this research.

In addition, I would like to thank the civil society organisations, especially Mazdoor Kisan Shakti Sangathan, Mahiti Adhikar Gujarat Pahal. Sambhaav and Urmul Trust, for assistance. Finally, I express my gratitude to several villagers of Rajasthan and Gujarat who shared their food and shelter with me.



CONTENTS

List of figures, tables and graphs.....	5
List of abbreviations.....	6
List of annexures.....	10
Abstract.....	12
Chapter 1: Introduction.....	14
1.1 Corruption and the RTI Act.....	14
1.2 Definition and Rationale of the study.....	16
1.3 Objectives of the study.....	17
Chapter 2: Scope of study and methodology.....	19
2.1 Scope of the study.....	19
2.2 Research Methodology.....	21
2.3 Data collection methods.....	22
2.4 Analysis of data and results.....	23
2.5 Selection of case studies.....	24
Chapter 3: The transparency movement.....	25
3.1 Right to information in India.....	25
3.2 The Background	28
3.3 The grassroots movement.....	29
Chapter 4 Literature review.....	32
4.1 Threat to RTI users.....	32
4.2 RTI users as whistle blowers.....	33

Analysing victimisation of RTI applicants and strategies for their protection

4.3 RTI users as human rights defenders (HRDs).....	37
4.4 The domestic protection mechanism.....	39
4.5 Moves by information commissions.....	41
4.6 Courts and governments.....	44
4.7 Community action.....	46
 Chapter 5 Findings.....	48
5.1 Rajasthan.....	48
5.1.1 Mangla Ram, Bamnor village Barmer district.....	51
5.1.2 Babu Ram Chauhan, Ramgarh village, Jaisalmer district.....	57
5.1.3 Goverdhan Singh, Bikaner city, Rajasthan.....	61
 5.2 Gujarat	67
5.2.1 Amit Jethwa, Khamba village, Amreli district.....	71
5.2.2 Vishram Laxman Dodiya, Surat.....	75
5.2.3 Satishbhai Rana, Alina village, Kheda district.....	77
 5.3 MAGP's RTI helpline.....	79
5.3.1 Bharatbhai Gughal and Bhanjibhai Jogal, Dhank village... ..	80
5.3.2 Bhadrash Vamja, Saldi village, Amreli district.....	85
5.3.3 Michael Martin and Bhanu Parmar, Anand district, Gujarat.....	89
5.3.4 Lessons drawn from MAGP's helpline.....	92
5.3.5 Limitations of the helpline.....	93
 Chapter 6 Discussion and Conclusion.....	95
6.1 Objectives of Research and Methodology.....	95
6.2 Limitations of Research.....	96
6.3 Scope of further research.....	97
6.4 Discussion.....	97
6.5 Some important findings.....	98
6.6 Recommendations.....	99
6.6.1 Lessons for authorities.....	99
6.6.2 Lessons for RTI users.....	100
 Bibliography.....	102
Annexure.....	104

LIST OF FIGURES, TABLES & GRAPHS

Figure 1	Mangla Ram at his home in Bamnor village, Barmer.....	56
Figure 2	Baburam Chauhan showing RTI documents.....	60
Figure 3	Satishbhai Rana was mercilessly beaten up for asking information about cutting of trees.....	78
Figure 4	Bharatbhai and Bhanjibhai at Dhank village in Gujarat.....	84
Figure 5	Bhadresh Vamja ensured regular ration in his village.....	88
Figure 6	Michael Martin at his office in Nadiad town of Gujarat.....	91
Graph 1	Trend in number of RTI applications received	26
Graph 2	Trend in RTI applications received in Rajasthan	49
Table 1	Cases registered against Goverdhan Singh.....	65

LIST OF ABBREVIATIONS

ACB	Anti-Corruption Bureau
ADGP	Additional Director General of Police
APL	Above Poverty Line
BPL	Below Poverty Line
CBI	Central Bureau of Investigation
CIC	Central Information Commission
CM	Chief Minister
CSO	Civil Society Organisation
CrPC	Criminal Procedure Code
CDHO	Chief District Health Officer
DDO	District Development Officer
DIG	Deputy Inspector General of Police
DoPT	Department of Personnel and Training
DGP	Director General of Police
DSP	Deputy Superintendent of Police
FIR	First Information Report

Analysing victimisation of RTI applicants and strategies for their protection

FOI	Freedom Of Information
GIC	Gujarat Information Commissioners
HRD	Human Rights Defender
IC	Information Commissioners
IGNP	Indira Gandhi Nahar Pariyojana
IGP	Inspector General of Police
IIPA	Indian Institute of Public Administration
IPC	Indian Penal Code
IPO	Indian Postal Order
IPS	Indian Police Service
LPG	Liquefied Petroleum Gas
MAGP	Mahiti Adhikar Gujarat Pahel
MLA	Member of Legislative Assembly
MKSS	Mazdoor Kisan Shakti Sangathan
MNREGA	Mahatama Gandhi National Rural Employment Guarantee Act
MO	Medical Officer
MP	Member of Parliament
NAC	National Advisory Council
NAPM	National Alliance of People's Movement

Analysing victimisation of RTI applicants and strategies for their protection

NCMP	National Common Minimum Programme
NCPRI	National Campaign for People's Right to Information
NGO	Non-Government Organisation
NHRC	National Human Rights Commission
PDS	Public Distribution System
PHC	Primary Health Centre
PHR	Protection of Human Rights
PIL	Public Interest Litigation
PIO	Public Information Officer
PSI	Police Station Incharge
PUCL	People's Union for Civil Liberties
RaaG	Right Assessment and Analysis Group
RIC	Rajasthan Information Commission
RTI	Right To Information
SC	Scheduled Caste
SDM	Sub-Divisional Magistrate
SHRC	State Human Rights Commission
SHO	Station House Officer

Analysing victimisation of RTI applicants and strategies for their protection

SIC	State Information Commission
SP	Superintendent of Police
ST	Scheduled Tribes
TDO	Taluka Development Officer
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
US	United States
UT	Union Territory
VAT	Value Added Tax
WHO	World Health Organization

List of Annexures

1.1	Minutes of CIC's meeting on suo motu disclosure.....	I
1.2	Circular issued by Mumbai Police Commissioner.....	II
1.3	Letter by RTI activists to Maharashtra CM.....	VI
2.1	Request for police protection by Mangla Ram.....	X
2.2	FIR registered on complaint of Mangla Ram.....	XI
2.3	FIR registered by Barmer Police.....	XII
2.4	SDM's report into attack on Mangla Ram.....	XIV
2.5	Order on special investigations into the case of Mangla Ram.....	XVI
2.6	The inquiry report in corruption allegations at Bamnor village.....	XVIII
2.7	Letter for action on inquiry report.....	XXXIII
2.8	CB-CID report into allegations against Baburam Chauhan.....	XXXVIII

Analysing victimisation of RTI applicants and strategies for their protection

2.9	Application for 'on-call security' by Baburam Chauhan.....	XL
3.1	Court order in Goverdhan Singh's case.....	XLII
3.2	Goverdhan Singh's complaint to Rajasthan Governor.....	XLVIII
3.3	ACB's report into allegations against Rajasthan information commissioners.....	LV
3.4	FIR filed by Satishbhai Rana.....	LVII
3.5	Communication between CIC and district collector in Bharatbhai-Bhanjibhai's case.....	LVIII
3.6	Letter to DSP in Bharatbhai-Bhanjibhai's case.....	LX
3.7	Letter to Secretary, Food, Civil Supplies & Consumer Affairs Department	LXI
3.8	Circular of the Food, Civil Supplies and Consumer Affairs Department	LXIII
3.9	Gujarat High Court order on pendency at SIC.....	LXVI
4.1	Order by first appellate authority in Michael Martin's case.....	LXXXIV

Abstract

The RTI Act has ensured a substantial positive change in government functioning, but it has not been a cakewalk for the applicants who have regularly been victimised for exposing wrongdoings in public offices. Around 20 cases of murder, 45 cases of assault and 73 cases of harassment of RTI users have been reported from all across India from as early as 2007. Most cases of victimisation involve information related to issues of larger public interest and social welfare schemes. Registration of false cases, accusations of blackmailing and other means to harass RTI users are routinely exercised by vested interests. Those living in rural areas are easier targets due to physical proximity with the accused and remoteness from police, media and civil society groups.

A well-established mechanism consisting of set procedures to deal with such cases can go a long way in guaranteeing safety of applicants. Regular proactive disclosure of information by public authorities under Section 4(1) of the RTI Act, quick police action on complaints of RTI users and monitoring of the investigations by a senior police official can help curb the menace. Investigations should also be made into the role of the PIO and first appellate authority can help curb the menace. When the information sought relates to police, the probe into allegations of victimisation should be done by an external/independent agency. Monitoring by information commissions, human rights commissions and the department to which the information pertains can also bring great benefits. A helpline by information commissions or state governments for protection of RTI users can go a long way in dealing with the issue.

Analysing victimisation of RTI applicants and strategies for their protection

On the part of applicants, community support has been found to be a great defence against victimisation. Reporting even minor threats, keeping proper documentation of complaints and representations to authorities and networking with civil society organisations and mediapersons can also help avoid mistreatment. Depending on the information sought, other laws can also be invoked to ensure protection. For instance, if the information sought relates to issues of a minor, the Juvenile Justice Board can be approached for action.

Chapter 1 Introduction

In the introductory chapter of this research we will get acquainted with the role of RTI Act in exposing corruption and ensuring transparency in governance. The level of corruption in India, recent cases involving misappropriation of public funds and the role of information commissions as ultimate appellate authorities will be discussed. The chapter also provides current context to the topic of study, outlines the need for this research and the objectives that will be achieved in the process.

1.1 Corruption and the RTI Act

Recent controversies including the 2G spectrum scam, financial irregularities in organisation of Commonwealth Games and Adarsh Housing Society scandal besides others have brought dark truth of corruption in governance to the fore. The prevalence of corruption in India can be gauged from the Centre for Media Services analysis that during 2005-10, corruption coverage in prime-time bulletins increased almost by four times in comparison to news stories.¹

India's rank fell from 87th to 95th position in Transparency International's 2011 ranking of nations in corruption perceptions.² Besides the involvement of bureaucrats and politicians, private sector has also been found deeply involved in abetting corruption. “The private sector is no more a victim of corruption in India. Instead, it is instrumental

1 A Comparative Scenario: India Corruption Study, 2002-09, CMS India

2 [India Transparency International corruption index blow, BBC News India, December 1, 2011](#)

<http://www.bbc.co.uk/news/world-asia-india-15979646>. Accessed on April 12, 2012

Analysing victimisation of RTI applicants and strategies for their protection

(in effecting it) and hand-in-glove with public officers. Collusive corruption, where officials from public sector undertakings join hands with the private sector, is greatly present in the Indian business environment, particularly in the power, mining and oil sectors,” the Transparency International's report says.³

The use of RTI Act by media and civil society organisations in exposing several of the latest corruption episodes⁴ underscores the fact that it is a great tool to ensure transparency and accountability in governance.

The right to information at all levels is a necessary condition to bring about the accountability necessary for reducing inefficiency and corruption. Only when transparency and accountability through fixing of responsibility are enforced at all levels can the march towards genuine development through full employment begin. (Bhaduri 2008)⁵

The role of Central Information Commission (CIC) and State Information Commissions (SICs) also assumes significance in this context as the bodies which formulate policies, set standards and are also the ultimate appellate authority at centre and state levels within the ambit of information system formulated through the RTI Act.

3 [Aman Sharma, Private sector also involved in corruption: Transparency report, Mail Today, March 22, 2012.](http://indiatoday.intoday.in/story/government-industry-nexus-graft-transparency-international/1/178806.html)
<http://indiatoday.intoday.in/story/government-industry-nexus-graft-transparency-international/1/178806.html>. Accessed on April 12, 2012

4 Mandakini Devasher Surie, Right to Information in India: An Effective Tool to Tackle Corruption, September 28, 2011, <http://asiafoundation.org/in-asia/2011/09/28/right-to-information-in-india-an-effective-tool-to-tackle-corruption/>. Accessed on April 14, 2012.

5 Bhaduri, 2008: Growth and employment in the era of globalization: Some lessons from the Indian experience.

1.2 Definition and Rationale of the study

As a new legislation on accountability and transparency, the RTI Act has introduced an opportunity for common citizen to question public authorities and get access to official documents which were hitherto classified under the draconian Official Secrets Act. This drop of posturing by the government has given a new lease of life to the democratic character of India where people now have power to scrutinise what their elected representatives and administrators are up to.

However, while the Act has ensured a substantial positive change in government functioning, it has not been a cakewalk for the applicants who have regularly been victimised for exposing wrongdoings in public offices. The RTI Act does not specifically provide for protection of users and though several state governments, information commissions and the courts have taken note of the seriousness of the situation, no concrete measures have been formulated to prevent the victimisation.

Around 20 cases of murder, 45 cases of assault and 73 cases of harassment of RTI users have been reported from all across India from as early as 2007.⁶ Such incidents not only defeat the purpose of enquiry as mandated under the RTI Act but also instill fear in minds of people who may be potential information seekers. More importantly, the present security set up has been found wanting when it comes to protection of RTI applicants. Satish Shetty, who had blown the whistle on a series of land scams in

⁶ Wikipedia, the free encyclopedia, http://en.wikipedia.org/wiki/Attacks_on_RTI_activists_in_India. Accessed on April 20, 2012.

Maharashtra, was hacked to death in Pune on January 13, 2010. According to information, Shetty had sought police protection after having received threats to his life. In the above context, it is imperative that besides making interventions at the policy level, strategies devised by the community to deal with this hazard should be disseminated and replicated in other parts of the country.

1.3 Objectives of the study

This research study was undertaken to understand multiple factors that make RTI users prone to victimisation and also to suggest remedial measures.

- To analyse the social, political and financial circumstances which lead to victimisation of RTI users and the role of state machinery in neutralising these factors.
- To underscore shortcomings in the current administrative set up and suggest remedies for quick action in cases of threats or incidents of victimisation.
- To study the effectiveness of decisions taken by courts, state and central information commissions, state governments and security agencies related to protection of RTI users.
- To review the performance of protective measures initiated by individuals or civil society organisations (CSOs).

- To suggest measures for collaborative approach between the administration, civil society, media and other stakeholders for protection of RTI users.

Summary: Though RTI Act has helped expose cases of corruption, it has not been a cakewalk for the users. who have regularly been victimised for exposing wrongdoings in public offices. Around 20 cases of murder, 45 cases of assault and 73 cases of harassment of RTI users have been reported from all across India since 2007. The study will verify such cases of victimisation, analyse shortcomings in the present system and suggest remedies.

The next chapter will detail the field areas, method of research, criteria for selection of case studies, tools for data collection, limitations of research and scope for further study.

Chapter 2 Scope of the study and methodology

The chapter outlines the scientific basis for this research study. Justification will be provided for selection of the field area and methodology adopted for selection of samples. Operational definitions used, methods of data collection adopted and guiding questions put into practice for carrying out unstructured interviews will also be discussed in detail.

2.1 Scope of the study

Gujarat and Rajasthan have been selected as field areas for the purpose of this research. The rationale for this selection lies in the strength of RTI movement in these two states. Both Rajasthan and Gujarat have a large geographical area with substantial rural set up and a deep-rooted caste-based society, at least in the villages. Both the states also differ in various ways which offers a good contrast to the research. While Gujarat is an established industrial hub with some of the largest businesses in India⁷, people of Rajasthan are mainly dependent on tourism, agriculture and daily labour.

Rajasthan was the battleground from where the first call for right to information was made in mid 1990s by the labourers and farmers seeking their right to livelihood. (report: MKSS. On the other hand, Gujarat is only second to Maharashtra in reported cases of murder, assault and harassment of RTI users. Around 20 such cases have come

⁷ Wikipedia, the free encyclopedia, <http://en.wikipedia.org/wiki/Gujarat#Demographics>. Accessed on April 24, 2012

to notice through media reports and other sources in Gujarat.⁸

The neighbouring states also score high on presence of civil society organisations working in the field of right to information and human rights. In Rajasthan, RTI Manch, under the aegis of MKSS, is a forefront organisation in this field while People's Union for Civil Liberties (PUCL) is well known for its efforts towards protection of human rights. Besides these, there are various other district-level organisations, including Bikaner-based Urmul Trust, which have been active in the field of RTI.

In Gujarat, Mahiti Adhikar Gujarat Pahel (MAGP) runs an RTI helpline which also assists those who are harassed for seeking information. This is the only one of its kind initiative in India which has acted as a go-between for the common man and security agencies. Ease of access and fewer linguistic barriers also helped select Rajasthan and Gujarat as the field area. It is worth noting that the assessment of these two states should not be seen as representative of the whole of India. Though all the states of India have similar federal administrative structure, they differ in law and order situation and response to human rights violation. For a full picture of the situation in the country, this study should be read with existing research and further studies should be done in other states to complement this research.

⁸ Wikipedia, the free encyclopedia, http://en.wikipedia.org/wiki/Attacks_on_RTI_activists_in_India. Accessed on April 24, 2012

2.2 Research Methodology

The study was conducted through qualitative research method since the theory will be generated through the process of gathering information and looking for patterns. Nature of the problem is already known (RTI applicants are being victimised), so the study fell under causal research looking for parameters affecting safety of RTI applicants. The Oxford dictionary broadly defines 'victimisation' as unfair treatment but this study will specifically focus on cases of assault, threat calls, intimidation and registration of complaints/police cases against an RTI applicant subsequent to filing of the application(s). Only those case studies which involved usage of RTI to help a public cause have been selected purposefully to avoid the instances of RTI misuse, if any.

The target population was all the RTI users living in geographical boundaries of Rajasthan and Gujarat who have been victimised for seeking revealing information. Information about such persons was gathered through media reports and from people working in the field of RTI in Rajasthan and Gujarat.

Judgement sampling method was used as the sample had been selected based on the judgement about some appropriate characteristics required of the sample member. The sample was selected only after verification that use of RTI was the reason for the alleged victimisation. Where mixed motives were found, it was determined through documents and personal judgement based on exhaustive interviews what the dominant motive was.

2.3 Data collection methods

- Desk review of existing documents on victimisation of RTI users in the country and protective measures initiated by individuals, civil society organisations (CSOs) as well as government agencies (policy papers, court orders, affidavits, representations, memorandums and minutes of meetings of key organisations, for instance. the Central Information Commission.). Analysis of documents pertaining to individual case studies.
- Legal review of existing and draft laws regarding right to information, protection of human rights, whistleblower protection and UN declaration on human rights. The review covered generic law, including the draft Public Interest Disclosure and Protection to Persons Making the Disclosures Act (Whistleblower Protection Bill), Protection of Human Rights (PHR) Act, 1993, sectoral laws including Code of Criminal Procedure, 1973, Indian Penal Code and Indian Evidence Act, case law, (e.g. court cases, decisions of information commissions) besides parliamentary debates.
- Key informant interviews with RTI experts and practitioners and other well-informed persons in order to get a clearer picture on the research topic.
- Media analysis, including a review of media reporting on victimisation of RTI users and protective strategies.
- Unstructured interviews with victimised RTI users, their family members, the accused party, administrative officials dealing with the case.

Though all the interviews were unstructured, these were the guiding questions in most of the case studies:

- What was the public cause raised or likely to be raised in the RTI application filed by the user?
- How was the accused party affected or likely to get affected by the disclosure of such information?
- What was the mode of victimisation used?
- Any other factor besides RTI which could have been the reason for victimisation?
- Which public authority/authorities and/or security agencies that were intimidated about the instance of victimisation and when?
- Action taken by public authorities and/or security agencies and its impact?
- Any protective measure initiated by the user on his/her own and its impact?

2.4 Analysis of data and results

The research was carried out between April and June 2012 and the results of the assessments were discussed and analysed on monthly basis with the faculty members of the Indian Institute of Public Administration (IIPA). Preliminary findings were also discussed briefly at a national workshop on best practices in the implementation of the RTI sponsored by the Department of Personnel and Training (DoPT), Government of India in May 2012. Certain updates were added later on during vetting of the report.

2.5 Selection of case studies

Based on preliminary research, four case studies in Rajasthan and 13 case studies in Gujarat were selected for further investigations. More cases of victimisation were visible in Gujarat because of presence of an intensive network of CSOs and individual activists working in the field area, better communication and transport facilities, larger media presence and existence of a dedicated RTI helpline run by a CSO.

Of the selected case studies, three cases from Rajasthan and six from Gujarat were found to be valid according to the research design adopted for this study. The imbalance in selection of case studies is not bound to affect the research findings since the study focuses on individual cases and does not draw state-specific inferences.

Summary: Gujarat and Rajasthan have been selected as field areas because of the strength of RTI movement in these two states. Both the states also differ in various ways which offers a good contrast to the research. Qualitative research method was adopted since the theory will be generated through the process of gathering information and looking for patterns. Only those case studies which involved usage of RTI to help a public cause have been selected purposefully to avoid the instances of RTI misuse, if any. A total of nine case studies were selected using the judgement sampling method. The next chapter charts out the progress of right to information movement in India.

Chapter 3 The transparency movement

This chapter charts out the trajectory of right to information movement in India vis-a-vis the international experience. It details the background including legal pronouncements, civil society or people's movement and government action over the years till the enactment of the Right To Information Act 2005. Lessons learnt from other countries are also incorporated in this chapter.

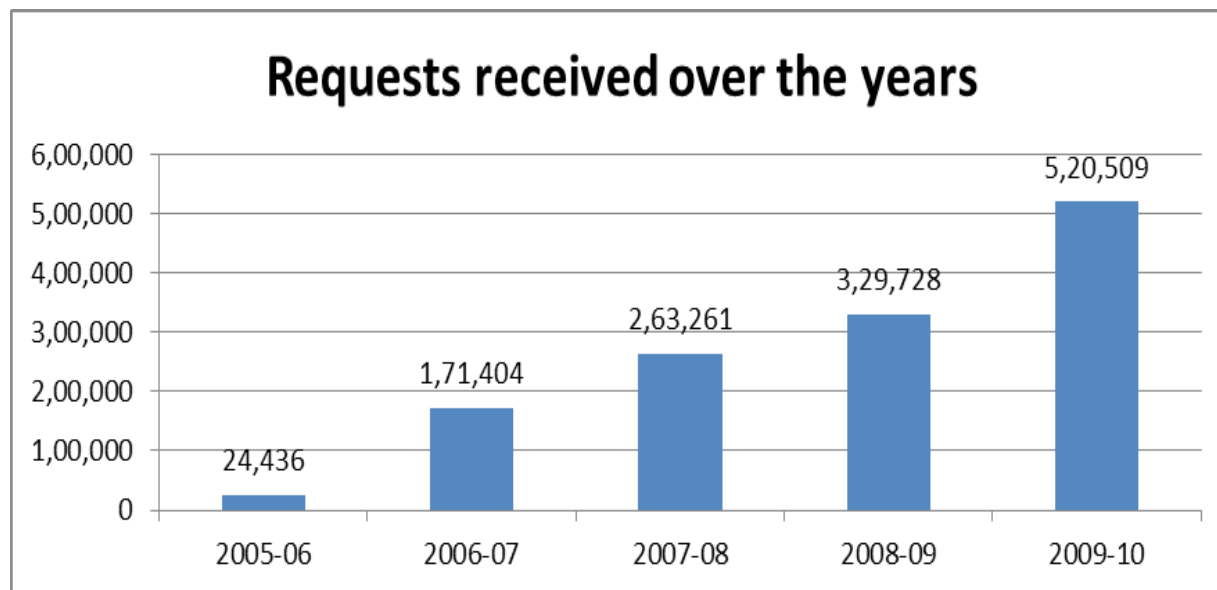
3.1 Right to Information in India

The RTI Act came into being after concerted efforts of social activists who sought amendments in the Freedom of Information Act for greater powers to the people. The most heartening fact to be noted after six years is that their trust in common man has been vindicated. Citizens of the country are increasingly arming themselves with the provisions of the legislation and turning India into a democratic country in the true sense. This is evident with the steady increase in number of requests for information filed with various public authorities from October 2005 to March 2011. The number of RTI applications with central authorities and Union Territories have actually gone up from 24,436 in 2005-06 to 4,17,955 by 2010-11.⁹

⁹ CIC annual report, 2010-11, <http://cic.gov.in/AnnualReports/AR2010-11.htm>. Accessed on April 20, 2012.

CIC annual report, 2005-06, <http://cic.gov.in/AnnualReports/AR2005-06.htm>. Accessed on April 20, 2012.

Graph 1 Trend in number of RTI applications received between 2005 and 2010



The enactment of the RTI Act was a result of the confluence of a variety of factors, both international and domestic. The legislative expression of the right to information has long been recognised as supporting all other human rights. Article 19 of the Universal Declaration of Human Rights of the United Nations (UN), signed on 10 December 1948, states unequivocally:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

Therefore, the freedom of opinion and expression which lends veracity to the right to information has been unambiguous elements of a historic international law to which

India is a signatory. The UN Declaration gives preference to human rights over power of the State. However, even before any international declaration on information was signed, there was already a movement underway in Europe for more transparency in the functioning of governments. This movement culminated in legislations ensuring information access which have set benchmarks for others including India. Here's a brief on these international laws:

Sweden

Sweden has the oldest legislation relating to public access to official documents, dating back to as far as 1776. The right is, in fact, provided in the Constitution itself. The principle that disclosure of information is the norm unless it is withheld by specific legal provision underlies Sweden's open access regime. Documents that are to be exempted from disclosure are defined in the Secrecy Act.

Finland, Denmark and Norway

Finland passed the *Law on the Public Character of Official Documents* in 1951. The legal provisions benefited from the country being a part of Sweden in the 19th century. Both Denmark and Norway passed their information access laws in 1970.

In all these four Scandinavian countries, citizens who have been denied information can appeal to the court.

United States

The United States Freedom of Information (FOI) Act, passed in 1966, laid out the decree that access to documents should be a rule rather than an exception. However, due to

inherent difficulties in enforcing compliance, this Act was amended in 1974 and the onus of justifying restriction of access to a document was placed entirely on the government. It goes one step further than the laws of other countries by allowing limited disclosure or the release of all non-secret information that can be segregated from the exempted information in any secret file. The most potent provision in the US law is the power of a judge to examine whether or not the government has classified documents properly. Indian lawmakers and civil society groups found some of the earlier European and American practices familiar. In particular, the provision that applicants do not need to provide a reason for accessing documents has been adopted in the RTI Act of India. The American law's provisions for disciplinary action, right to inspect documents and fees for inspection and photocopy have also found a place in the Indian legislation in some form or the other.

3.2 THE BACKGROUND

In India, the movement to realise the right to information occurred in three areas:

- Legal pronouncements
- Civil society/ people's movement
- Government action

The Supreme Court (SC) has held through various judgments that the right to information is a part of the fundamental right to freedom of speech and expression under Article 19 (1) of the Constitution, since the right cannot be properly exercised if the people did not have the right to information. The clearest enunciation of the fundamental

right to information was seen in the Supreme Court ruling in the *State of P vs. Raj Narain* [(1975) 4 SCC 428] in which Justice K.K. Mathew said:

“In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They (the public) are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption”.

Later, in *S.P. Gupta vs. Union of India* [1982 SC (149)], Justice P. N. Bhagwati observed: *“The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of the government must be the rule and secrecy an exception.”*

3.3 THE GRASSROOTS MOVEMENT

The RTI Act is the result of a popular and widespread grassroots struggle for effective governance. Civil society movements to realise the right to work and livelihood of

villagers discovered that public money meant for development projects was being siphoned off routinely. Workers were being denied their wages and classified government records were showing that these people had not worked on the projects.

Mazdoor Kisan Shakti Sangathan (MKSS), which took up the issues of land redistribution and minimum wages in 1990s, understood the significance of transparency and the right to information. Every time the workers asked to be paid the minimum wage, they were told that they had not done the work, a claim that, they were also told, was based on records¹⁰. When the MKSS demanded to see the records, the reply was that these were government accounts and therefore secret. And so it was that a simple demand for minimum wages became a fight for the right to information. The poor started to see that they had to be involved in the RTI campaign because it was an issue connected intrinsically to their livelihood and survival. One of the slogans born during the struggle is self-explanatory: ‘The Right to Know, The Right to Live.’

A series of demonstrations and public hearings were held to show how local governments had manipulated the records that affected wages and livelihoods of villagers. In 1996, a nation-wide network of senior journalists, lawyers, distinguished bureaucrats, academics and social activists strongly advocated for abolition of the Official Secrets Act, 1923 and enactment of a strong right to information legislation at the Centre. Starting from the time when States were operating right to information laws in a limited way, and during the period after the RTI Act 2005 was promulgated, there was a conspicuous upsurge in public response. In 2002, the Freedom of Information (FOI) Bill was passed but it invited criticism from the civil society for not being

¹⁰ Aruna Roy and Nikhil Dey: Fighting for the Right to Know in India, Development Dialogue, 1, 2002, p. 77-90.

effective in ensuring transparency in government functioning. Even as efforts for a Central legislation on the right to information continued, several states had already begun enacting their own access to information laws. However, neither were these Acts considered very strong tools for enforcing accountability nor were they citizen friendly. The provisions for proactive disclosure and penalty were not present. In some cases there was a long list of documents and information exempted from the laws.

Though the FOI Act was passed by Parliament in 2002 and received Presidential assent in January 2003, it was not notified and, as a result, was never enforced. In May 2004, the struggle for the right to information received some encouragement in the form of the National Common Minimum Programme (NCMP), which promised to make India's information access legislation "more progressive, participatory and meaningful". The National Advisory Council (NAC) was set up to fulfil this, among other things. The RTI Act came into force within 120 days of its enactment on October 12, 2005.

Summary: In India, the movement to realise the right to information involved legal pronouncements, people's movement and government action. The Supreme Court (SC) has held through various judgments that the right to information is a part of the fundamental right to freedom of speech and expression under Article 19 (1) of the Constitution. Civil society movements to realise the right to work and livelihood of villagers also pushed for the transparency in expenditure of public money.

In the next chapter, various documents including academic research reports, legal court orders and administrative reports and decisions are reviewed for better understanding of the topic.

Chapter 4 Literature review

This chapter offers references to the contemporary studies related to the research topic, development in the field of administrative reforms and policy making at the state and Central level. Draft law on whistle blowers, status of human rights defender in India, resolutions passed by the information commissions, court orders, action of law and order agencies, media and civil society organisations besides community action will also be discussed in detail.

4.1 Threats to RTI users

Victimisation of RTI users is a relatively new phenomenon in India which is why there has not been any systematic study done on the issue so far. The research study conducted by the National Campaign for People's Right to Information (NCPRI) in collaboration with the Right Assessment and Analysis Group (RaaG) in 2008 to assess the implementation of RTI had also take into account the threat perception of users. It was found that over 40 per cent of the rural respondents term harassment and threats from officials as the major constraint in exercising their right to information. In urban areas, 15 per cent of the respondents cited harassment from officials and uncooperative officials as the most important constraint. However, the study did not delve deeper into case studies of victimisation, shortcomings of the system and protective mechanisms.

Those who challenge the corrupt have always been threatened, but with RTI it has

become easier to challenge and hence the number of cases of victimisation are also on the rise. There have been several media reports about incidents of harassment, threat, coercion and violence against RTI users and their family members by both state and the non-state actors. Media and civil society organisations have particularly been instrumental in raising the issue of protection of the RTI users with the policy makers. The issue has gained great prominence and has been frequently discussed in the Parliament, courts and the executive meetings. It has now been widely accepted that RTI users are prone to victimisation by those with vested interests and a protective mechanism needs to be in place to curb such a practice.

4.2 RTI users as whistle blowers

While addressing the 6th RTI Convention on Oct 14, 2011, Prime Minister Dr Manmohan Singh stated : "I would like to mention here our initiative to enact a legislation for the protection of whistle blowers which would further strengthen the Right to Information. We expect this law to be enacted in the next few months and it would, among other things, help in prevention of violence against those who seek to expose wrongdoings in our public administration."¹¹

Whistle blowers play a crucial role in providing information about corruption. If adequate statutory protection is granted, there is every likelihood that the government would be able to get substantial information about corruption. In the United States, in the post-Watergate era, after the trials and tribulations of Daniel Ellsberg, the man who

¹¹ [Himanshi Dhawan, Whistleblowers Act coming soon: Manmohan Singh, Times of India, October 14, 2011, http://articles.timesofindia.indiatimes.com/2011-10-14/india/30278730_1_rti-act-information-commissioners-central-information-commission](http://articles.timesofindia.indiatimes.com/2011-10-14/india/30278730_1_rti-act-information-commissioners-central-information-commission), Accessed on July 18, 2012.

Analysing victimisation of RTI applicants and strategies for their protection

“blew the whistle” on the so called “Pentagon papers”, whistleblowing has not only been protected by statute but is also encouraged as an ethical duty on the part of the citizens.¹²

In its 4th report the second administrative reforms commission emphasised on protection of whistle blowers exposing false claims, fraud or corruption by ensuring confidentiality and anonymity, protection from victimisation in career, and other administrative measures to prevent bodily harm and harassment.

Accusations especially of blackmailing are regularly made against whistle blowers including RTI users which is why it gets difficult for the security agencies as well as courts to ascertain good faith. South African courts have asserted that —good faith is a finding of fact; —the court has to consider all the evidence cumulatively to decide whether there is good faith or an ulterior motive, or, if there are mixed motives, what the dominant motive is.¹³

Efforts to bring in a legislation to protect whistle blowers in India have been on-going for some years now. In 2001, the Law Commission of India studied the laws that protect whistle blowers in the UK, USA and other developed countries and had submitted a report to the government. Along with the report the Law Commission submitted a draft bill to protect whistle blowers. Meanwhile, in the absence of a specific law on the subject, the Government of India created a mechanism for its employees and those employed in central public sector enterprises to blow the whistle on wrongdoings.

12 India. Administrative Reforms Commission (Fourth) Report on Ethics in Governance, New Delhi: Administrative Reforms Commission (Second), 2007, 140p, Chairman: M. Veerappa Moily.

13 G20 Anti-Corruption Action Plan- Action Point 7.: OECD, 2011, 36 p.

The Public Interest Disclosure and Protection of Informers Resolution was notified by the Government of India in 2004 to enable public sector employees to make disclosures of wrongdoing to the Central Vigilance Commission in confidence. This mechanism only covers employees working in the Government of India or any of its agencies.¹⁴

Law makers have also included statutory provisions to encourage public and official reporting of crimes or of the intention to commit crimes of corruption. These provisions cast reporting obligations on the citizens with penal provisions in the event of failure to comply with such obligations. Section 39 of the Code of Criminal Procedure (CrPC), 1973 makes it mandatory for any person to report to a magistrate or officer of the law any alleged corrupt offence by a public servant failing which he shall be liable for prosecution. Failure to give information is also an offence under Sections 176 or 202 of the Indian Penal Code (IPC) which deal with omission to give notice to public servant by a person legally bound to give it and intentional omission to give information of offence by a person bound to inform. However, these provisions have remained ineffective because no mechanisms are available for protection of the informants.

Obviously, fear of potential whistle blowers being subjected to reprisals by the perpetrators of corrupt acts, and the inability of the government to protect their person and property in the event of such threats are powerful deterrents which far outweigh the moral pressure of duty as a citizen.¹⁵

14 Venkatesh Nayak, [Secrecy over the draft Whistleblower's Bill](http://www.accountabilityindia.in/accountabilityblog/1366-secrecy-over-draft-whistleblowers-bill), *Accountability India*, August 16, 2010 <http://www.accountabilityindia.in/accountabilityblog/1366-secrecy-over-draft-whistleblowers-bill>, accessed on July 18, 2012.

15 India. Administrative Reforms Commission (Fourth) Report on Ethics in Governance, New Delhi: Administrative Reforms Commission (Second), 2007, 140p, Chairman: M. Veerappa Moily.

Section 125 of the Indian Evidence Act, 1872, also covers aspects of the interest and integrity of the information given in respect of offences. Official communication with regard to crime is privileged, and a police officer or a magistrate cannot be compelled to disclose the source of information received by him with regard to the commission of the offence.

A law to protect all whistle blowers, including general public, may be a reality in India very soon with the Public Interest Disclosure and Protection to Persons Making the Disclosures Act, (Whistleblower Protection Bill) passed by the Lok Sabha in December 2011. The bill is now pending with the Upper House of the Parliament. The draft Public Interest Disclosure and Protection to Persons Making the Disclosures Act, 2010 (Whistleblower Protection Bill) was referred to the Department related Standing Committee of Parliament on Personnel, Public Grievances, Law and Justice (the Committee) for detailed deliberation. The Committee sought views from the people of India on the contents of the Bill after placing its contents in the public domain and subsequent amendments were made in the draft.

Though the committee had recommended that a proper mechanism be provided for protecting all kinds of whistle blowers including RTI users, RTI activists and human rights defenders, the suggestion has not been accepted.¹⁶ However, Section 3 (1) of the draft bill details that “notwithstanding anything contained in the provisions of the Official Secrets Act, 1923 any public servant or any other person or any other person

¹⁶ Nayak Venkatesh, Public Interest Disclosure and Protection to Persons Making the Disclosures Act, 2010 (Whistleblower Protection Bill): An analysis of the amendments introduced by the Government of India. New Delhi: Commonwealth Human Right Initiative, 2011, 15 p.

including any non governmental organisation, may make a public interest disclosure before the Competent Authority”, thus RTI users are naturally included in the definition of whistle-blowers. Clause 4 of the draft has been amended to make the prior written consent of the whistle blower mandatory before his/her identity is disclosed to the Head of the Department. Where such consent is not forthcoming the whistleblower is only required to hand over all documents relating to the complaint to the Competent Authority.

The original version of the Bill did not contain any clause regarding burden of proof of victimisation. As a result of this the whistle blower would have had to prove that he/she was victimised by the public authority. The standing committee recommended reversal of burden of proof so that the public authority concerned is required to prove that the victimisation did not occur. The amended bill enables the Competent Authority to penalise any person who does not comply with its directions and also requires rules to be made by the appropriate government for stipulating the time for completing inquiries into a complaint of wrongdoing.¹⁷

4.3 RTI users as human rights defenders (HRDs)

RTI activists are the most vulnerable human rights defenders (HRDs) of India. Human rights defenders are people who either individually or in a group, act to promote or protect human rights peacefully. “Human Rights Defender can act to address any human right (or rights) on behalf of individuals or groups; Human rights defenders investigate,

¹⁷ Nayak Venkatesh, Public Interest Disclosure and Protection to Persons Making the Disclosures Act, 2010 (Whistleblower Protection Bill): An analysis of the amendments introduced by the Government of India. New Delhi: Commonwealth Human Right Initiative, 2011, 15 p.

gather information regarding and report on human rights violations. The defenders can be characterized as acting in support of victims of human rights violations. They work to secure accountability for respect for human rights legal standards and encouraging a Government as a whole to fulfill its human rights obligations. Thus, human rights defenders make a major contribution, particularly through their organizations to the implementation of international human rights treaties and imparting human rights education, training and capacity building.” (UN, 1998)¹⁸.

Human rights defenders are individuals, groups of people or organizations who promote and protect human rights through peaceful and non-violent means. They:

- i. uncover violations
- ii. subject violations to public scrutiny
- iii. press for those responsible to be accountable
- iv. empower individuals and communities to claim their basic entitlements as human beings.¹⁹

Unlike other HRDs, a large majority of the RTI activists are not necessarily part of any organisation or group. They often act alone, moved by outrage against corruption and other illegal activities. RTI activists are extremely vulnerable as they live in the same areas as the corrupt public authorities, political leaders and mafia who do not want information about their illegal activities to be disclosed. The lucky ones come to the media attention only when killed, maimed or battling for life.²⁰

18 UN 1998, United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (commonly known as the Declaration on Human Rights Defenders. It was adopted by the UN General Assembly in December 1998),

19 <http://www.amnesty.org/en/human-rights-defenders/background>. Accessed on May 10, 2012.

20 Asian Centre for Human Rights. RTI Activists: Sitting ducks of India, New Delhi. 2011, p. 18.

The Universal Declaration of Human Rights (UDHR), proclaimed by the UN General Assembly as “a common standard of achievement for all peoples and all nations,” is regarded as an authoritative interpretation of the human rights provisions of the UN Charter.²¹ India signed the UDHR along with 47 other countries on December 10, 1948. (Wikipedia Free Encyclopedia (2011))²²

It encompasses two major categories of human rights:

- i. civil and political rights, and
- ii. economic, social and cultural rights.

The RTI users, through a mere act of filing an RTI application, ensure accountability and transparency in functioning of public authorities and in turn protect civil, political, economic, social and cultural rights of all the citizens.

4.4 The domestic protection mechanism

Though human rights violations have been part of the world and Indian history since time immemorial, it was only after independence that universal human rights independent of origin, caste, creed, religion or language were adopted. The Constitution of India was in the process of making when the Universal Declaration of Human Rights was adopted by the United Nations General Assembly and many of these rights were given a concrete shape in our domestic law by incorporating them in Part-3 and Part-4 of

²¹ UDHR (1948): Universal Declaration of Human Rights

²² Wikipedia, the free encyclopedia, en.wikipedia.org/wiki/Human_rights_defender, Accessed on April 20, 2012.

the Constitution dealing with the Fundamental Rights and Directive Principles of the State Policy including Right to life, personal liberty and others Social, Economic, Educational, Religious and Cultural Rights and Rights to Constitutional Remedies. (Basu, 1993)²³

The Indian Parliament has enacted the Protection of Human Rights (PHR) Act, 1993 and also constituted new mechanism such as National/State Human Rights Commissions at the level of the Union and Provincial for better protection and promotion of human rights. The human rights are defined in Section 2(1) (d) of the PHR Act, “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”. The functions of human rights commissions include enquiring suo moto or on petitions into complaints of violations of human rights, review safeguard provided under the Constitution or any law and study laws, treaties and other international instruments of human rights and make recommendations for their effective implementations, undertake and promote research on human rights issues, spread human rights awareness and encourage efforts of individuals, non-governmental organisations working and media and other civil society (human rights defenders) in the field of human rights under the provisions and its implementations of the Protection of Human Rights Act in the country (PHRA, 1993)

However, it has been found that human rights defenders face tough time in the country. Of 25 cases listed at NHRC website in 2010, majority of the cases against HRDs relate

23 Basu DD. Introduction to the Constitution of India. New Delhi: Prentice Hall of India, 1993.

with police atrocities against human rights defenders.²⁴ The defenders are illegally arrested and detained in police custody. They are also abused, misbehaved, assaulted, harassed, humiliated, false charged, tortured and treated inhumanly. In some cases, high police officials were also involved like SP/DIG/IGP level which indicates zero level tolerance and sensitivity among police towards human rights defenders.

The non-state actors, including individuals, local politicians and others anti-social elements also indulge in inflicting violence against HRDs who were involved in exposing cases pertaining to corruption, violations of human rights and black-marketing of goods and illegal mining activities. In few cases, the dynamics of police violence reflected such as police collusion with powerful people to non-registration of cases, abused and use of force against human rights defenders. However, none of the case under the study had been disposed off nor victims got any sort of relief by the National or State Human Rights Commissions. A few instances of state human rights commission seeking information about murder of RTI activist have been reported. The State Human Rights Commission (SHRC), Gujarat, sought a report from the director general of Gujarat Police and the mines and minerals department on the murder of RTI user Amit Jethwa.²⁵

24 Kumar Kamlesh. Defending the defenders: An analysis of violence against human rights defenders in India, *International Journal of Sociology and Anthropology* Vol. 3(12), December 2011, pp. 460–468.

25 IANS, Slain RTI activist's father wants action against MP, TwoCircles.net, August 1, 2011. http://twocircles.net/2011aug01/slain_rti_activists_father_wants_action_against_mp.html. Accessed on April 27, 2012.

4.5 Moves by information commissions

Nepal, which followed India in formulation and implementation of the RTI Act, has redressed the issue of protection of RTI users. According to the Nepalese legislation: “It shall be a responsibility of employee of public agency to provide information on any ongoing or probable corruption or irregularities or any deed taken as offence under the prevailing laws. If any punishment or harm is done to the whistleblower, the whistleblower may complaint, along with demand for compensation, to the commission for revoking such decision.”²⁶.

Though the Indian RTI Act does not specifically address the issue of protection, the NCPRI-RaaG study recommends that information commissions (ICs) should receive complaints of threats and attacks as complaints received under Section 18(1)(f) of the RTI Act and, where prima facie merit is found in the complaint, the IC should institute an inquiry under Section 18(2) (reasonable ground for inquiry) read along with Section 18(3) (IC granted powers of civil court) and Section 18 (4) (power to examine any record).

The report goes on to suggest that such intimidation, threat or attack can also qualify as obstruction and falls within the gamut of Section 20(1) as an offence liable for penalty. “Where the enquiry establishes the guilt of a person who is a PIO, the IC must impose such penalty as is appropriate to the case and acts as a deterrent to other PIOs. Where the guilty party is not a PIO, the IC must establish a tradition of passing on the enquiry

²⁶ Srinivas Madhav. Right To Information footprints. New Delhi: Centre For Good Governance, 2008, 48 p.

report to the police, where a cognizable offence is made, or otherwise to the relevant court, and use its good offices (and its moral authority) to ensure that timely and appropriate action is taken,” the report recommends.

Section 18(2) of the legislation says that if “the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.” If the information commissions would like to use this provision to inquire into matters of victimisation of RTI users, they may have to go a step beyond their conventional purview. In fact, the Gujarat Information Commission (GIC)²⁷ has used this provision to demand action in reported cases of harassment and threat. Ahmedabad-based non-profit group, MAGP has been running a helpline for RTI whistle blowers. The helpline voice records a complaint, transcribes it and forwards it to the state information commission for action. While the complainant is encouraged to lodge a complaint or FIR at the nearest police station, the information commission also asks the concerned area DSP to look into the matter. The involvement of information commission in the whole process ensures prompt action by the police.²⁸

As a first institutional framework to provide protection to RTI applicants, the Central Information Commission (CIC) passed a resolution on September 13, 2011. According to the resolution, if the commission receives a complaint regarding an assault on or

27 Charul Shah, Farm hands expose housing scam, whistleblowers threatened in Rajkot, DNA, March 11, 2011, http://www.dnaindia.com/india/report_farm-hands-expose-housing-scam-whistleblowers-threatened-in-rajkot_1518616, Accessed on July 19, 2012.

28 GOI Monitor Desk, Getting informed and surviving the skirmish, GOI Monitor, September 13, 2011, <http://www.goimonitor.com/story/getting-informed-and-surviving-skirmish>. Accessed on July 19, 2012.

murder of an information-seeker, it will examine pending RTI applications of the victim and order the departments to publish the requested information suo motu on their websites.²⁹

The commission also resolved that it will take proactive steps in ascertaining the status of investigations/prosecutions of cases involving information-seekers and endeavors to have these processes expedited. (**Annexure 1.1**). However, there has not been a single case till now for which this provision has been invoked. State information commissions have also been taking up cudgels against threat to RTI users from time to time. On September 30, 2008, the Karnataka Information Commission issued instructions to the Director General of Police (DGP), Bangalore, that police personnel should not visit RTI Applicants nor ask them to come to the police station unless they have asked for inspection of documents.

This order came on plea of RTI applicant Sunil Kumar Panchariya who had sought certain information with regard to a complaint registered at High Grounds Police Station. The petitioner complained that he was threatened by the constable from High Grounds Police Station stating that in case he went against local police he would face the consequences. While giving its order, the Karnataka Information Commission observed that “it has received several similar complaints against police stations, wherein it has been alleged that when an applicant files an application under RTI Act with a police station, either the constables from the police station repeatedly visit his house or he is repeatedly summoned to the police station. Commission is of the view that these

²⁹ Anahita Mukherji, CIC shield to protect RTI crusaders, Times of India, October 5, 2011, http://articles.timesofindia.in/diatimes.com/2011-10-05/india/30246449_1_rti-activist-vitthal-gite-pune-rti. Accessed on July 19, 2012,

practices are hindering the proper implementation of the provisions of the Act and exercise of the right to information by the citizens vis-à-vis police authorities.”³⁰

4.6 Courts and governments

On May 7, 2010, while hearing the murder case of RTI activist Satish Shetty, the Bombay High Court ordered the Maharashtra state government to immediately provide police protection to any person or organisation that complains of threat or use of force or has been attacked for filing applications under the RTI Act. The High Court also directed the state government to set up provisions for speedy investigation of cases of threats or attacks against social activists, a monitoring system and a database of social activists, within 90 days.³¹

Earlier, in a circular dated January 18, 2010, the Mumbai Police Commissioner had called for quick action into complaints of victimisation by activists and immediate preparation of threat perception report in case protection has been sought by the complainant. A police-public coordination committee involving local activists was also proposed at the police station level for better coordination. (**Annexure 1.2**). This was closely followed by a government resolution issued by the Maharashtra government. However, RTI users claimed that the orders had not been properly implemented. In a letter to the Chief Minister Prithviraj Chavan on January 3, 2011, a group of RTI activists sought stricter measures including suo moto disclosure of assets and sources of income of politicians, bureaucrats, judges & their family members, appeal procedure

30 <http://www.rtiindia.org/forum/17037-karnataka-sic-issues-orders-police-not-visit-rti-applicants.html>, Accessed on May 10, 2012

31 Meena Menon, Whistleblowers at receiving end after using RTI, The Hindu June 7, 2010, <http://www.thehindu.com/news/national/article448479.ece>, Accessed on May 12, 2012.

rules for RTI in Maharashtra, with a clause that RTI penalty clause (Section 20) is to be strictly enforced, strict action against policemen who shirk their mandated duty to register FIR within 48 hours of filing of a complaint, time-bound mechanisms for departmental inquiry and disciplinary action in complaints by citizens about corruption, misuse of power and non-enforcement of rules and laws. **(Annexure 1.3)**

The Punjab government has decided to set up a security review committee comprising of representatives of Home Department, Advocate General's office and social activists, including women. The committee would be headed by the Additional Director General of Police (ADGP), Security. The move came after a public interest litigation was filed by Advocate H. C. Arora in the Punjab and Haryana High Court seeking directions to Punjab government, Haryana government, UT Chandigarh Administration and the Union of India to frame a policy for protection of RTI activists. Meanwhile, Haryana government drew flak from the court for not taking same steps as Punjab and the division bench observed that the "court had expressed its provisional view that the forums which have to consider the requests for granting protection to RTI Activists should be broad based."³²

4.7 Community action

RTI Anonymous, a group of citizens working through web portal www.getup4change.com, has been addressing the issue of protection for RTI users through community initiative. The concept works on the basis of proxy application. This helps offer anonymity and benefit of distance from the issue at hand.

³² Express News Service, Shielding whistle blowers: Punjab gives teeth to panel, Indian Express April 28, 2012, <http://www.indianexpress.com/news/shielding-whistle-blowers-punjab-gives-teeth-to-panel/942489/0>. Accessed on July 18, 2012.

Anybody willing to procure information from any public authority can submit an online request to RTI Anonymous, with details of the public information officer and his set of questions. A volunteer expert helps draft the application which can then be submitted to the public authority by any volunteer based in India. The applicant is generally based in a city distant from the location of public authority so that the magnitude of possible threat is reduced. Once he receives the reply, the documents are uploaded on the website which can then be downloaded by the original requester. The information is made publicly available on the website for lawyers, journalists, researchers and general public. This action also helps decrease the level of threat since anybody can have access to the hitherto concealed information. Though the group does receive requests through post too, most of the users use their online platform which why its reach is limited. Several individuals as well as civil society organisations have also been experimenting with this idea of proxy applicant, prompt public release of the information and submission of same information request by multiple applicants to nullify the security threat.³³

Summary: As a first institutional framework to provide protection to RTI applicants, the CIC has passed a resolution that in case of an assault or murder of an information-seeker, it will examine pending RTI applications of the victim and order the departments to publish the requested information suo motu on their websites. The Gujarat Information Commission has also been taking action in such cases under Section 18(2) of the RTI Act which gives the commissions powers to inquire in case of reasonable

33 Nandini Oza, Fatal Information, The Week May 2, 2012, <http://week.manoramaonline.com/cgi-bin/MMOnline.dll/port al/ep/theWeekContent.do?programId=1073754900&contentId=11513555>. Accessed on May 12, 2012.

Analysing victimisation of RTI applicants and strategies for their protection

grounds. In response to a public interest litigation, Punjab government has decided to set up a security review committee to handle cases of victimisation of RTI users. In its 4th report the second administrative reforms commission emphasised on protection of whistle blowers and a law to this effect is pending with Upper House of the Parliament.

The next chapter will include the findings of field research including factual details and information gathered from interviews with various stakeholders in the field area of Rajasthan and Gujarat.

Chapter 5 Findings

This chapter will present the detailed case studies including factual details, information gathered from official documents, media reports and interviews. The selection and analysis of each study will be done by using the methodology discussed before and inferences will be drawn. Performance of various protective methods used by civil society organisations and individual RTI applicants will also be analysed.

5.1 Rajasthan

Rajasthan is the largest state of India lying on north western frontier of the country with an area of 342,269 square kilometres and population of 68.6 million, according to 2011 Census.³⁴ During recent years, Rajasthan has made significant progress in the area of education as its literacy rate of Rajasthan increased significantly from 38.55 per cent in 1991 to 67.06 per cent in 2011.

Rajasthan was the battleground from where the first call for right to information was made in mid 1990s by the labourers and farmers seeking their right to livelihood. (report: Mazdoor Kisan Shakti Sangathan (MKSS)). Due to its vast geographical expanse, a large number of people reside in far flung areas with many of the villages lacking approach roads. However, since the RTI movement was powered by the residents of these very nondescript villages, the awareness level about right to information is comparatively higher among the rural population of the state as 19 per

³⁴ Wikipedia, the free encyclopedia, <http://en.wikipedia.org/wiki/Rajasthan>. Accessed on May 12, 2012.

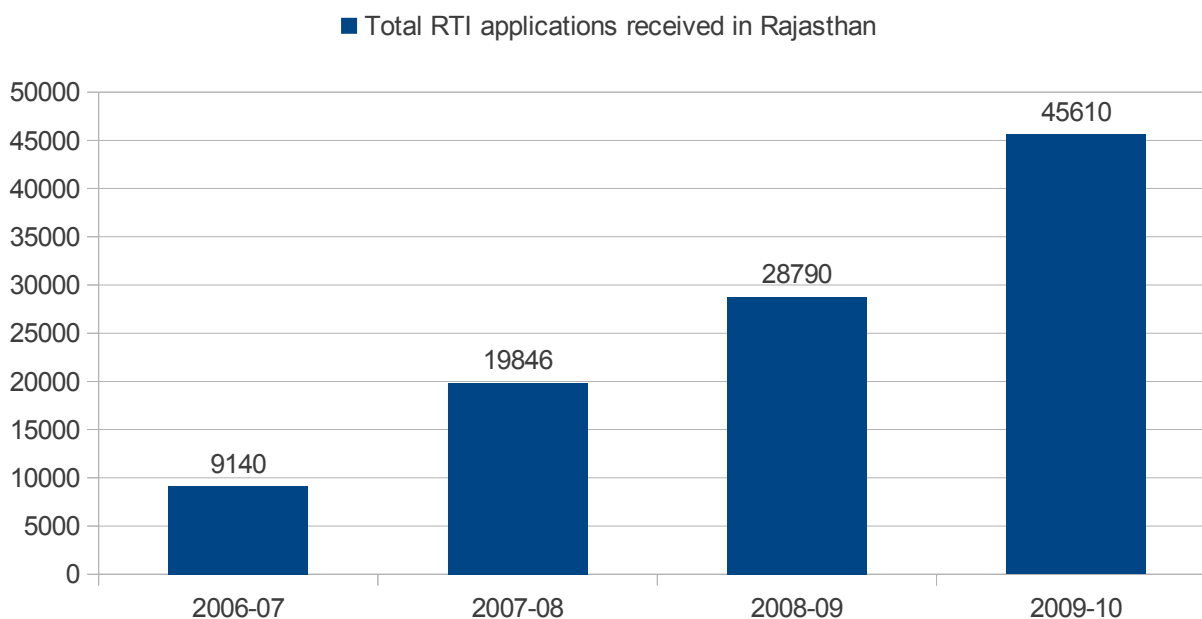
Analysing victimisation of RTI applicants and strategies for their protection

cent³⁵ of them are aware of the RTI Act against 13 per cent national average.³⁶

RTI Manch, under the aegis of MKSS, is a forefront organisation in this field while People's Union for Civil Liberties (PUCL) is well known for its efforts for protection of human rights. Besides these, there are various other district-level organisations, including Bikaner-based Urmul Trust, which have been active in the field of RTI. Over the years, the number of RTI applications filed with various public authorities has seen a steady increase in Rajasthan. From 9,140 in 2006-07, the number of applications submitted rose to 45,610 in 2009-10.

Graph 2

Trend in RTI applications received in Rajasthan between 2006-10



35 Five Years of RTI in India: Challenges and opportunities in Rajasthan. Jaipur: Consumer Unity & Trust Society, 2010

36 Understanding the “Key Issues and Constraints” in implementing the RTI Act, New Delhi: Price Waterhouse Coopers, 2009.

However, the Rajasthan Information Commission (RIC) has been facing rough weather related to matter of pendency. There is only one chief information commissioner and not a single information commissioner in the RIC which has led to increase in number of pending appeals to more than 8,000 and the time of disposal shooting to over one year.³⁷

The approach of RIC on cases of victimisation of RTI users is not proactive. During an unstructured interview, Mr T Srinivasan, the present chief information commissioner appointed in 2011, expressed ignorance about several cases which have been highlighted by the media time and again. Mr Srinivasan had knowledge regarding just one recent incident in which a former sarpanch had been assaulted for complaining about corruption in MNREGA works at Ankhisar village of Bikaner district. In this particular case, the commission had formally written to the state home department requesting appropriate action but Mr Srinivasan ruled out any suo moto action on the part of the commission. He also ruled out any collaboration with civil society organisations since according to him “there are not many cases of victimisation of RTI users in Rajasthan.”

³⁷TNN, [Rajasthan High Court notice to government over non-appointment of information commissioners](http://articles.timesofindia.indiatimes.com/2012-05-15/jaipur/31710918_1_ric-information-commissioner-appointment), Times of India, May 15, 2012, http://articles.timesofindia.indiatimes.com/2012-05-15/jaipur/31710918_1_ric-information-commissioner-appointment. Accessed on May 20, 2012.

5.1.1 Case study #1

Mangla Ram, Bamnor village, Barmer district

Around 52 km from Barmer district town, a long winding road passes through vast, uninhabited expanse before reaching a dusty village of Bamnor. With a population of around 7,000, the settlement seems to be located in the middle of nowhere, just like several other villages of Rajasthan. The nondescript village grabbed national headlines when Mangla Ram, who sought information from his panchayat on development works, was brutally beaten up at a gram sabha meeting on March 3, 2011.

It all started in 2006, when Mangla Ram, at that time working as a labourer in Gujarat, got to know that a house under Indira Awas Yojana had been allotted to him. He was rejoiced since that would ensure a pucca house and ownership of the part of gauchar (pastoral) land they have been living on along with several other underprivileged families of the village. However, the sarpanch, Syed Ghulam Shah, allegedly asked for 50 per cent commission from the grant and when Mangla Ram refused to share the amount, the grant was denied.

Mangla Ram decided to take the sarpanch to task and started using RTI in 2009 along with a couple of friends to access information related to various development works done in the village since 2001. He was asked to submit Rs 40,282 upon which he approached the Rajasthan Information Commission with the plea that since he was a BPL person the information should be provided for free. The commission ordered that first 100 pages of the information should be given for free.

Peeved by this, the sarpanch complained to the district collector seeking removal of encroachments from the gauchar land of the village which meant uprooting all the families staying there. When the anti-encroachment team came to demolish the dwellings on February 25, 2011, Mangla Ram and his friends reasoned that they had been staying on the land for decades and despite repeated requests, the panchayat was not willing to discuss the agenda for regularisation of these dwellings during its meetings. The tehsildar accepted the contention and only new encroachments were removed. This further created a rift between the two sides and the sarpanch allegedly threatened Mangla Ram.

On February 28, 2011, Mangla Ram met the Superintendent of Police, Barmer, and the district collector with an application (**Annexure 2.1**) seeking security and apprised them of the irregularities in development works done at the village. On March 3, a meeting of social audit was conveyed at the panchayat ghar and when Mangla Ram entered the premises, he was allegedly assaulted by the sarpanch and his supporters with sharp edged weapons and sticks. Mangla Ram had to be rushed to the hospital with severe injuries including multiple fractures. An FIR (**Annexure 2.2**) was registered against Ghulam Shah under Sections 448 (house trespass), 341 (wrongful restraint), 323 (voluntarily causing hurt) and 308 (attempt to commit culpable homicide) of IPC and Section 3(1)(10) (intentional insult or intimidation with intent to humiliate a member of a SC/ST within public view) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989.

Next day, a police team visited the village and found four persons, Ali Khan, Jila Khan,

Hamira alias Bhuta and Jamil, creating nuisance and threatening to kill Mangla Ram. They were arrested under Section 151 (arrest to prevent the commission of cognizable offence) and Section 107 (to ensure peace in the area) of the CrPC (**Annexure 2.3**). However, no arrest was made of Ghulam Shah. Later, the police claimed that the sarpanch was not even present on the spot when the attack took place and it was Mangla Ram who invited trouble by indulging in name calling against Shah, which was objected to by the sarpanch's supporters who also thrashed him. The four persons arrested earlier, owned up to assaulting Mangla Ram. On the other hand, the victim claimed that Shah was present since the meeting could not be conducted in his absence.

The incident got highlighted in state and national media upon which an inquiry by SDM, Gudamalani, was instituted. The SDM report (**Annexure 2.4**) also verified the presence of sarpanch when the incident took place and recommended a high-level inquiry into allegations of corruption in the development works done under various welfare schemes. Earlier, Superintendent of Police (SP) Santosh Chalke had claimed that upon receipt of Mangla Ram's complaint, the sarpanch had been issued a warning before the incident. However, this claim was rubbished in the SDM's inquiry report. Soon after, the SP changed his stance claiming the application for security was caught in procedural delays.

On March 4, 2011, Principal Secretary and Joint Secretary (MNREGA) ordered special investigation (**Annexure 2.5**) by a team headed by Joint Director (Social Audit) into the development works done in the village between April 1, 2007 and December 31, 2010 under MNREGA as well as Indira Awas Yojana. Members of various civil society organisations including dalit groups staged a massive dharna at district headquarters for 60 days beginning March 7, which included silent protests and public rallies. The district

Analysing victimisation of RTI applicants and strategies for their protection

collector assured quick action and also sanctioned Rs 25,000 as medical compensation to the victim, who was still recovering from his injuries at a Gujarat-based hospital.

The inquiry team found several irregularities and unaccounted money amounting to Rs 9,67,781 (**Annexure 2.6**). Glaring wrongdoings including bogus bills, 51 missing or low quality water tanks, irregularities in construction of 20 dwellings under Indira Awas Yojana and no collection of tax or VAT from unregistered firms, were noticed. The under construction houses were also sanctioned only after constitution of the inquiry. Two Bamnor-based firms which were supposed to have supplied the construction material during three years did not exist. One of the recipients of payment worth Rs 35.96 lakh was Chana Khan Mussa Khan, the driver of the sarpanch, who actually belongs to BPL category and has a kutchra house. However, no action was taken against the culprits as it was claimed by local MLA that the probe was impartial and the sarpanch and other local officials had not been given an opportunity to submit their views. A district-level inquiry was demanded. Subsequently, another inquiry was marked on April 7, 2011, to the district collector who gave the charge to SDM, Chauhan. The inquiry team found that the unaccounted for money was Rs 3,61,750 instead of the earlier calculated Rs 9,67,781, but irregularities in allotment of work to bogus companies besides incomplete and missing work were confirmed.

On May 19, 2011, Mr C S Rajan, Principal Secretary (Rajasthan Rural Development and Panchayati Raj Department) wrote to district collector-cum- district programme coordinator (MNREGA) for recovery of the unaccounted money and disciplinary proceedings against the sarpanch, gram sevak and technical assistant-cum-assistant engineer (**Annexure 2.7**). However, despite all this, no action was taken against those

found guilty whereas Mangla Ram is yet to recovery fully from his injuries. Doctors have inserted steel rods in his legs but he has not regained his full strength, which he fears might never be possible.

The sarpanch, Syed Ghulam Shah, not only enjoys a good financial status but also has a considerable political clout as the religious head of a sizeable Muslim community of the area. Local politicians and MLA are believed to be backing him to avoid loss of mass support during elections. On the other hand, Mangla Ram belongs to scheduled caste and BPL category, which does not have much political base in the area. Though he is getting financial and moral support from certain dalit organisations based in Barmer town, Mangla Ram continues to live in fear. Several requests by him to the police for registration of an FIR against the accused went unheeded.

Recently, on August 4, 2012, Mangla Ram approached the district magistrate seeking directions to the police for registration of an FIR against the sarpanch, gram sewak and technical assistant-cum-assistant engineer citing the inquiry reports proving corruption on their part. On August 8, 2012, the magistrate issued directions to the police under Section 156(3) of the CrPC for inquiry into the allegations of corruption.



Figure 1 Mangla Ram at his home in Bamnor village, Barmer.

Conclusion: This is an extreme case of victimisation where the justice has been denied till now despite subsequent inquiries indicting the high and mighty of indulging in corruption. Political compulsions seem to be preferred over law of the land in Bamnor. Little consolation can be drawn from the fact that several development works, which were only listed in papers, were done after the corruption was highlighted. The support of dalit social organisations has motivated Mangla Ram to get an FIR registered against the accused recently but it remains to be seen how seriously police deals with the case.

5.1.2 Case Study #2

Babu Ram Chauhan, Ramgarh village, Jaisalmer district

This border town with a population of around 20,000 is the last settlement where the water from Indira Gandhi Nahar Pariyojana (IGNP) is used to irrigate fields thus bringing greenery to the desert area. The land around the canal is allocated to landless farmers on subsidised rates. However, land mafia has gained foothold in the area with many deserving farmers not being awarded the titles. School teacher Baburam Chauhan took upon himself to get the encroachments removed by using the RTI Act. His untiring effort saw 30 villagers getting the land allotted but there are 200 others still awaiting the benefit.

It was in 2006 that Chauhan first used the RTI Act to access information about delay in disbursement of monthly salaries to teachers of Rajiv Gandhi Pathshala in nearby Mohangarh panchayat. Based on the information provided, he complained to the district collector who put the district education officer on show cause notice and subsequent salaries were disbursed on time. This gave him a confidence boost and Chauhan decided to use RTI to address the issue of land allotment in the IGNP's command area in March 2008.

Since he was fighting for a public cause, Chauhan involved the community in his work from the very first day. Around 200 villagers, who were awaiting land allotment, contributed money to support Chauhan's effort who also trained them in filing of RTIs and scrutinising the details. Of the total 70 applicants filed till now on the issue, 40 have

been submitted by him and 30 were submitted by other villagers he trained. Chauhan has also kept accounts of the donated money open for anybody to inspect. Substantial community support from the very initial days helped Chauhan sail through difficult times too.

The information accessed through last four years of consistent efforts has been revealing as it was found that around 17,380 hectares were under encroachment by the land mafia. The encroachers were not only making a neat profit of Rs 1 lakh per 25 bigha (6.32 hectare), they were also siphoning off the canal water presumably in connivance with local revenue officials. According to rules of land allotment, 30 per cent quota is fixed for those belonging to scheduled castes (SC) and scheduled tribes (ST). However, only 18 per cent of the quota requirement had been met.

The offenders felt threatened by such information getting public and tried to thwart the movement by sending letters to administration officials, including the district collector and district magistrate, accusing Chauhan of being a Pakistani spy helping the neighbouring country by procuring maps of the IGNP canal area under the RTI Act. Separate inquiries were initiated into the allegations by the CB-CID and the education department in 2010.

The CB-CID report (**Annexure 2.8**) submitted in June 2010 mentioned that the allegations were baseless as the complainant's name and address were found to be fake and Chauhan was only procuring information related to land allotment instead of the canal's structural plan. The education department also found his conduct to be satisfactory. During these inquiries, villagers came out in full support of Chauhan and

submitted a memorandum to Ramgarh police station SHO on this issue. The movement was further strengthened in July 2010 when acting on several representations based on information accessed using the RTI Act, 30 villagers were allotted the land.

Disappointed by failure of their plan, the land mafia started threatening Chauhan with dire consequences if he went ahead with his work against encroachments. However, undeterred by these threats, Chauhan acted promptly and submitted an application to the Superintendent of Police on September 1, 2011, seeking 'on-call security' from the administration (**Annexure 2.9**). In the application, he named the prime suspect who was asked to execute a bond that he or his supporters would not harm Chauhan.

The 32-year-old school teacher also decided to change his strategy to deal with the issue. Instead of seeking action against encroachments on vacant plots, he stressed on allotment of vacant land to the deserving candidates. Due to his consistent efforts, Colonisation Commissioner (Bikaner) has now accepted the fact that 17,380 hectare of the land is vacant and SC/ST applicants have not been given their due share. The villagers have also hired a lawyer to get a court stay if the vacant land is allotted to somebody else.

Though real action on the ground is still awaited, Chauhan has definitely made the authorities acknowledge the discrepancies in the system. What keeps him going is the improvement in living standard his family experienced due to a small piece of land. In his own words: “Though my family was poor, I was able to study and get a government teacher’s post because my father tilled a small piece of land. Just imagine how many underprivileged families will be able to improve their lives this way if the land is

allotted according to rules.”



Figure 2 Baburam Chauhan showing RTI documents.

Conclusion: Chauhan involved the community in the information seeking process instead of jumping into the fray alone. This not only helped ease the financial burden but also ensured that he was not an easy target for vested interests. Prompt action in approaching the authorities on receipt of threat calls and a clean image in society also helped his cause.

5.1.3 Case study #3

Goverdhan Singh, Bikaner city, Rajasthan

Bikaner is located in the northwest of Rajasthan around 330 km from the state capital, Jaipur. Though it is situated in the middle of the Thar desert with very little rainfall and extreme temperatures, the Indira Gandhi Canal, completed in 1987, has led to growth of agriculture in the area. According to Census India 2011, the city's population is 6,47,804 with 3,40,894 males and 3,06,910 females. Average literacy rate of Bikaner city is 79.86 percent of which male and female literacy are 87.15 and 71.77 percent.

Famous for its delicious sweets, namkeens and other tangy snacks, Bikaner also shares a sweet and sour relation with RTI. While users cite several incidents of corruption being exposed with help of the transparency law, officials claim the law is being misused to serve personal interests, settle scores and to blackmail. The district collector has earlier been fined Rs 25,000 by the Rajasthan Information Commission for failing to reply to an RTI query related to deployment of election officers during 2008 Assembly elections³⁸ while the present and previous chief information commissioners are also battling accusations of forgery in a case filed by a Bikaner resident.

At the centre of this controversy is 34-year-old Goverdhan Singh, who has been accused of indulging in vendetta and blackmailing against businessmen, educational institutes as well as government officials, by using the RTI Act. On the other hand, Singh claims that his efforts have revealed corruption in the society and he is being targeted for his good

38 TNN, Bikaner collector fails to reply under RTI, fined, Times of India, http://articles.timesofindia.indiatimes.com/2010-06-05/jaipur/28275149_1_bikaner-assembly-polls-district-collector, June 5, 2010, Accessed on August 8, 2012.

work.

It is also pertinent to mention here that Goverdhan Singh is a recovery agent for telecommunication companies and has been accused of high handedness with cases of voluntarily causing hurt, wrongful restraint, robbery and criminal breach of trust being registered against him. However, in many of these cases he has been acquitted or claims to have been victim of a conspiracy. This research study follows the tenets of Indian law which holds everybody equal when it comes to protection of rights of a citizen irrespective of his/her antecedents. Also, this case study meets the criteria set for inclusion in this research.

The district officials also confirm that Goverdhan Singh has been an active user of RTI and though they term his interventions to be a nuisance, the fact that his claims are based on authentic documents is widely accepted. District collector Dr Prithviraj Sankhala says Singh picks up loopholes in the system through RTI and then exploits them.

The high point of this controversy was February 2010 when nine cases were filed against Singh within a span of 46 days. Cases were also filed against his family members, friends and lawyer while his house was sealed and car confiscated by the police. Singh's tryst with RTI began in 2006 and he started using it to bring out incriminating details about various business houses, newspapers, administration officers and educational institutes. Shanti Prasad and his brothers who run three local vernacular newspapers and a gas agency in Bikaner have been at the receiving end of his work. Singh procured details related to circulation claimed by the newspapers and government advertisements allotted to them. Discrepancies were found in the copies printed and

circulation claimed. The case is pending with the anti-corruption bureau as Singh claimed that government officials were unduly favouring the publications. Another case has also been filed against the gas agency run by the family for selling LPG cylinders in black and out-of-turn refilling of the cylinders. Singh also made a complaint to the district collector against Shantiprasad's brother Madan Sharma accusing him of getting a post of gazetted officer through unlawful means since he was originally appointed as a temporary worker.

Shantiprasad claims that he and his brothers had been targeted because he did not oblige Singh when he asked for supply of LPG cylinders in black. The dispute has intensified with submission of various cases and cross cases. Among the nine cases filed against Singh in 2010, two were by Shantiprasad and his family. A case was filed on a complaint by Shantiprasad alleging extortion by Singh on February 2, 2010, while another case of extortion and defamation was filed by his brother Mohan Sharma on February 21, 2010. The latest case between the two parties was filed on April 15, 2012 with Shantiprasad and his family claiming that Singh forcibly entered their house and molested the women. On the other hand, Singh claims that Shantiprasad and his family members kidnapped him and tried to eliminate him.

Some of the other important cases where RTI was used by Singh to reveal corruption included the controversy involving former district collectors Shikhar Agrawal and Shreya Guha who were accused of misusing their official position to make hefty payment of electricity and water bills of their residences from government exchequer. In yet another case, tax evasion by Bikaner-based Rashtriya Sahayak Vidayalya Sansthan in connivance with officials of the Oriental Bank of Commerce came to light. Another

Analysing victimisation of RTI applicants and strategies for their protection

revelation was related to the officials of sale tax department of Bikaner who were found flouting government rules by using private vehicles while conducting raids.

Irregularities in staff appointments and financial transactions were also found at the Government Engineering College of Bikaner because of information accessed by Singh using the RTI Act. The college principal later filed a case against him alleging extortion, assault to deter public servant from discharge of his duty and intentional insult with intent to provoke breach of trust.

It is believed that when Singh started procuring information on property details, service records and dispatch register related to Additional SP Satish Chandra and SHO, JNV Nagar, Amir Hassan, he was targeted and nine cases were slapped against him. It needs to be mentioned here that contrary to media reports, the RTI application for seeking this information was not filed by Singh but by his cousin Hanuman Singh on November 5, 2009. However, since Singh and Hanuman have been working together for a long time and it can be accepted that the police officials might have decided to go after Singh. Also, it should be noted that Hanuman and other of Singh's friends and family members were also charged in different cases. Police teams confiscated his car claiming it to be stolen while his house was sealed. The police also claimed to have confiscated fake currency from the house and found obscene images of women on Singh's computer which were allegedly being used to blackmail them.

It was also found that while all the nine cases filed against him were by those who could have been itching to get back at Singh, the complainants also acted as witnesses in each other's case. Here's a list of cases registered against Goverdhan Singh between February

Analysing victimisation of RTI applicants and strategies for their protection

2, 2010 and April 18, 2010:

Table 1 Cases registered against Goverdhan Singh

Date	Complainant	Charges	Earlier connection
2/2/2010	Shantiprasad Sharma	IPC 384 (Extortion)	Owner of gas agency against which a case has been filed for selling LPG cylinders in black market. One of the brothers Madan Sharma accused of gaining post of gazetted officer through unlawful means.
12/2/2010	M P Poonia	IPC 384 (Extortion), 353 (assault to deter public servant from discharge of his duty) and 504 (intentional insult with intent to provoke breach of trust)	College principal against whom allegations of irregularities in staff appointments and financial transactions were made based on information accessed using the RTI Act
16/2/2010	Kundanlal Bohra	IPC 384 (Extortion)	One of the sales tax officers against whom a case was registered with ACB for using private vehicles during raids against government rules.
21/02/2010	Mohan Sharma	IPC 384 (Extortion), 211 (false charge of offence made with intent to injure) and 500 (defamation)	Brother of Shantiprasad and publisher of three vernacular newspapers which were found to have exaggerated circulation figures to get government advertisements.
25/02/2010	Subash Swami	IPC 384 (Extortion), 392 (robbery) and 452 (house trespass)	School principal earlier accused of tax evasion.
26/02/2010	Dharam Poonia	IPC 420(cheating), 463(forgery), 465 (punishment for forgery)	SHO, Nayashahar Police Station.

Analysing victimisation of RTI applicants and strategies for their protection

03/03/2010	Manoj Sharma	IPC 420 (cheating), 467 (forgery of valuable security, will etc) and 468 (forgery for purpose of cheating)	Two year old case reopened and name of the accused added.
22/03/2010	Dilip Gaur	IPC 384 (Extortion), 420 (cheating), 500 (Punishment for defamation)	Real brother of Sunil Gaur, one of the sales tax officers against whom a case was registered with ACB for using private vehicles during raids.
18/04/2010	Rakesh Rathi	IPC 447 (criminal trespass), 430 (wrongfully diverting water) and 341 (wrongful restraint)	Complaint against him for encroachment on government land.

Singh went into hiding and approached the Rajasthan High Court seeking probe in all the cases by an independent agency. The episode gained limelight in electronic as well as print media and the issue was also discussed in the State Assembly.³⁹ On September 13, 2010, the court restrained his arrest and also directed the police to return the car and the house (**Annexure 3.1**). The cases are still pending in the court.

Ironically, the complainants claim that police have been favouring Goverdhan Singh by not taking concrete action against him. On the issue of registration of nine cases in a short span of time, Shantiprasad says it was only after he filed the first complaint that others got motivated and nine cases could be filed within 46 days.

Goverdhan Singh is now involved in another case, this time against the Rajasthan

³⁹ TNN, Rathore, Bhati spat over 'RTI activist', Times of India, March 26, 2010, http://articles.timesofindia.indiatimes.com/2010-03-26/jaipur/28130299_1_rti-activist-bikaner-devi-singh-bhati. Accessed on April 4, 2012.

Information Commissioners, who have been accused of criminal conspiracy and forgery by manipulating an earlier order to favour certain police officials. Singh claims that on February 22, 2011, while hearing the second appeal on his RTI application seeking documents related to the cases registered against him, the double bench of the then chief information commissioner M D Kaurani and information commissioner T Srinivasan had ordered disclosure of the information sought. However, the written order provided to him dated April 15, 2011, remanded the application back to the appellate authority. Singh claims to have procured both these orders bearing the same appeal number through RTI in a certified CD by the commission. He approached the sessions court besides writing to the State Governor (**Annexure 3.2**) and a case has now been registered with the ACB against eight officials including the present and previous chief information commissioners and two IPS officers.

However, during the inquiry, the ACB team was not provided certain documents by the commission citing Sections 21 and 23 of the RTI Act, 2005, which denies the power to initiate investigations against the chief information commissioner orders passed under the Act (**Annexure 3.3**). On this, the sessions court directed the ACB on July 5, 2012, to continue its probe by virtue of the powers vested in it under the Code of Criminal Procedure (CrPC), 1973.⁴⁰ The inquiry is still on.

Conclusion: On personal observation it was noticed that Goverdhan Singh may not be as clean as he pretends to be. He has a good knowledge of the law and has supporting

⁴⁰ TNN, ACB to continue probe against Srinivasan, July 5, 2012, <http://m.timesofindia.com/PDATOI/articleshow/14681849.cms>, Accessed on August 8, 2012.

documents to verify his claims, which is why even the High Court was compelled to restrain his arrest. Singh also seems to have good contacts with mediapersons which has helped him in times of need.

On the other hand, the complainants evidently tried to wrongfully exploit the law. More damning has been the role of Bikaner Police which overstepped its brief and seems to have colluded with the complainants to settle scores with Singh. District administration officials accept the fact that Singh has a better hand when it comes to understanding of the law. The ongoing case involving the state information commissioners is another proof that if the RTI user has good knowledge of the law and the administration set up, there is enough scope for him to deal with victimisation provided he is also ready to be patient with the legal and administrative process. One advantage Goverdhan Singh had was a good financial background which saw him sail through troubled times.

5.2 Gujarat

Located on western coast of India, Gujarat has an area of 196,030 square km with a population of 60,383,628, 57.4 per cent living in rural areas (2011 census). The state is a good industrial hub with some of the largest businesses in India.⁴¹ Literacy rate in Gujarat stands at 79.31 per cent of which, male literacy is 87.23 per cent while female literacy is 70.73 per cent.⁴²

Gujarat is one of the few states that took an early lead in 2005 to set up systems and procedures for implementing the RTI Act. Nevertheless, a widespread view persists

41 Wikipedia, the free encyclopedia, <http://en.wikipedia.org/wiki/Gujarat#Demographics>. Accessed on June 10, 2012.

42 <http://www.gujaratindia.com/state-profile/demography.htm>, Accessed on June 10, 2012

among civil society that public authorities are lagging in terms of compliance with the requirements of the legislation.⁴³ Gujarat Information Commission (GIC) has come up with some of the best rulings related to disclosure of information which among others include the decision to allow students access to their answersheets which was stayed by the High Court but later upheld by the Supreme Court,⁴⁴ inclusion of PDS shops within the purview of RTI and allowing applications by differently-abled under the life and liberty clause.⁴⁵ However, those working in the field claim that the transparency movement has only been restricted to issues of social welfare and being an industrial state, very little progress has been made in disclosure of information, which can be detrimental to corporate interests. RTI requests related to industrial subsidies, environmental issues and illegal mining are routinely denied and because of large pendency at the commission level, the complaints are not redressed properly.

In November 2010, Late RTI activist Amit Jethwa had filed a public interest litigation (PIL) in the Gujarat High Court as the pendency had increased to 8,000 appeals/complaints due to vacant posts of ICs. On intervention of the High Court, two additional ICs were appointed in March 2011. However, pendency is still a controversial issue in Gujarat. So far, 22,082 appeals and complaints have been received by the commission since the RTI came into being in 2005. While 13,078 cases were disposed of, 9,004 cases were pending as on December 31, 2011, which means a 40 per cent pendency rate.⁴⁶

43 Compliance with the Right To Information Act: A Survey. New Delhi: Commonwealth Human Right Initiative, 2009, 160 p.

44 Paul John & Ragini Bharadwaj, SC ruling spurs hope of better exam evaluation, Times of India, August 11, 2011, <http://epaper.timesofindia.com/Default/Scripting/ArticleWin.asp?From=Archive&Source=Page&Skin= TOINew&BaseHref=TOIA/2011/08/11&PageLabel=5&EntityId=Ar00501&ViewMode=HTML>, Accessed on August 9, 2012.

45 TNN, Differently-abled fights red-tapism with RTI, Times of India, June 9, 2009, http://articles.timesofindia.indiatimes.com/2009-06-09/ahmedabad/28179685_1_family-pension-differently-abled-abled. Accessed on August 9, 2012.

46 Kapil Dave, Info panel to hold public hearings to clear RTI pleas, February 5, 2012, <http://www.indianexpress.com>

The latest move by the GIC to hold lok darbars (special public gatherings) through a special drive in all the districts of the state for speedy disposal of pending appeals was challenged in the court. The public gatherings were supposed to call upon the RTI applicants and concerned public information officers (PIO) in an attempt to resolve the issue on the same day⁴⁵. However, objections were raised against the process on the grounds that this would more likely lead to compromises instead of action against the PIOs. While hearing the PIL, the Gujarat High Court said since only those matters where the applicants or appellants agreed for settlement of dispute or were satisfied by the information supplied, were disposed of, there was no violation of the law. The court, however, ordered that at least two Additional Information Commissioners should be appointed temporarily in order to deal with the pendency (**Annexure 3.4**).

The performance of the GIC has been under scanner as the commission has only recently submitted first three of its annual reports for the years, 2005-06, 2006-07 and 2007-08 in the Gujarat Assembly.⁴⁷ Though the delay in preparation and submission of annual reports has been attributed to lack of reliable data provided by various public authorities of the State,⁴⁸ it also cast aspersions on the GIC's supervisory role. Gujarat is only second to Maharashtra in reported cases of murder, assault and harassment of RTI users. Around 20 such cases have come to notice through media reports and other sources in Gujarat since 2005.⁴⁹

</news/info-panel-to-hold-public-hearings-to-clear-rti-pleas/908139/>, accessed on June 30, 2012

47 DNA, Finally GIC submits first 3 reports to assembly, Dainik Bhaskar, July 20, 2012, <http://daily.bhaskar.com/article/GUJ-NEWS-finally-gic-submits-first-3-reports-to-assembly-3546098-NOR.html>, Accessed on July 25, 2012.

48 Charul Shah, RN Das hangs up his boots as Gujarat information commissioner but..., DNA, July 7, 2011, http://www.dnaindia.com/india/report_rn-das-hangs-up-his-boots-as-gujarat-information-commissioner-but_1563156. Accessed on July 25, 2012

49 Wikipedia, the free encyclopedia, http://en.wikipedia.org/wiki/Attacks_on_RTI_activists_in_India. Accessed on April

5.2.1 Case study #4

Amit Jethwa, Khamba village, Amreli district

Khamba is a small village on the edge of Amreli district in the south east region of Gujarat. Proximity to the coastline and world famous Gir forest in neighbouring Junagarh district underscores the need for environment protection of the region. However, presence of minerals, especially limestone, in hills of the area attracts illegal miners thus leading to a tussle between those willing to protect nature and those wanting to make money out of it.

Murder of 34-year-old Amit Jethwa on July 20, 2010, was a result of this clash of interests. The brazen fatal attack, which came just a few months after the murder of Pune-based RTI activist Satish Shetty, highlighted the serious security threat RTI users face while trying to expose corruption. Jethwa was born in Khamba village and took up issues of environmental law and wildlife protection issues around Gir Sanctuary along with the community. Jethwa had also spearheaded a campaign against rising case pendency in the GIC due to lack of commissioners. It was in response to his petition filed in November 2009 that the state government appointed two new information commissioners. He also filed a writ petition in the HC and made the government accept Indian Postal Order (IPO) as one of the modes of payment to deposit fees for filing of RTI applications. However, it was his public interest litigation (PIL) against illegal mining that became the reason behind the murderous attack since many mining

companies in the region were sent notices and penalties were slapped on them.

Since 2008, Jethwa had filed six requests under the RTI Act, asking information related to the activities of an illegal mining lobby operating in the protected forest area just outside Gir forest. On June 28, 2010, he filed a PIL in the Gujarat High Court citing evidence found and praying to stop illegal mining within five kilometers radius from the boundary of Gir. In the same month, a raid was conducted by the police and geology departments, and a number of mining equipment were seized. However, the equipment was subsequently stolen back. Jethwa appealed that the matter be investigated by an independent ombudsman or Lokayukta, a constitutional position that had been lying vacant in Gujarat since 2003. He had moved court to seek a judicial order to the state government to fill this post.

The petition came up for hearing on July 6, 2010, and Amit Jethwa filed a supplementary affidavit. He gave additional details regarding illegal mining and impleaded BJP MP Dinubhai Boghabhai Solanki and his nephew Pratap Alias Shiva Hamirbhai Solanki as respondent Nos. 9 and 10 in the said writ petition. The court issued notice to the newly impleaded parties. Categorical allegations had also been made against the Solankis in paragraph 2.29 at page 16 of the said writ petition with the details of their illegal activities of mining and stone crushing within five kilometers radius from the boundary of Gir Sanctuary.

However, Amit Jethwa was shot dead before the next date of hearing. His family members and friends allege that Jethwa was murdered on the behest of the MP and the state government is trying to shield him. The investigations into the murder were

transferred from Sola Police Station in Ahmedabad to the Crime Branch in August 2010. The police arrested constable Bahadursinh Dhirubhai Vadher, Sanjay Chauhan, Udaji Thakor and Pachan Shiva who was allegedly one of the hired killers. On September 6, 2010, they arrested Pratap alias Shiva Hamirbhai Solanki, nephew of Dinu Solanki. In November 2010, Mumbai police arrested Shailesh Pandya, who allegedly fired the shot.

In February 2012, the Gujarat Police Crime Branch gave a clean chit to Dinu Solanki in case claiming that Bahadursinh Dhirubhai Vadher conspired with Pratap alias Shiva Hamirbhai Solanki to eliminate Jethwa. The report says that Bahadur and one of his brothers had bought some land in the area in 2007 for mining purposes but due to Jethwa's interventions against illegal mining, they suffered financial losses which is why they planned the attack. However, Jethwa's lawyers submitted that the Gujarat government had prohibited mining within five kilometer periphery of Gir wild life sanctuary through a circular dated August 9, 2002, so there was no question of Bahadur and his brother purchasing the land for mining purposes in the area.

Jethwa's father, Bhikhubhai Jethwa, and lawyers sought an independent probe by the CBI claiming that no proper investigations had been made into Dinu Bogha Solanki's movements, his telephone records and conversations with other accused. Anand Yagnik, advocate and friend of Amit Jethwa, gave a statement that Amit had met him a day before the murder expressing serious apprehension about threat to his life from the MP. In his statement submitted to the court, Dilipbhai Jinabhai Katariya, a colleague of Amit Jethwa in his NGO Gir Nature Youth Club, also claimed that Jethwa had been receiving threats from the MP for quite some time.

During 2007 legislative assembly election, Jethwa unsuccessfully contested election against Solanki. During campaigning, Solanki had allegedly threatened him with dire consequences if he did not withdraw his nomination. This was reported by Jethwa to the election officers. The threats allegedly continued when he started filing RTI applications to get information related to illegal mining. Dilipbhai has also submitted an affidavit in the court stating that a few days before his murder, Jethwa had told him that the threats from Dinu Solanki had increased particularly after filing of the PIL against illegal mining and the whole team needed to be careful.

Dilip also alleged that when he gave this statement to the police team investigating into the murder case, it was manipulated to convey that only he was threatened by Dinu Bogha Solanki in 2007. On September 25, 2012, the Gujarat High Court transferred the case to CBI observing that “Investigation into the murder of petitioner’s (Bhikha Jethwa) son does not appear to have been carried out in conformity with the legal provisions and the control exercised by one police officer of a very high rank.”⁵⁰

Conclusion: This is the most high profile case in which the RTI user has been done to death and the main accused is a sitting Member of Parliament from the ruling party of the state. However, media coverage, pressure from civil society organisations and legal interventions have ensured the case is not easily brushed under the carpet. The legal struggle for independent probe into the whole incident has yielded good results and the case is expected to negate all political pressures against a fair probe.

⁵⁰ Amit Jethwa murder case: Gujarat HC orders CBI probe, DNA, September 26, 2012, http://www.dnaindia.com/india/report_amit-jethwa-murder-case-gujarat-hc-orders-cbi-probe_1745503. Accessed on September 30, 2012.

5.2.2 Case study #5

Vishram Laxman Dodiya, Surat

Situated on the left bank of Tapti river, Surat is the fourth fastest growing city of the world. It is also known as diamond hub of India with third rank in cleanliness despite being India's 8th most populated city.

Vishram Laxman Dodiya was one of the 4.5 million inhabitants of the city eking out a living by selling pouches of drinking water and books on a footpath. Dodiya consistently used RTI to not only reveal irregularities in the system but also to press upon authorities for action against the culprits. On February 11, 2010, the 55-year-old vendor was done to death in a busy market area of Surat.

It was an illegal electricity connection in his neighbourhood that inspired Dodiya to file his first RTI application. Soon, he was taking Torrent power distribution company to task with various applications filed to procure information revealing irregularities. It seemed like he was determined to make utmost use of the RTI Act, filing applications with various public authorities including with the Surat Police seeking information on action taken against illegal liquor vends, gambling and encroachments. Those working with him say he had annoyed many with his relentless work to expose wrongdoings.

On February 11, 2010, he was called to a police station near his residence for a meeting with Torrent company officials to workout a compromise. Around 9 pm, when Dodiya started from his house after having dinner, he was attacked by four men with swords.

Police arrested three of them. While one of the accused, Bharat Bhanji Miadra, is son of a Torrent company employee, Prakash Keshav Rathore and Kalji Upepanya Baria have been accused of running illegal liquor business. Dodiya had been putting pressures on the police through his RTI applications to act against Rathore and Balye for flouting the law.

The three accused were later acquitted by the court on the basis of lack of evidence. Not only the witnesses turned hostile, the circumstantial evidence was also found weak. Prosecution lawyer Kalpesh Desai claims that Vishram Dodiya's elder son, who was the petitioner in the case, reached a compromise with the accused. This fact was also corroborated by Dodiya's younger son, Girish Vishram Dodiya, and wife Jasuben. In the whole case, the role of Surat Police remains suspicious. No protection to eye witnesses and lack of circumstantial evidence are cited as main reason for acquittal of the accused. The fact that the slain activist had to use RTI to compel the police act against the violators time and again points to the fact that the police personnel were not willing to follow the call of duty on their own and may have been part of the illegal nexus.

sayeedapura

Chowkbazar police station

Conclusion: Though this case was highlighted in the local media extensively, it held little promise for the family of the victim, who are not only financially weak but also have little knowledge of the legal process. There is no support whatsoever from the civil society organisations. The suspicious role of the police underscores the fact that in such cases probe should be done by an independent, external agency.

5.2.3 Case study #6

Satishbhai Rana, Alina village, Kheda district

Alina is a small village with a population of 13,500 near the famous Hindu pilgrimage town of Dakor in Kheda district of Gujarat. The village sarpanch Geetabein Bhojani and her father-in-law Nattubhai Bhojani have been battling allegations of corruption and highhandedness from Satishbhai Rana, a 42-year-old cutlery merchant of the village. It was in July 2007 that Rana filed an RTI application with the panchayat asking for information related to cutting of 167 trees in the village. The application included point-wise questions on which rules were followed, permissions taken before felling of the trees and in which account the money earned from selling the trees had been deposited.

However, it was only after he appealed to the taluka (tehsil) development officer (first appellate authority) that the panchayat gave him the information which revealed that the permission for cutting the trees had been taken only after they were felled. In addition, there was no account of the money generated through sale of trees. Armed with this information, he complained to the district magistrate and district development officer.

The taluka development officer and mamlatdar (tehsildar) were marked the inquiry into the allegations but before any action could be taken, sarpanch's father-in-law and his accomplices allegedly abducted Rana on September 19, 2007, from outside the mamlatdar's office. He was taken to a secluded place and mercilessly beaten up. On

regaining consciousness, Rana managed to reach nearby civil hospital by taking lift in a state transport bus. Though the FIR (**Annexure 3.5**) was registered on the same day, the police claimed that the accused were untraceable. After recovering from the injuries, Rana gave a representation to the district collector threatening to stage a half nude protest followed by hunger strike. Upon this, orders were passed for swift action by the police and all the seven accused were arrested on charges of abduction and attempt to murder, three months after the FIR was registered. The criminal case is still on in the court. Regarding the felling of trees, sarpanch and talati were fined Rs 2.72 lakh by the mamlatdar but the case is still pending after the sarpanch appealed against the order.



Figure 3 *Satishbhai Rana was mercilessly beaten up for asking information about cutting of trees.*

Conclusion: It's a long pending case in which action was taken by the police only after Rana threatened to stage a half nude protest and hunger strike. Though it may seem like the last resort to many, such an ultimatum may not always work.

5.3 MAGP's RTI helpline

Mahiti Adhikar Gujarat Pahel (MAGP) has been running an RTI helpline since May 12, 2006 which gets around 1,400 calls per month on average basis. Besides the initial publicity done through media, network of civil society organisations and workshops, the helpline number also gets published every day in a local vernacular daily. The helpline's popularity has spread beyond the geographical boundaries of Gujarat with calls also being registered from the states of Uttar Pradesh, Bihar, Chattisgarh, Rajasthan and Madhya Pradesh.

Besides the guidance about procedures to access the information under the RTI Act, the helpline also assists those RTI users who face victimisation from vested interests. Of the total calls it receives every month, around 7-8 relate to victimisation. The helpline follows a set procedure not only to verify the authenticity of the caller but also to ensure quick action by the security agencies. The genuineness of the RTI user is judged by the information asked. If it relates to a public cause, women or child issues, human rights violations or the applicant belongs to economically or socially backward sections of the society, they are provided assistance. Many a times, the user is engaged with the helpline since the time he/she decided to file the application, which also lends credibility to his actions.

Adequate caution is taken and the caller is asked to file a complaint with the local police station as soon as possible and fax a copy of the complaint. However, it's not always possible for the caller to access a fax service, in which case the complaint is voice recorded over the phone. In case the complaint is not accepted by the police, this is also

mentioned in the voice recorded version which is transcribed for further correspondence with the authorities. The complaint on MAGP's behalf is faxed to the local police station and the offices of area DSP, district collector and district magistrate. In addition, the helpline staff tries to contact these officials through telephone seeking immediate protection for the user.

Action is also initiated at the administrative level. Once the FIR is filed, its copy along with the complaint is sent to the GIC and the department to which the information sought is concerned seeking proactive disclosure under Section 4 of the RTI Act. The GIC is also actively involved in building pressure on the authorities by seeking action against the vested interests and ensuring transparency in service delivery. In some emergency cases, GIC is approached immediately after an SOS call is received for swift action. Here are some case studies of the helpline:

5.3.1 Case study #7

Bharatbhai Gughal and Bhanjibhai Jogal, Dhank village, Rajkot district

Dhank is a small village on south west border of Rajkot district in Gujarat with a population of around 7,014, including 3,425 women and 3,589 men. Soothed by breeze from the Arabian sea, the settlement is surrounded by agricultural fields and barricaded on the south by wooded hills. However, what seems like an idyllic setting has fault lines running underneath. There is an unspoken division within the village, between those who indulge in corrupt means and those who complain against them. At the centre of this conflict are irregularities found in allotment of free houses meant for underprivileged families of the village.

Bharatbhai Gughal (36) and Bhanjibhai Jugal (47) are two daily wage labourers who have been using the RTI Act to procure information related to this corruption. But their struggle is not without the dangers. On March 5, 2011, village sarpanch allegedly slapped and threatened the duo with dire consequences if they complain about the allotment process during an ongoing inquiry.

It was in 2010 that Gughal and Jugal observed that well-to-do people owning large properties were getting the houses meant for below poverty line persons. They, joined by four others, decided to raise the issue first through official representations. Their first step was to file a joint complaint to the Taluka (Tehsil) Development Officer (TDO) on March 30, 2010, seeking an inquiry into the matter. Getting no response from the administration, they armed themselves with knowledge about the RTI Act, which they had heard was bringing about transparency in governance.

On June 16, 2010, they filed separate RTI applications regarding allotment of houses under three housing schemes for the underprivileged, Indira Awas Yojna, Ambedkar Awas Yojna and Sardar Awas Yojna, in their village since 1997. The information they got was only related to the Indira Awas Yojna and that too just for the year 2009-10. However, even this comparatively little information revealed that irregularities had been made in allotment of 22 houses. Many of the allottees already owned houses and agricultural fields while in some cases, both the husband and wife had got a house each. Many of the allottees just refurbished their old houses passing them off as the new houses constructed under the scheme and pocketing the grant. On September 20, 2010, the complainants wrote to the state vigilance commission, GIC and Panchayats, Rural

Analysing victimisation of RTI applicants and strategies for their protection

Housing and Rural Development department of the state government citing these irregularities. After much persuasion, an inquiry team from the office of TDO visited the village on January 4, 2011. However, suspecting that no action will be taken on the issue, the complainants asked for inquiry by the district development officer (DDO). On March 5, 2011, an inquiry team from the DDO office came. While the inquiry was on, the sarpanch allegedly slapped Bhanjibhai and threatened others with dire consequences if they gave statements before the inquiry team.

Fearing for their physical security, Bharatbhai and Bhanjibhai remained confined in their houses. Though there is an outstation police post at Dhank village, it remains locked most of the time. Telephone calls to the police station in neighbouring Bhayavadar village yielded no response upon which they approached the RTI helpline run by MAGP. Their complaint was voice recorded and MAGP contacted the area DSP over the phone. The DSP, who was attending an official function at that time, refused to accept the complaint saying he would rather trust his own system rather than an NGO. Since it was crucial to provide the security immediately, MAGP faxed the complaint to his office and also released the information to the mediapersons, asking them to contact the DSP for official version. The strategy worked and fearing criticism in the media, the officer asked the police station incharge (PSI) of Bhayavadar police station to look into the matter. The district collector and district magistrate was also informed about the incident over the phone and through faxed complaint. The collector in turn directed the mamlatdar (tehsildar), Upleta, and the PSI to look into the matter.

Soon, the police team arrived and took the complainants with them. The accused, including the sarpanch and two of his supporters, were also called to the police station.

Analysing victimisation of RTI applicants and strategies for their protection

The three accused were charged under Section 323 (voluntary causing hurt), 504 (intentional insult to provoke breach of peace), 506 (criminal intimidation) and 114 (abetment) of the IPC. Later, MAGP also faxed the complaint along with a copy of the FIR with details to the Gujarat Information Commission (GIC). Chief Information Commissioner wrote to the district collector and district magistrate (**Annexure 3.6**) while Deputy Secretary of GIC wrote to the area DSP on March 8, 2012, seeking impartial probe into the allegations of corruption (**Annexure 3.7**). This consistent effort on the part of MAGP helped sustain the pressure on the authorities.



Figure 4 Bharatbhai (left) and Bhanjibhai at Dhank village in Gujarat.

The inquiry into the corruption was conducted again on March 23, 2011, and the allegations regarding irregularities in allotment of 22 houses was found to be correct. The DDO issued show cause notices to the sarpanch, TDO, and seven other taluka-level administrative officers. An inquiry by vigilance commission into the embezzlement is still on. However, the security threat has not been totally neutralised. The RTI applicants are still getting indirect threats from the sarpanch and his supporters, but since the issue is in the limelight, the danger is not as imminent.

Bharatbhai Ghughal, Bhanjibhai Jogel, Naranbhai Varagiya and Govind Gangera sat on a six-day Satyagraha at Rajkot district headquarters to seek action against the accused. Though the effort was highlighted in the media, the district development officer only gave verbal assurances on the demands.

5.3.2 Case study #8

Bhadresh Vamja, Saldi village, Amreli district

Saldi is a small village in Amreli district of Gujarat with a population of 9,000. What sets this village apart from other settlements is substantial awareness and use of the RTI Act. Villagers regularly questioning public authorities about expenditure and procedures regarding various social welfare schemes. All this was made possible by a simple college-going boy who decided to keep checks on distribution of ration through a fair price shop of the village.

It was in January 2011 that Bhadresh Vamja (19) got to know from a friend about

Analysing victimisation of RTI applicants and strategies for their protection

unavailability of ration through public distribution system (PDS) in the village. Further inquiry revealed that none of the below poverty line (BPL) and above poverty line (APL) ration card holders were getting the allocated supply and owner of the fair price shop was allegedly selling the supplies in black market. On being questioned, he claimed there had been no supply from the government's end. Though he was not a ration card holder, Bhadresh decided to take up the cudgels for the whole village and wrote a complaint to the taluka mamlatdar (tehsildar) on January 27, 2011, with 13 ration card holders as co-signatories.

On getting no response from the authorities, he decided to file his first RTI on February 11, 2011, with the mamlatdar office asking for the action taken on the joint complaint filed earlier. The application had point wise questions on why no inspection of stock had been conducted till now, details of work which was keeping the officials busy and expected timeline for action on the complaint. Details of ration supply and distribution to beneficiaries in last six months was also sought. Though mamlatdar forwarded the application to the shopkeeper ordering him to disclose the details, only partial information was given. The mamlatdar also promised Bhadresh that he would visit the village soon. When the inspection team came, it was found that none of the 13 beneficiary complainants had got the ration from the shop except kerosene even though 14,000 kg of grain per month had been supplied to the shop. The officials also issued a panchnama with details about the stock lying in the shop.

Meanwhile, MAGP was pursuing the matter of access to records of PDS shops with GIC. The Gujarat Chief Information Commissioner Mr R N Das wrote a letter to the Secretary, Food, Civil Supplies and Consumer Affairs Department, asking for specific

directions to the concerned public authorities for proactive disclosure of PDS-related information under Section 4(1)(b) of the RTI Act (**Annexure 3.8**). Upon this, the Food, Civil Supplies and Consumer Affairs Department issued a circular dated March 4, 2011, directing all mamlatdars and fair price shop licensees in the state to proactively disclose ration supply information on the walls of fair price shops as well as at the taluka (tehsil) level (**Annexure 3.9**). Twelve categories of information, including shopkeeper's name, licence number, shop timings, allocations to APL and BPL card owners, rate of various commodities under the PDS, stock register and complaint register have to be prominently displayed outside the fair price shops.

On the other hand, Bhadresh's struggle for information was on. Even after 15 days of the physical inquiry by the mamlatdar, no action had been taken. When asked, the mamlatdar told Bhadresh that the inquiry report had been sent to the District Supply Officer (DSO). Bhadresh also found that most members of the vigilance committee of the village, which is supposed to certify arrival of the stock, were not aware that they were in the committee. The two members, who used to verify the arrival, were supporters of the shopkeeper. On March 1, 2011, Bhadresh filed another RTI, this time with the DSO, seeking a certified copy of the inquiry report and the date by which the complainants will receive their allocations. The RTI also included questions about the rules and procedures for constitution of a vigilance committee.

On this, the shopkeeper started sending threatening messages to Bhadresh through common friends on March 17, 2011. He also tried to convince the 13 beneficiaries to give statements against Bhadresh by promising them more than their share of ration. However, they did not budge from their stand. On learning about the threat, Bhadresh's

parents told him to leave the matter and focus on his studies. In Bhadresh's own words, “It was a very difficult time as it seemed like I am alone in this fight. Then a saying I had heard somewhere came to me 'The real youth is one who finishes a task once taken up.'”

Bhadresh decided to contact MAGP's helpline. Pankti Jog of MAGP voice recorded his complaint which was faxed to the area DSP's office who was also contacted over the phone. Late in the evening of the same day, Bhadresh got a call from the incharge, Liliya police station, offering protection during the night and asking him to reach the police station the next day and register his complaint. The shopkeeper was also called to the police station and he had to give an undertaking that he would not threaten Bhadresh again and if any physical attack takes place in next six months, he would be held responsible.



Figure 5 *Bhadresh Vamja ensured regular ration in his village.*

At Saldi village, now everybody gets the allocated ration on time without any irregularity. Bhadresh and his friends have started a weekend RTI clinic in the village and also disseminate information about the rights of residents under various welfare schemes.

5.3.3 Case study #9

Michael Martin and Bhanu Parmar, Anand district, Gujarat

Rogi Kalyan Samiti is a health scheme operational in Gujarat in 2006 to provide free treatment and medicines to poor patients at government hospitals and health centres. However, there have been several allegations of misappropriation of funds under this scheme.⁵¹ Michael Martin and Bhanu Parmar, both members of a non-profit organisation, Healing Touch, decided to scrutinise the utilisation of funds under this scheme at a primary health centre (PHC) based in Rohini village of Anand district.

Martin and Parmar had earlier used the RTI Act to prove discrepancies in implementation of various welfare schemes, including the Cheeranjeevi Scheme for maternal health care and relief scheme for residents of villages which get routinely inundated during monsoons. They chose to question the utilisation of funds at Rohini village PHC because they had found the PHC's medical officer (MO) guilty of charging money from poor patients who were entitled for free treatment. The incident had been video recorded and presented to the area police upon which the MO had apologised and returned the collected money. Instead of seeking any particular information, Martin asked for inspection of records and physical verification of medicines supplied under the Rogi Kalyan Samiti through an RTI application filed on January 4, 2011. On receiving no reply, a first appeal was filed on March 17, 2011, with the chief district health officer (CDHO). During the hearing of the first appeal, the CDHO ordered the MO, who was also the PIO under RTI Act, to permit the inspection of the records and medicine supplies on April 20, 2011 (**Annexure 4.1**). Martin and Parmar inspected the records on

⁵¹ Truth of Rogi Kalyan Samiti fund: Only 10% spent on patient welfare, February 17, 2012, Desh Gujarat, <http://desh.gujarat.com/2012/02/17/truth-of-rogi-kalyan-samiti-fundonly-10-spent-on-patient-welfare/>. Accessed on June 25, 2012

the given date but because of large volume of the documents, they could not complete the work and decided to resume the inspection on April 27. On the given date, they were refused further inspection and the MO called around 30 villagers claiming that Martin and Parmar were blackmailing him and he might be forced to quit the posting which would be detrimental for the village. The villagers threatened Martin and Parmar, who were forced to lock themselves in a room of the PHC to avoid assault.

From the room, they called upon the area DSP but on getting no positive response, they contacted the MAGP helpline. The helpline staff voice recorded, transcribed and forwarded their complaint to the GIC. The staff also called upon the area DSP, the local Khambak rural police station as well as the MO, informing him that being the PIO under the RTI Act, physical safety of information seekers was his responsibility. After an hour, the police team arrived and the inspection was completed under police protection. On written complaint of Martin and Parmar, three persons including the medical officer were arrested under Section 151 of the CrPC (arrest to prevent commission of cognizable offence). The case of corruption against the medical officer is pending with the state health commission.



Figure 6 *Michael Martin at his office in Nadiad town of Gujarat*

Conclusion: These three cases studies underscore the point that even an informal helpline can make a tremendous impact in protecting the RTI users from possible physical assaults. Adoption of this best practice by the state governments or by the state information commissions can go a long way in ensuring that seeking accountability from public authorities is not a dangerous business.

5.3.4 Lessons drawn from MAGP's helpline

- The way you approach the system matters. If documentation is done properly, action by authorities is swift. The MAGP helpline records and transcribes the complaint besides asking the user to fax the FIR, which makes it a well documented case to be taken up with the authorities concerned.
- Right to information is not a stand alone law. Depending on the information sought, other laws can also be invoked to ensure protection of users. For instance, if the information sought relates to issues of a minor, the Juvenile Justice Board can be approached for action. This also conveys the fact that those seeking protection are not asking for favours but working within the law.
- MAGP has used pressure calls effectively especially in case of Bharatbhai and Bhanjibhai. Since the area DSP was not willing to believe the helpline staff, media's assistance was taken to ensure action. Calls from different sources can also help press upon the urgency of the issue.
- Even minor threats need to be reported to the police which will act as a warning against any possible full blown assault.
- Community support is most important since those living close can provide more efficient and quicker security assurance than police. In Bhadresh's case, the support of co-complainants was crucial in building his confidence.

5.3.5 Limitations of the helpline

There are certain limitations with the MAGP helpline which need to be rectified to make it more effective.

- Many a times a caller is unable to fax a copy of the police complaint or FIR to the helpline. There are chances that the caller is not genuine and may not have approached the police. This limitation can be dealt with by contacting the concerned police station and verifying if the caller had actually filed the complaint.
- Most of the cases where the GIC took up the cause of protection of RTI users belong to the tenure of former chief information commissioner Mr R N Das who retired on July 6, 2011. How the commission will now respond to similar requests is yet to be seen but MAGP confirms that the current chief commissioner Mr D Rajagopalan has promised full support to whistleblowers. However, when contacted, one of the information commissioners Mr A J Shukla was ignorant about the initiatives taken by the GIC in collaboration with MAGP. Therefore, it's pertinent that past best practices by the commission is properly documented in its annual reports and dispersed among the staff as well as the general public.

Summary: Most of the victims have weak educational and financial background while the accused are invariably affluent persons. Corruption in social welfare schemes, damage to environment and misuse of official position are the issues raised by most of the RTI users who were victimised. Of all the nine cases, justice has been done in only one case. While RTI users most often find themselves fighting the battle alone, the assistance from civil society organisations or community at large can go a long way in ensuring protection from harassment.

The next chapter will involve discussion of the findings and conclusions.

Chapter 6

Discussion and Conclusion

In this chapter lessons learned from the study findings will be discussed and conclusions will be drawn on the research topic. The chapter will also outline the objectives of research, methodology used and selection of case studies in brief. In addition, limitations of research and scope for further research will also be detailed.

6.1 Objectives of research and methodology

This research study was conducted to analyse cases of victimisation of RTI applicants and strategies for their protection. While the RTI Act has ensured a substantial positive change in government functioning, it has not been a cakewalk for the users who have regularly been victimised for exposing wrongdoings in public offices. The study verified such cases of victimisation, analysed the details and looked into shortcomings (if any) in the present system which need to be attended to.

The study was qualitative research and the target population was all the RTI users within the geographical boundaries of Rajasthan and Gujarat who have been victimised for seeking revealing information. Snowball sampling method was used to get details of such users from those working in the field as well as from media reports. Judgement sampling method was also used since the sample had been selected based on the judgement about some appropriate characteristics required of the sample member.

For the research study, the sample was selected only after verification that use of Right

To Information was the reason for the alleged harassment. Authenticity of these cases was verified through exhaustive interviews with the people and officials involved besides analysis of official documents.

6.2 Limitations of research

This research study has been limited in scope due to various reasons. Lack of any previous systematic study on this topic prevented any comparative analysis with already-known results. The access to certain people and organisations was denied or remained limited despite repeated attempts. Though the case studies were investigated, the researcher did not hold any legal or quasi judicial powers to call for submission of documentary evidence or individual statements. A few of the documents related to certain case studies could not be accessed even through filing of applications under the RTI Act within the research period.

It was observed that the victims or RTI users were invariably much more willing to share details than the accused and the administrative officers involved in the case, which may have influenced the findings inadvertently. Since self-reported data has also been relied upon, selective memory, telescoping, wrong attributions and exaggerations could have crept in but utmost care has been taken to verify the details more than once. Among the two states, Gujarat was more difficult to explore due to linguistic barriers especially in written language.

6.3 Scope of further research

Further research can be conducted on this research topic with expansion of field area beyond Rajasthan and Gujarat. The impact of RTI helpline being run by the Bihar government can be studied and compared with other informal set ups. Threat perception of RTI users as well as general public related to whistleblowing and RTI usage can be measured to analyse the law and order situations in various states. Response of security agencies towards protection of RTI users can also be studied separately.

6.4 Discussion

RTI Act has emerged as a powerful tool to ensure accountability and transparency in governance. In India, financial and political status weighs heavy in public dealings and preferential treatment on caste and religious lines is also evident, especially in rural areas. Being a legislation deeply rooted in the Constitutional tenement of equality, the RTI Act is striking at this deep-rooted power dynamics. The resistance to this corrective process is not only on expected lines but also bound to grow more vociferous with further increase in awareness and usage of the transparency law. This is why it's imperative to ensure a protective mechanism at the earliest.

6.5 Some important findings:

- RTI has empowered the citizens who always had the rights but no definite tool to question the authorities.
- RTI users are at increased risk of threats, attacks and other methods of victimisation especially if they belong to economically and socially weaker sections.
- Most cases of victimisation involve information related to issues of larger public interest including corruption in social welfare schemes, damage to environment and misuse of official position.
- Officials at public authorities are mostly hand-in-glove with private vested interests in abetting corruption and thus can go to any length to avoid transparency, even if it means victimisation of RTI users.
- Registration of false cases, accusations of blackmailing and other means to harass RTI users are routinely exercised by vested interests.
- Physical attacks are usually the last resort after all other alternatives including bribery and threats are exhausted.
- Reporting minor threats can help avoid their escalation into physical attacks.
- Victimisation of RTI users is easier in rural areas due to physical proximity with the accused and remoteness from police, media and civil society groups. On the other hand, it's easier to garner community support in rural areas because of small and known set ups.
- Proper documentation and knowledge of the administrative and legal set up can ensure quick protective action from police and other authorities.

6.6 Recommendations

Here are certain recommendations for various stakeholders based on findings of the research:

6.6.1 Lessons for authorities

- Ensure implementation of Section 4(1) of the RTI Act on proactive disclosure. According to this clause not only the records should be duly catalogued and indexed, the public authorities should provide as much information suo motu to the public at regular intervals through various means of communications, including Internet. RTI Act should be amended to include a provision of penalty on public authorities not implementing this clause.
- Quick action to complaints of victimisation of RTI users is required from the police. It should be specifically mentioned in the FIR that RTI usage was the reason for the victimisation to avoid the case being clubbed with other routine incidents of enmity. A senior police official of the rank of Deputy Superintendent of Police or Assistant Commissioner of Police should personally monitor the investigations. If proven guilty, trial of the accused should be put on fast track.
- When the information sought relates to police, the probe into allegations of victimisation should be done by an external/independent agency.
- If accusations are made against an RTI user, the case should be filed only after proper verification so that reactionary smear campaigns are avoided.

Analysing victimisation of RTI applicants and strategies for their protection

- Unless proven contrary, concerned public information officers, first appellate authorities and those officials directly linked to the information sought should be presumed to have abetted the offence.
- NHRC and SHRCs should be formally involved in the process since RTI users also fall in the category of human rights defenders.
- The respective information commissions should write to the concerned area police station requesting quick action and also monitor the progress in the case. The department to which the information sought pertains should be asked to ensure suo motu disclosure of the information.
- Information commissions or state governments can set up a helpline for RTI users on the lines of MAGP's service. Formal collaborations with civil society organisations can also be entered into for the same purpose.
- Keep the complainant informed about the progress of investigation.

6.6.2 Lessons for RTI users

- It's pertinent to engage the community in the work. This will not only ensure protection from vested interests but also lend credibility to the efforts.
- Be in touch with civil society organisations and mediapersons. Release the information to public as soon as possible to avoid victimisation.
- If there is a possibility of victimisation, have more than one person file the same RTI application to divert attention. A friend based in another faraway location can also be asked to file the RTI application on your behalf.
- In case of threat or assault, immediately contact the local police station and obtain

a copy of the FIR or DDR. File a formal complaint with the respective information commission, area DSP and the department to which the information pertains with copies of relevant documents through fax or speed post.

- SOS calls by different sources to the security agencies for help can press upon the urgency of the issue.
- Right to information is not a stand alone law. Depending on the information sought, other laws can also be invoked to ensure protection. For instance, if the information sought relates to issues of a minor, the Juvenile Justice Board can be approached for action. This also conveys the fact that those seeking protection are not seeking any extra-judicial favours but working within the established system.

Summary: Victimisation of RTI users can be prevented by ensuring implementation of Section 4(1) of the RTI Act on proactive disclosure thus reducing the need to file RTI applications. Involvement of human rights commissions and proactive approach of concerned information commissions can lead to quick action. A helpline for RTI users with involvement of Information commissions and civil society organisations is another good option. RTI users should take precautions by engaging the whole community in their work, keeping civil society organisations and mediapersons in the loop and by releasing the procured information to public as soon as possible. Having more than one person file the same RTI application or having a proxy applicant from another location also work well.

BIBLIOGRAPHY

- India. Administrative Reforms Commission (Second) Report on Right to Information: Master Key to Good Governance, New Delhi: Administrative Reforms Commission (Second), 2006, 140p, Chairman: M. Veerappa Moily.
- Baisakh, Pradeep. Right to information and rural development. Kurukshetra, 53(8), July 2005, p. 4-8
- Kejriwal, O.P. Right to Information Act: loopholes and road ahead, Economic and Political Weekly, 41(11), 18 March 2005, p. 941-42.
- Roy, Aruna and Sowmya Kidambi. Secret ballots and transparent campaigns, Yojana, 50, Jan 2006, p. 26-31.
- Asian Centre for Human Rights. RTI Activists: Sitting ducks of India, New Delhi. 2011, p. 18.
- Action research villages: a Right to Information campaign: a report. New Delhi: Development Alternatives, 2007. 112p.
- Chaturvedi, T.N., ed. Secrecy in government, New Delhi: Indian Institute of Public Administration, 1980. 388 p.
- Guha Roy, Jaytilak. Right to information: initiatives and impact. New Delhi: Indian Institute of Public Administration, 2006. 63 p.
- Madan Mohan. Right to information act 2005: roles and responsibilities of the public information officers and the public authorities. New Delhi: Indian Institute of Public Administration, 2007. 226 p. (APPA M.Phil dissertation).
- Baisakh, Pradeep. Right to information and rural development. Kurukshetra, 53(8), July 2005, p. 4-8.
- Bhaduri, Amit. Guarantee employment and right to information. Economic and Political Weekly, 40(4), 22 Jan 2005. p. 267-69
- Jetkins, Rob and Anne Marie, Goetz. Accounts and accountability: theoretical

implications of the right-to-information movement in India. *Third World Quarterly*, 20(3), Jun 1999, p.603-22.

- Roy, Aruna and Nikhil Dey. Fighting for the right to know in India. *Development Dialogue*, 1, 2002, p. 77-90.

Annexure

Minutes of the Meeting of the Commission held on 13.9.2011

Present:

- A. Shri Satyananda Mishra, Chief Information Commissioner
- B. Smt. Annapurna Dixit, Information Commissioner
- C. Shri. M.L. Sharma, Information Commissioner
- D. Shri. Shailesh Gandhi, Information Commissioner
- E. Shri B.B. Srivastava, Secretary and other officers assisted the Commission.

Agenda-1: A draft resolution in the wake of surge in attack on the RTI activist circulated by IC(SG).

The Central Information Commission expresses regret and takes note of the reported killings of and assault on the RTI users across the country. The Commission underlines the need to take urgent steps by the respective Governments for the safety and protection of the RTI users. The Commission strongly believes that it is the duty and responsibility of the respective Governments to safeguard the life and liberty of the RTI users for which purpose they should invoke the relevant penal provisions for the prevention and detection of such heinous crimes.

2. This Commission, therefore, resolves that if it receives a complaint regarding assault or murder of an information seeker, it will examine the pending RTI applications of the victim and order the concerned Department(s) to publish the requested information suo motu on their website as per the provisions of law.

3. This Commission also resolves that it will take proactive steps in ascertaining the status of investigations/prosecutions of the cases involving information seekers and endeavor to have these processes expedited.

Agenda-2: Progress on the Convention, 2011.

The Commission noted the progress on the forthcoming Convention.

Annexure 1.2 Circular issued by Mumbai Police Commissioner

Police Circular in English & Marathi (No. 21 / Po Aa / Swiya / Jan / 2010) issued by Mumbai Police Commissioner D Shivanandan, dated 18.1.2010, directing all Police Stations to promptly take cognizance of complaints lodged by activists and concerned citizens.



क्र. २१ / पोआ/स्वीया / जन / २०१०

पोलीस आयुक्तालय

डि.एन. रोड, मुंबई - ४०० ००९.

दूरध्वनी : २२६२ ०८२६, २२६९ ३५५२

फॅक्स : २२६२ ९८३५

दिनांक - १८/०१/२०१०

प रि प त्र क

समाज प्रबोधन, देश उन्नतीसाठी झटणाऱ्या हाडाच्या सामाजिक कार्यकर्त्यांवर जीवघेणे हल्ले होत असल्याचे निदर्शनास येत असल्याच्या पार्श्वभूमीवर खालीलप्रमाणे सूचना निर्गमित करण्यात येत आहेत.

१. अशाप्रकारची तक्रार प्राप्त झाल्यावर ठाणे अंमलदाराने त्वरीत त्याबाबत पोलीस ठाणेच्या वरिष्ठ पोलीस निरीक्षकांना अवगत करून तक्रारीच्या स्वरूपानुसार दखलपात्र अथवा अदखलपात्र स्वरूपाचा गुन्हा तात्काळ नोंद करावा. प्राप्त तक्रारीवरून दखलपात्र अथवा अदखलपात्र स्वरूपाचा गुन्हा निष्पन्न होत असल्यास संबंधीत कार्यकर्त्यास त्याप्रमाणे लेखी कळवावे.

Immediately on receipt of such complaint the Duty Officer will inform the in-charge of the Police Station i.e. Sr. Inspector of Police and will immediately register the complaint as Non Cognizable or F.I.R. depending on the facts or circumstances of the case. If the facts disclose neither a F.I.R. nor a N.C. the activist will be informed so in writing.

२. पोलीस ठाणेचे वरिष्ठ पोलीस निरीक्षक अशा स्वरूपाच्या तक्रारीची चौकशीवर तसेच दखलपात्र स्वरूपाच्या गुन्ह्याच्या तपासावर स्वतः वैयक्तिक देखरेख करतील. काही विशिष्ट अदखलपात्र गुन्ह्यांमध्ये ते न्यायालयाच्या पुर्व परवानगीने तपास करू शकतील.

Sr.P.I. of that Police Station will personally monitor the enquiry of complaint / investigation of the case. In appropriate cases he may also investigate N.C. offences with the prior permission of the Court.

.....2/-

३. जेव्हा तात्काळ अटक करणे आवश्यक ठरते तेव्हा ती ताबडतोब करावी. कट कारस्थानाचा प्रत्येक पैलूचा तपास व चौकशी करण्यात यावी.

Where immediate arrests are called for, they shall be expeditiously made. All elements and angles of conspiracy will also be investigated or enquired.

४. अशाप्रकारामध्ये सखोल तपास करण्यात यावा. संबंधीत विभागीय सहाय्यक पोलीस आयुक्तांनी देखील तपासावर वैयक्तिक देखरेख करावी.

Investigation in such cases will be expeditiously made. Assistant Commissioner of Police of concerned division also shall personally monitor the investigation.

५. आवश्यकतेप्रमाणे फौजदारी प्रक्रिया संहितेच्या कलम १०७, ११०, १५१, १५१(३) तसेच मुंबई पोलीस अधिनियमाच्या कलम ५५, ५६, ५७ आणि एम.पी.डी.ए. अंतर्गत कारवाई करावी.

Preventive action u/s. 107, 110, 151, 151(3) of Cr.P.C. also u/s. 55, 56, 57 of B.P. Act and M.P.D.A. will be resorted to wherever required.

६. कार्यकर्त्यांकडून पोलीस संरक्षणाची मागणी करण्यात आल्यानंतर तात्काळ त्या कार्यकर्त्यांस असलेल्या धोक्याचा आढावा घेऊन त्याच्या संरक्षणाबाबतचा प्रस्ताव पोलीस आयुक्त, बृहन्मुंबई यांना त्वरेने सादर करावा.

विशिष्ट प्रसंगी धोक्याचा आढावा घेताना गुन्हे शाखेकडील स्रोताचा उपयोग करण्यात यावा.

Where a request for protection is made by the an activist a Threat Perception Report will be immediately prepared and submitted through proper channel to the Commissioner of Police, Mumbai for decision in this regard.

In appropriate cases inputs from the Crime Branch will also be taken in preparation of T.P.R.

.....3/-

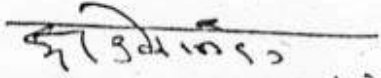
७. विविध समाजयोगी कारणाकरिता कार्य करणाऱ्या स्थानिक कार्यकर्त्यांचा समावेश पोलीस ठाणे स्तरावरील पोलीस-जनता समन्वय समितीमध्ये करण्यात यावा. त्यामुळे चांगला समन्वय साधला जाऊन स्थानिक पातळीवर प्रश्न चांगल्या पद्धतीने तेथेच तात्काळ सोडविले जाऊ शकतील.

Local activists working in various public causes will be inducted into the Police - Public coordination committee at the police station level to ensure better coordination and to immediately redress local issues.

८. परिमंडळीय पोलीस उप आयुक्त आणि प्रादेशिक विभागांचे अपर पोलीस आयुक्तांनी अशाप्रकारच्या गुन्ह्यांचा, त्यासंबंधातील प्रतिबंधक कारवाईचा आणि कार्यकर्त्यांच्या सुरक्षेसंबंधीच्या बाबींचा वेळोवेळी आढावा घ्यावा.

Zonal Deputy Commissioners of Police and Regional Additional Commissioners of Police will periodically review investigation / preventive action in such cases and issues related to security of activists.

सदर सूचनांचे कसोशीने पालन होऊन समाज व देशासाठी झटणाऱ्या कार्यकर्त्यांच्या सुरक्षेमध्ये कुचराई होणार नाही याची सर्वांनी दक्षता घ्यावी.


(ध. शिवानंदन) 18.1.2019
पोलीस आयुक्त,
बृहन्मुंबई.

प्रत माहिती व उचित कार्यवाहीकरिता :-

१. सर्व सह पोलीस आयुक्त, मुंबई
२. सर्व अपर पोलीस आयुक्त, मुंबई.
३. सर्व पोलीस उप आयुक्त, मुंबई.
४. सर्व सहाय्यक पोलीस आयुक्त, मुंबई.
५. सर्व वरिष्ठ पोलीस निरीक्षक, मुंबई.

G R Vora's remarks in brackets contrast this pious-sounding circular with the hard realities prevailing today

The initial paragraph in Marathi, which is not translated in English, directs all concerned officers to take cognizance of the complaints lodged by activists.

Para 1. Immediately on receipt of such complaint the Duty Officer will inform the in-charge of the Police Station i.e. Senior Inspector of Police and will immediately register the complaint as Non Cognizable or F.I.R. depending on the facts or circumstances of the case. If the facts disclose neither a F.I.R. nor a N.C. the activist will be informed so in writing. *(This never happens. The Duty Officer tries his best to shoo away the activist or at best would lodge an N.C. on which no action is ever taken.)*

Para 2. Sr. P.I. of that Police Station will personally monitor the enquiry of complaint / investigation of the case. In appropriate cases he may also investigate N.C. offenses with the prior permission of the Court. *(The Senior P I rarely monitors / investigates the case. The activists never know what has happened to their complaints of threat, assault, or intimidation).*

Para 3. Where immediately arrests are called for, they shall be expeditiously made. All elements and angles of conspiracy will also be investigated or enquired. *(Leave alone arrests, even proper investigations are not done. The accused persons pointed out by the activists may never be summoned for taking their statement. Months and years may pass before they are interrogated, if at all that ever happens.)*

Para 4. Investigation in such cases will be expeditiously made. Assistant Commissioner of Police of concerned division also shall personally monitor the investigation. *(One wonders whether the ACP ever monitors the investigations done by his subordinates.)*

Para 5. Preventive action u/s 107, 110, 151, 151 (3) of Cr. P.C. also u/s 55, 56, 57 of B.P. Act and M.P.D.A. will be resorted to wherever required. *(This is unheard of till now.)*

Para 6. Where a request for protection is made by an activist a Threat Perception Report will be immediately prepared and submitted through proper channel to the Commissioner of Police, Mumbai for decision in this regard. *(Has TPR ever been done for any activist? This is news to us).*
In appropriate cases inputs from the Crime Branch will also be taken in preparation of T.P.R.

Para 7. Local activists working in various public causes will be inducted into the Police – Public coordination committee at the police station level to ensure better coordination and to immediately redress local issues. *(Most of the times, the Sr PI, ACPs and DCPs avoid having collective meetings with local activists. They make excuses to avoid having such meetings. If this point is taken seriously, then there would be less crime and law & order problems in the city, as activists are well aware of the source of nuisance or illegalities.)*

Para 8. Zonal Deputy Commissioners of Police and Regional Additional Commissioners of Police will periodically review investigation / preventive action in such cases and issues related to security of activists. *(Wonder whether it is ever done!)*

The last para, which is not translated in English, asks the police to follow the above directions rigourously, so that activists working for society and for the country can do so without threat and fear.

C.C. for information and appropriate action to : (a) All Saha Police Aayukta, Mumbai (b) All Apar Police Aayukta, Mumbai (c) All Police Upa Aayukta, Mumbai (d) All Sahayak Police Aayukta, Mumbai (e) All Varishtha Police Nirikshak, Mumbai.

Annexure 1.3 Letter by RTI activists to Maharashtra CM

3 January 2011

To

Shri Prithviraj Chavan,
Chief Minister of Maharashtra,
Mantralaya, 6th Floor,
Madame Cama Road,
Mumbai 400032

Sub: Immediate steps needed to prevent attacks on Activists & restore Rule of Law

Sir,

The New Year has started inauspiciously for RTI activists of Maharashtra. On Sunday, January 2, two RTI activists were brutally attacked in Mumbai (Bhandup) and Pune (Talegaon) on Sunday. The finger of suspicion points towards powerful politicians and concessionaires of large government contracts:

- **In Bhandup, Yashwant Gavand** was attacked by about 30 persons connected to the local Shiv Sena Corporator Suresh Shinde. We learn that Mr Gavand had successfully exposed, through RTI, several assets that were not declared to the Election Commission in the last election, including a 4,000 square-metre plot.
- **In Talegaon, Arun Mane** – an associate of the slain activist Satish Shetty -- was attacked with a sharp instrument, and warned to stay away from the Shetty murder case. We are told that he was investigating matters connected with toll-tax collection and real-estate agents IRB Infrastructure Developers, believed to be involved in the Shetty murder.

Last year, there were 11 attacks on activists in various parts of Maharashtra, and five of them were fatal. Our state was the leading state in attacks on activists, accounting for 50% of such attacks nationwide. Appended at the end of this letter is a tally of attacks on activists in 2010, all of which remain unsolved cases in the police registers.

After every attack and murder, the state administration's standard reply is, "Matter is under investigation. We will find the culprits." That is eyewash, because the top brass knows exactly what is going on: an innocent citizen blew the whistle on the rackets run by politically-connected people, and they bumped him off.

Sir, last year, soon after the Shetty murder, Mumbai's Police Commissioner issued a circular for protection of Activists. This was closely followed by a GR issued by Govt of Maharashtra suggested several measures, including a mandate to promptly register FIRs in response to complaint by activists. Please read these documents:

- a) Police Commissioner's Circular: <http://tinyurl.com/CPcircular1>
- b) Maharashtra GR on protection to Activists: <http://tinyurl.com/MahaGR1>

However, our common experience as activists and civil society is that these circulars were not implemented at all; these circulars were nothing but a damage-control exercise of the government, drafted for the benefit of the press

What you must do to ensure Rule of Law in Maharashtra

- I IMP SE 6-M TH DEADLINE F SU M T DISCL URE ASSETS & S
P ICITIANS, BUREAUCRATS, JUDGES & THEIR FAMILY MEMBERS Please make necessary laws and rules to ensure that MLAs, MPs, Municipal Corporators, judges and leaders of political parties come clean about their assets and business dealings The secrecy surrounding the phenomenal growth of their personal wealth is the main cause of corruption, growth of mafias and the killing of activists Failure to meet 6-month disclosure deadline must invite automatic disqualification and prosecution
- II FRAME APPEAL PR CEDURE RULES F RTI IN MAHARASHTRA, WITH A CLAUSE THAT RTI PENALTY CLAUSE (SECTION 20) IS T BE STRICTLY BY not penalizing slippery public information officers and by not compelling evasive public authorities to provide information, State Information Commissioners are deliberately blunting the activist's sword and prolonging his battle for years and years, until somebody gets him in the end Make appropriate rules to ensure strict compliance with RTI Act 2005
- III ER STRICT ACTI AGAINST P LICEMEN WH SHIRK THEIR MANDATED DUTY T REGIST WITHIN 48 H RS, BASED D UMENTS THAT THE RTI ACTIVIST PAINSTAKINGLY GATHERS Through deliberate inaction, the State Home Department and police leave the citizen-activist standing in the line of fire for months and years, alone, undefended and crying out for justice He is an orphan, an easy target It is police's mandated duty to register an FIR within 48 hours, based on documents and information that the citizen-activist painstakingly gathers, and this has been reiterated repeatedly by various laws, authorities and apex courts Please read the following:
 - A) What CrPC says about the duty of police to register FIR: <http://tinyurl.com/FileFIR1>
 - B) What Maharashtra DGP's order said: <http://tinyurl.com/FileFIR2>
 - C) What Supreme Court ordered in 2008: <http://tinyurl.com/FileFIR3>
 - D) What Bombay High Court (full bench) said in 2009: <http://tinyurl.com/FileFIR4>
- IV PASS A G VT RES UTI N (GR) DIRECTING ALL DEPARTMENTS T RECEIVE CITIZENS' AB UT C RUPTI , MISUSE P ER & N Please set up time-bound mechanisms for departmental inquiry and disciplinary action Currently, faced with

of blatant corruption in govt departments, some RTI activists act as investigating agencies for months and years in order to go to court, becoming highly visible and risking their own lives

We trust you will take up this matter with utmost urgency

Yours Sincerely,

G R Vora
9869195785
Address: Plot - 275 / 3,
Gope Nivas, Sion E,
Mumbai - 400022.

Mohd. A
9820490435

Krishnaraj Rao
9821588114

Sunil Ahya
9821070606

Copy to:

- 1 Prime Minister Dr Manmohan Singh, South Block, New Delhi - 110001
- 2 NAC Chairperson Mrs Sonia Gandhi, 10 Janpath, New Delhi - 110001

Maharashtra's Table of Shame: Attacks on Activists in 2010

Name of Activist	Incident	Date	Place	Probable reason for attack
Nayana Kathpalia	Fired at in her Churchgate home	Jan 2010	Mumbai	PIL against hawkers in Mumbai
Satish Shetty	Killed	Jan 2010	Pune	Exposing land scams incl those by IRB Infrastructure
Arun Sawant	Attacked, permanently paralysed	Feb 2010	Thane	Exposing land scams at Badlapur Municipal Council
Sumaira Abdulali, Naseer Jalal and Viju B	Murderous assault by mob on highway	March 2010	Mahad	Exposing illegal sand mining, involvement of local MLA
Vithal Gite	Killed	April 2010	Beed	Exposed corruption at Panchayat & Block levels
Abhay Patil	Mobbed & threatened	April 2010	Jalgaon	Made corruption charges against politician
Dattatreya Patil	Killed	May 2010	Ichalkaranji	Exposing corruption in Handloom Sector
Stalin D and Debi Goenka	Assault	May 2010	Mumbai	While inspecting site of mangrove destruction
Ashok Shinde	Assault	July 2010	Mumbai	For filing PIL against corruption PWD officials

Ramdas Ghadegaokar	Killed	Aug 2010	Nanded	RTI against irregularities in fuel and grain sales in Public Distribution System
Irfan Yusuf Qazi	Killed	Dec 2010	Jaitapur	Protest against nuclear power plant in Jaitapur

Annexure 2.1 Request for police protection by Mangla Ram

सेवामें,

श्रीमान पुलिस अधीक्षक महोदय

बाडमेर

विषय :- सुरक्षा व अनुसूचित जाति के व्यक्ति पर अत्याचार के कम में।
महोदयजी,

निवेदन मंगलाराम पुत्र श्री नेहचलराम जाति मेघवाल निवासी
बमणोर तहसील चौहटन जिला बाडमेर का इस प्रकार है कि :-

01. कि मैंने बामणोर ग्राम पंचायत में सूचना के अधिकार 2005 के अनुसार ग्राम पंचायत की वित्तीय वर्ष 2001 से 2008 तक की सूचना मांगी थी। वह मुझे आधी अधूरी देकर इति श्री कर दी गयी। मेरी चाही अनुसार नहीं दी गई। उसके बाद मैं सरपंच मेरी जान का दुश्मन बना हुआ है।
02. कि द्वेष पूर्ण मुझे सरपंच महोदय ने सरकार को अतिक्रमी व भूमाफिया घोषित करने के लिये लिखा गया था जब कि मैं एक भूमिहीन एवं बीपीएल परिवार का सदस्य हूँ।
03. कि मैं बामणोर से 40 वर्षों से निवास कर रहा हूँ पूर्व में सरपंच द्वारा यहां बसने की मौखिक रूप से जमीन दे रखी है जिसमें मैं व मेरा परिवार रह रहे हैं।
04. कि सरपंच महोदय ने उनके सहयोगियों द्वारा द्वेषभावना से परेशान करने गांव छोड़ने के लिये बाध्य कर रहा है।
05. सैयद गुलामशाह सरपंच व उनके सहयोगियों द्वारा मुझे डेड, निच शब्दों से अपमानित किया जा रहा है। तथा साथ में जान से मारने व अपहरण करने की धमकियां दी जा रही हैं। मैं सरपंच महोदय को ही जानता हूँ अन्य लोगों को नहीं जानता हूँ। पूर्व में भी मेरा श्रीमानजी से आग्रह दिनांक 16.09.2009 को किया गया उसकी छाया प्रति संलग्न है।

अतः श्रीमानजी से निवेदन है कि इन लोगों से मेरी सुरक्षा कराने का श्रम करावें। यदि समय रहत हुए इन्हें पाबन्द नहीं किया गया तो मेरे ऊपर प्रत्यक्ष व प्रत्यक्ष पटना घट सकती है जिसकी जिम्मेवारी सरकार व प्रशासन की होगी।

इति दिनांक :- 28.02.2011

भवदीय

मंगलाराम पुत्र श्री नेहचलराम

प्रतिलिपी :-

01. श्रीमान जिला कलेक्टर महोदय, बाडमेर
02. माननीय मुख्यमंत्री महोदय राजस्थान सरकार जयपुर।

12. प्रस्तुत सूचना रिपोर्ट की विषयवस्तु (मजमून) (यदि आवश्यक हो तो अलग पृष्ठ नरणी करें):

प्रार्थना पत्र

सेवामे

श्रीमान थानाधिकारीजी

पुलिस थाना धोरीमना

अर्ज एक मंगलाराम पुत्र श्री नेहचलराम जाति मेगवाल निवासी वामणोर भंवरशाह वाले कि मालूम होवे कि करीब एक बने ग्राम पंचायत की मिटिंग थी। जिसमे मैं भी गया। जैसे ही मैं ग्राम पंचायत कार्यालय में गया तो गुलामशाह ने बोला कि नीचे, कमीने डेढ़ तुम ग्राम पंचायत में कैसे आए। यह कहते हुए उठा गुलामशाह ने कुल्हाड़ी का वार मेरे सिर पर किया। जिससे मैं नीचे गिर गया। नीचे गिरने के बाद लाठी ने मेरे उपर ताबड़तोड़ वार करने लगा। जिससे मैं शंभल नहीं सका। इसके बीच उक्त गुलामशाह ने अपनी पिस्तौल निकाल कर मेरी जान लेना चाहता था। इस बीच मीराराम s/o मनसुखराम, मूलाराम s/o सुमाराराम, भीमाराम s/o रामाराम ने इन तीनों आदमियों ने पिस्तौल पकड़ कर मेरी जान बचाई परन्तु इससे पहले मेरी दोनों टांगें व दोनों हाथ पैर लाठियों से वार कर तोड़ दिये। अब मैं हाजा थाने में अपनी रिपोर्ट दे रहा हूँ। दिनांक 0.303.2011 sdमंगलाराम

दिनांक 3.3.2011 समय 4.30 PM CHC धोरीमना

इस समय यह लिखित रिपोर्ट प्रार्थी श्री मंगलाराम s/o नेहचलराम जाति मेघवाल उम्र 37 साल निवासी वामणोर ने मुकाम CHC धोरीमना में पेश की मजमून रिपोर्ट प्रार्थी को पढ़ कर सुनाया सुन समझ सही मान हस्ताक्षर किया। sdमंगलाराम

कार्यवाही पुलिस

मजमून रिपोर्ट दरियाफ्त से जुर्म धारा 448, 341, 323, 308 IPC 3(1)(x) Sc/st PA Act का घटित होना पाया जाता है। मुकाम अस्पताल मजमून के बदन पर लगी चोटों का इलाज एवं चोट प्रतिवेदन बाबत तेहरीर पेश की। थाना पहुँच असल रिपोर्ट वाले कायमी मुकदमा SHO साहब को पेश की जायेगी। sdमंगलाराम लाखाराम ASI I/OPs धोरीमना कैम्प CHC धोरीमना

पुलिस थाना धोरीमना बाडमेर दिनांक 3.3.11at 6 PM

इस समय ASI लाखाराम PS धोरीमना ने उपस्थित थाना होकर परिवादी मंगलाराम s/o नेहचलराम जाति मेघवाल R/O वामणोर की बमुकाम CHC अस्पताल धोरीमना में जैर इलाज से रिपोर्ट प्राप्त कर पेश की जिस पर

जिला : BARMER थाना : DHORIMANA वर्ष : 2011 प्र.सू.रि.स. : 20110050 दिनांक : 03-03-2011

मु.न. 50 तारीख इमरोजा जुर्म धारा 448, 341, 323, 308 IPC 3(1)(x) Sec/st PA Act में दर्ज कर FIR प्रतियां नियमानुसार जारी की गयीं। SR जारी कर पत्रावली अग्रिम अनुसंधान हेतु श्रीमान C.O सा. बाडमेर को प्रेषित होगी।

13. की गई कार्यवाही (चूंकि ठक सूचना द्वारा, मद संख्या 2 पर उल्लिखित धाराओं के अन्तर्गत अपराध होने का पता चलता है):

(i) भागना रजिस्टर्ड किया गया व अनुसंधान आरम्भ किया गया

या

(ii) श्री/श्रीमति/कुमारी (अनुसंधान अधिकारी का नाम): NAJEEB ALI RPS
संख्या: 99999999

पद : DSP
को अनुसंधान आरम्भ करने के निर्देश
दिये गये, या

(iii) जिन कारणों से अनुसंधान आरम्भ करने से इनकार किया गया:

(iv) वार्न को केस स्थानान्तरित किया गया (नाम):
पेशाधिकार की दृष्टि से

या
जिला:

प्रथम सूचना रिपोर्ट, परिवादी/सूचना देने वाले को पटककर चुनाई गई, जिसने सही लेखन की पुष्टि की और परिवादी/सूचना देने वाले को एक प्रति निःशुल्क प्रदान की गई:

पटककर चुनाया और सही पाया गया:

14. हस्ताक्षर/अंगूठे का निशान
परिवादी/सूचना देने वाले का:

थाना प्रभारी के हस्ताक्षर
नाम : राजकिशोर RAM
पुलिस स्थान : धोरीमना
जिला - बाडमेर (सज.)

संख्या: 00278486

15. न्यायालय में भेजने की दिनांक व समय:

क्रमांक-
प्रति-:

राजस्थान सरकार
कार्यालय उपखण्ड अधिकारी गुडामालानी मुख्यालय बाड़मेर

21/03/2011/329

दिनांक-04-03-2011

श्रीमान जिला जिरस्ट्रेट
बाड़मेर

विषय:-बामणोर ग्राम में ग्राम सभा की मीटिंग के दौरान आर टी आई कार्यकर्ता
पर हुए हमले के सम्बन्ध में सूचना ।
प्रसंग:-आपका त्रांक-न्यायिक/2011/3173-74 दिनांक 04-03-2011

महोदय,

इस प्रकरण के सम्बन्ध में अधोहस्ताक्षरकर्ता आज मौके पर जाकर के गांव के
हालात का जायजा लिया गया एवं इस घटना की जानकारी प्राप्त की गई जिसके सम्बन्ध में
निवेदन निम्न प्रकार है:-

1. कि श्री मंगलाराम द्वारा गत पंचायत चुनावों में श्री गुलामशाह वर्तमान सरपंच के विरुद्ध
सरपंच का चुनाव लड़ा था जिसमें श्री मंगलाराम मेगवाल जिसके द्वारा मारपीट हुई है, हार
गया था और श्री मंगलाराम की पत्नी श्री श्री गुलामशाह के प्रत्याशी के सामने वार्ड पंच के
चुनाव में हारी है, लिहाजा श्री गुलामशाह से श्री मंगलाराम की राजनैतिक वैमनस्यता रही
है।
2. श्री मंगलाराम द्वारा वर्ष 2009 में ग्राम पंचायत द्वारा कराये जाने वाले कार्यों के बारे में
सूचना का अधिकार के तहत पंचायत से सूचना मांगी थी जिसे राज्य सूचना आयोग द्वारा
इसकी अपील स्वीकार कर 100 पेज की सूचना देने हेतु निर्देशित दिये जाने पर वर्ष 2010
में जरिये रजिस्टर्ड डाक उपलब्ध कराई गई थी। पंचायत से सूचना मांगे जाने के कारण
सरपंच और श्री मंगलाराम के बीच विवाद उत्पन्न हो गया था।
3. उक्त विवाद के बढ़ने पर श्री मंगलाराम को जान से मारने की आशंका उत्पन्न होने पर
दिनांक 28-02-2011 को जिला पुलिस अधीक्षक बाड़मेर के सामने पेश होकर श्री
गुलामशाह सरपंच बामणोर से जान भाल का खतरा है उसे जान से मारने की एलानिया
धमकी देने के फलस्वरूप श्री गुलामशाह सरपंच बामणोर को पाबन्द करने एवं परिवादी की
रक्षा करने हेतु निवेदन किया था।
4. दिनांक 28-02-2011 को प्राप्त निवेदना को जिला पुलिस अधीक्षक कार्यालय से
थानाधिकारी धोरीमना को दिनांक 02-03-2011 को भिजवाई जिसे थानाधिकारी धोरीमना
द्वारा पुलिस चौकी बाछड़ाउ को दिनांक 03-03-2011 को भिजवाई जाकर जांच हेतु निर्देश
दिये गये। जब तक जांच करके सरपंच को पाबन्द करते उसी दौरान दिनांक

03-03-2011 का ग्राम पंचायत बामणोर में सामाजिक अकक्षण हेतु ग्राम सभा का आयोजन किया गया था जिसमें सरपंच एवं ग्राम सभा के सभी सदस्य मय वार्ड पंचों के उपस्थित थे, उसी दौरान श्री मंगलाराम पुत्र श्री नेचलराम मेगवाल के साथ में ग्राम पंचायत भवन के परिसर में ही ग्राम सभा भवन के सामने मारपीट की गई जिसमें उसके पांवों एवं हाथों में गम्भीर चोटें आई जिससे कई मलटीपल फ्रैक्चर हुए ।

5. समाचार पत्र में जो रिपोर्ट लिखी है जिसमें पाबन्द बताया गया है वह गलत है । सरपंच को पूर्व में पाबन्द नहीं किया गया एवं न ही परिवादी द्वारा जान-माल का खतरे की सूचना के बावजूद उसकी रक्षा हेतु पुलिस द्वारा कार्यवाही की गई । लिहाजा ग्राम पंचायत के सामने भीड़-भाड़ में श्री मंगलाराम के साथ मारपीट हुई और श्री मंगलाराम को गम्भीर चोटों के कारण धोरीमना स्थित राजकीय अस्पताल में भर्ती किया गया जहां से उसे राजकीय अस्पताल बाड़मेर में रेफर किया गया । बाड़मेर से जोधपुर के लिये रेफर किया गया जो वर्तमान में जोधपुर नहीं जाकर डीसा (गुजरात) में अपना इलाज करवा रहा है ।

श्री मंगलाराम अनुसूचित जाति का बी पी एल परिवार से है एवं सामने पक्ष सरपंच बामणोर है जो इस क्षेत्र में बहुत ज्यादा राजनैतिक रूप से सक्षम है । दोनों के मध्य राजनैतिक एवं व्यक्तिगत विवाद तथा रजिश है जिसके कारण परस्पर दुश्मनी है । प्रकरण एक बी पी एल परिवार एवं एक सम्मान्त सरपंच तथा दोनों के अलग-अलग सम्प्रदाय से होने से भविष्य में सही जांच से दोनों वर्गों में कोई असन्तोष नहीं रहे एवं सही न्याय मिल सके, यह आवश्यक है । इस प्रकरण में सरपंच किस हद तक इस घटना में लिप्त है, की जांच किसी निष्पक्ष उच्चाधिकारी से कराने पर ही न्याय मिल सकता है । अतः उचित रहेगा कि इस प्रकरण में किसी निष्पक्ष उच्चाधिकारी से विस्तृत जांच कराई जावे ।



भवदीय

24/4/13

उपखण्ड अधिकारी
गुड़ामालानी मुख्यालय बाड़मेर

राजस्थान सरकार
ग्रामीण विकास एवं पंचायती राज विभाग
निदेशालय, सामाजिक अंकेक्षण

क्रमांक: एफ 61(23)ग्रा.वि./म.न./नि.सा.अ./आ.वि.जॉ./2010-11/11483-75 जयपुर, दिनांक : 04.03.2011

कार्यालय आदेश

निम्नांकित ग्राम पंचायतों द्वारा दिनांक 01.04.2008 से 31.12.2010 तक महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार गारंटी योजनांतर्गत किये गये/करवाये जा रहे कार्यों एवं समस्त व्यय की विस्तृत जांच हेतु निम्नांकितानुसार विशेष जांच दल गठित किये जाते हैं:-

क्र. सं.	जांच दल प्रभारी एवं सदस्य	ग्राम पंचायत	पंचायत समिति	जिला
1	2	3	4	5
1	(1) श्री महेन्द्र सिंह भूकर, संयुक्त निदेशक, सामाजिक अंकेक्षण (प्रभारी) (2) श्री लाभचन्द जीनगर, अधिशाषी अभियन्ता, जिला परिषद् जालोर (3) श्री महेश गुप्ता सहा0 लेखाधिकारी, सामाजिक अंकेक्षण	धामलोर	धोरीमन्ना	बाडमेर

कलक्टर एवं जिला कार्यक्रम समन्वयक यह सुनिश्चित करें कि इन दलों के साथ मुख्य कार्यकारी अधिकारी, जिला परिषद्, संबंधित पंचायत समिति के विकास/कार्यक्रम अधिकारी, सहायक अभियन्ता, एक हिन्दी टंकक साथ रहेंगे। पत्र के साथ संलग्न परिशिष्ट पर निर्धारित प्रपत्र में गोश्वारा व चैक लिस्ट के साथ कार्यवार फाइल जिसमें कार्य की वित्तीय व तकनीकी स्वीकृतियां मय तकमीना व ड्राइंग डिजाइन, कार्य पूर्णता/उपयोगिता प्रमाण पत्र, कार्य पर उपयोग में आए मस्टररोल, सामग्री के बिल वाउचर्स, सामग्री स्टॉक रजिस्टर, परिसम्पत्ति मय संचयी व्यय रजिस्टर (Asset cum cumulative expenditure register) तथा दर्ज कार्य की माप पुस्तिका के पृष्ठों की मूल प्रति अथवा प्रमाणित फोटो प्रतियां संलग्न हों। कार्यवार पत्रावलियों में उक्त सभी दस्तावेज ठीक प्रकार से नत्थी होकर पत्रावली पर बड़े अक्षरों में कार्य का नाम, ग्राम/ग्राम पंचायत, स्वीकृत वर्ष तथा श्रम व सामग्री पर व्यय राशि अंकित होनी चाहिए। कार्यवार कार्य पूर्णता/उपयोगिता प्रमाण पत्र में अंकित की गई राशि का मिलान पत्रावली में संलग्न समस्त मस्टररोलों पर भुगतान की गई कुल राशि व सामग्री मद में बिल व वाउचर्स पर अंकित राशि के योग से होना चाहिए। महानरेगा की रोकड़ बही, बैंक स्टेटमेंट, पास बुक भी पत्रावलियों के साथ उपलब्ध होनी चाहिए। पंचायत समिति कार्यक्रम अधिकारी से इस ग्राम पंचायत को दिनांक 01.04.2008 से 31.12.2010 तक उपलब्ध एवं समायोजित राशि का विवरण भी उपलब्ध कराया जावे। उक्त समस्त सूचनाएँ दिनांक 06.03.2011 को सायं 5 बजे तक तैयार कराकर दिनांक 07.03.2011 को ग्राम पंचायत मुख्यालय पर दल प्रभारी को उपलब्ध कराई जावे। साथ ही ग्राम सेवक एवं ग्राम रोजगार सहायक को मुख्यालय पर उपलब्ध रहने के लिए भी पाबन्द किया जावे एवं दिनांक 07.03.2011 से 11.03.2011 तक उपरोक्त संबंधित कार्मिकों के किसी भी प्रकार के अवकाश स्वीकृत नहीं किये जावें। जांच दल को आवश्यक लेखन सामग्री, फीता, केलकुलेटर व गेंती फावड़ा आदि भी ग्राम पंचायत मुख्यालय पर उपलब्ध कराया जाना सुनिश्चित करावे। उक्त सभी जांच दलों को निर्देश दिये जाते हैं कि वे दिनांक 07.03.2011 को प्रातः 10 बजे संबंधित ग्राम पंचायत में पहुँचकर संलग्न निर्धारित प्रपत्रों में सूचना प्राप्त कर विस्तृत जांच दिनांक 11.03.2011 तक पूर्ण कर अपनी जांच रिपोर्ट अधोहस्ताक्षरकर्ता को दिनांक 22.03.2011 तक आवश्यक रूप से प्रस्तुत करेंगे। जांच प्रतिवेदन में जांच के दौरान दृष्टिगत होने वाली अनियमितताओं

के लिए अनिलेखीय साक्ष्य (Documentary Proof) के आधार पर स्पष्ट उत्तरदायित्व निर्धारित किया जायेगा। जांच रिपोर्ट को तैयार करने से पूर्व संलग्न प्रपत्रों में सूचना तैयार की जावे तथा इन प्रपत्रों को जांच रिपोर्ट का भाग बनाया जावे।

संलग्न: उपरोक्तानुसार

(सी.एस.राजन)
प्रमुख शासन सचिव
ग्रामीण विकास एवं पंचायती राज

क्रमांक: एफ 61(23)ग्रा.वि./म.न./नि.सा.अ./आ.वि.जो./2010-11/11463-75 जयपुर, दिनांक : 04.03.2011

प्रतिलिपि :- निम्नांकित को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रस्तुत है:-

1. विशिष्ट सहायक, माननीय मंत्री, ग्रा. वि. एवं पंचायत राज विभाग, राज., जयपुर
2. निजी सचिव, प्रमुख शासन सचिव, ग्रा. वि. एवं पंचा. राज विभाग, जयपुर
3. निजी सचिव, आयुक्त एवं शासन सचिव, ई.जी.एस., जयपुर
4. अतिरिक्त आयुक्त-द्वितीय, ईजीएस
5. जिला कलक्टर एवं जिला कार्यक्रम समन्वयक, बाडमेर/जालोर
6. मुख्य कार्यकारी अधिकारी, जिला परिषद बाडमेर/जालोर
7. संबंधित दल प्रभारी, श्री महेन्द्र सिंह भुकर, संयुक्त निदेशक, निदेशालय, सामाजिक अंकेक्षण को प्रपत्र सं. 01 से 05 तक संलग्न किए जा रहे हैं।
8. संबंधित दल सदस्यगण श्री लाभचन्द जीनगर, अधिशाषी अभियन्ता, जिला परिषद जालोर/श्री महेश गुप्ता, सहायक लेखाधिकारी, सामाजिक अंकेक्षण।
9. विकास अधिकारी एवं कार्यक्रम अधिकारी, पंचायत समिति धोरीमन्ना, बाडमेर
10. रक्षित पत्रावली

सूचना के अधिकारी के तह 2542

संयुक्त निदेशक,
सामाजिक अंकेक्षण

अतिरिक्त कार्यक्रम समन्वयक
मुख्य कार्यकारी अधिकारी
जिला परिषद जालोर

ग्राम पंचायत-बामणोर, पंचायत समिति-धोरीमना, जिला-बाड़मेर में ग्राम पंचायत द्वारा नरेगा योजनान्तर्गत दिनांक 01.04.2007 से 31.12.2010 तक किए गए/करवाए जा रहे कार्यों एवं लेखों की विस्तृत जांच का प्रतिवेदन

(जांच अवधि 07.03.2011 से 11.03.2011)

प्रस्तावना :-

प्रमुख शासन सचिव, ग्रामीण विकास एवं पंचायती राज विभाग के आदेश क्रमांक एफ 61(23) ग्रा.वि./म.न./नि.सा.अं./आ.वि.जॉ./2010-11/11463-75 दिनांक 04.03.2011 द्वारा निम्नलिखित अधिकारियों का एक जांच दल गठित किया गया:-

- 1 श्री महेन्द्र सिंह भूकर, संयुक्त निदेशक, निदेशालय सामाजिक अंकेक्षण, जयपुर
- 2 श्री लाभचन्द्र जीनगर, अधिशाषी अभियंता, जिला परिषद, जालौर
- 3 श्री महेश गुप्ता, सहायक लेखाधिकारी सामाजिक अंकेक्षण, जयपुर

जांच दल ने मौके पर जाकर कार्यों का भौतिक सत्यापन किया तथा कार्यों से संबंधित अभिलेख की जांच की। जांच के समय श्री संजय अमरावत, विकास अधिकारी, पंचायत समिति धोरीमना, श्री मनोज गोयल, सहायक अभियंता, पंचायत समिति धोरीमना, श्री संदीप जैन, सहायक अभियंता जिला परिषद बाड़मेर, श्री हनुमान चौधरी सहायक अभियंता, पंचायत समिति, बाड़मेर श्री मोईकबाल अहमद, ग्राम सेवक एवं पदेन सचिव, ग्राम पंचायत बामणोर, श्री मोतीलाल मीना कनिष्ठ तकनीकी सहायक, पंचायत समिति धोरीमना, श्री रामदयाल बैरवा कनिष्ठ तकनीकी सहायक, पंचायत समिति धोरीमना एवं श्री पप्पूराम बैरवा, कनिष्ठ तकनीकी सहायक, पंचायत समिति धोरीमना, श्री पवन कुमार शर्मा, कनिष्ठ तकनीकी सहायक, पंचायत समिति धोरीमना मौके पर साथ रहे।

नरेगा योजनान्तर्गत करवाए गए कार्यों के मौके पर माप एवं मूल्यांकन का कार्य श्री लाभचन्द्र जीनगर, अधिशाषी अभियंता (तकनीकी अधिकारी) द्वारा श्री मनोज गोयल, सहायक अभियंता पंचायत समिति, धोरीमना व श्री मोतीलाल मीना कनिष्ठ तकनीकी सहायक पंचायत समिति धोरीमना के साथ किया गया। मौके पर व्यक्तिगत टांका निर्माण कार्यों एवं इन्डि

1

आवास कार्यों का भौतिक सत्यापन करवाने के लिए निम्नलिखित तकनीकी अधिकारियों का भी सहयोग लिया गया:-

श्री संदीप जैन, सहायक अभियन्ता जिला परिषद बाड़मेर, श्री हनुमान चौधरी सहायक अभियन्ता, पंचायत समिति, बाड़मेर, श्री रामदयाल बैरवा कनिष्ठ तकनीकी सहायक पंचायत समिति धोरीमना, श्री पप्पूराम बैरवा कनिष्ठ तकनीकी सहायक पंचायत समिति धोरीमना, श्री पवन कुमार शर्मा, कनिष्ठ तकनीकी सहायक, पंचायत समिति धोरीमना।

ग्राम पंचायत-बामणोर में नरेगा योजनान्तर्गत पंजीकृत परिवारों एवं आय व्यय का विवरण

- (i) ग्राम पंचायत-बामणोर, पंचायत समिति धोरीमना, जिला बाड़मेर में नरेगा योजनान्तर्गत पंजीकृत परिवारों का विवरण निम्नानुसार है :-

क्र सं	गांव का नाम	जनसंख्या 2001 के अनुसार	मतदाता संख्या	पंजीकृत परिवारों की संख्या	जॉर्नल की संख्या
1	बामणोर भंवरशाह	2127	805	488	478
2	बामणोर अमीरशाह	739	486	198	193
3	ठठर का डेर	1933	1116	401	391
4	बांडाबेरा	1170	976	345	335
5	अमीरगढ़	331	369	106	101
6	पिंगलपुरा	737	374	145	135
7	मीठा बेरा	389	323	102	98
8	अम्बेडकर नगर	472	314	125	110
9	अमी मोहम्मद शाह की बस्ती	432	358	123	112
	योग	8330	5121	2033	1953

- (ii) ग्राम पंचायत-बामणोर का वर्ष 2007-08, 08-09, 09-10 एवं 2010-11 के आय-व्यय एवं राशि समायोजन का विवरण:- (राशि रुपये लाखों में)

वर्ष	स्वीकृत राशि			व्यय राशि			कुल समायोजन राशि	बकरीय राशि
	अम	सामग्री	कुल	अम	सामग्री	कुल		
2007-08	4916100	3099800	8015900	1536306	807901	2344207	2730461	-386254
2008-09	12100000	8143000	20243000	6360142	244937	6605079	11915817	-510738
2009-10	15244400	9337000	24581400	7891564	4336441	12228005	4274648	7953357
2010-11	19428000	16369000	35797000	4938143	1622976	6561119	0	6561119
योग	51688500	36948800	88637300	20726155	7012255	27738410	18920926	3897484

जिला बाइमेर पंचायत समिति घोरीमना एवं भाम पंचायत बामणोर में नरेगा के कार्यों से संबंधित पदस्थापित अधिकारियों/कर्मचारियों/लोकसेवक का विवरण

दिनांक 1.4.2008 से 31.12.2010 तक नरेगा के संचालन हेतु कार्यरत अधिकारी / कर्मिक (परिशिष्ट -1)

क्र.सं.	पदनाम अधिकारी/कर्मचारी	पदस्थापन अवधि
क.सं.	कलक्टर एवं जिला कार्यक्रम समन्वयक (ई.जी.एस.)	श्री कृष्ण कुणाल 01.04.2008 से 24.05.2008
		श्री रवि जैन 25.05.2008 से 31.03.2010
		श्री गौरव गोयल 01.04.2010 से लगातार
ख.सं.	मुख्य कार्यकारी अधिकारी एवं अतिरिक्त जिला कार्यक्रम समन्वयक (ई.जी.एस.)	श्री छगनलाल श्रीमाली 01.04.2008 से 07.10.2008
		श्री चिरंजीलाल दायमा 08.10.2008 से 01.03.2009
		श्री बलदेवसिंह उज्ज्वल 02.03.2009 से 17.03.2009
		श्री सोहनलाल पालीवाल 18.03.2009 से 08.09.2009
		श्री बलदेवसिंह उज्ज्वल 09.09.2009 से 04.10.2009
		श्री रामावतार भीणा 05.10.2009 से 31.03.2010
		श्री बी.एल.कन्दोई 01.04.2010 से लगातार
		श्री दीनानाथ पाण्डेय 01.04.2008 से 30.06.2008
		श्री किशनलाल * 01.07.2008 से 04.12.2009
ग.सं.	विकास अधिकारी	श्री मेहताबसिंह उज्ज्वल 05.12.2009 से 21.01.2011
		श्री संजय अमरावत 31.01.2011 से लगातार
		श्री संजय अमरावत 01.07.2008 से 21.01.2011
		श्री संजय अमरावत 31.01.2011 से लगातार
घ.सं.	अधिकांशी अभियंता (ई.जी.एस.)	श्री ए.के.शर्मा 01.04.2008 से 31.12.2009
		श्री संदीप जैन 01.01.2010 से 31.03.2010
च.सं.	सहायक अभियन्ता/वरिष्ठ तकनीकी सहायक	श्री सुजानाराम विश्णोई 01.04.2008 से 31.03.2010
छ.सं.	कनिष्ठ तकनीकी सहायक	श्री मोतीलाल मीना 01.04.2008 से लगातार
ज.सं.	लेखा सहायक पंचायत समिति	श्री ओम प्रकाश विश्णोई 13.08.2009 से 10.07.2010
		श्री सोनाराम पाला 11.07.2010 से 28.02.2011
झ.सं.	सरपंच ग्राम पंचायत	श्री गुलाम शाह 01.04.2008 से लगातार
ड.सं.	ग्राम सेवक एवं पदेन सचिव	श्री मोहम्मद ईकबाल अहमद 01.04.2008 से लगातार
ढ.सं.	ग्राम रोजगार सहायक	श्री केदाराम मेगवाल 01.04.2008 से लगातार

ग्राम पंचायत बामणोर द्वारा नरेगा योजनान्तर्गत वर्ष 2007-08, 08-09, 09-10 एवं 10-11 में 360 कार्य स्वीकृत कर करवाये गये हैं (परिशिष्ट-2)। (96 इन्दिरा आवास सहित)

उक्त कार्यों में से जांच एवं भौतिक सत्यापन के समय वर्ष 2007-08, 08-09, 09-10 एवं 10-11 में स्वीकृत एवं करवाए गए 360 में से 8 ग्रेवल सड़कों के कार्यों की विस्तृत जांच की गई तथा मौके पर माप एवं मूल्यांकन किया गया तथा 260 कार्यों का भौतिक सत्यापन किया गया। (96 इन्दिरा आवास सहित)

जांच प्रतिवेदन

भाग-1

नरेंगा कार्यों के मौके पर भौतिक सत्यापन के दौरान वास्तविक माप एवं माप पुस्तिका में दर्ज माप के मूल्यांकन में अन्तर के कारण अनियमित भुगतान राशि रु0 9,67,781/-

जांच दल द्वारा ग्राम पंचायत बामणोर में करवाये गये कार्यों का भौतिक सत्यापन कर वस्तुतः जांच की गई जांच के दौरान निम्नांकित निर्माण कार्यों में मौके पर उपलब्ध कार्य के माप एवं माप पुस्तिका में दर्ज माप में अन्तर पाया गया-

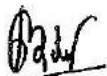
क्र. सं.	निर्माण कार्य का नाम	कार्य का यूनिट कोड	मौके पर भौतिक सत्यापन एवं माप पुस्तिका में दर्ज राशि में अन्तर के अनुसार वसूली योग्य राशि (रुपयों में)	कार्य स्थल मौके पर जांच दल द्वारा लिए गए वास्तविक माप की आईटम वार रिपोर्ट (मप माप पुस्तिका की प्रति) परिशिष्ट संख्या
1	2	3	4	5
1	ग्रेवल सड़क मीठाबेरा से धनाणी छदरों की ढाणी तक 1.5 किमी	207/H/05	110451	3(1 से 14)
2	ग्रेवल सड़क निर्माण पिगलपुरा से नवातला तक	207/H/008	19188	4(1 से 17)
3	ग्रेवल सड़क निर्माण गजुओं की होदी से तेजे का तला तक 3 किमी	207/H/09	148302	5(1 से 42)
4	ग्रेवल सड़क पिगलपुरा रोड से भीलों की बस्ती तक	207/H/16	196481	6(1 से 24)
5	(i) ग्रेवल सड़क मुहिबाणियों के फांटे से तेजा का तला (ii) ग्रेवल बिछाने का कार्य मुहिबाणियों के फांटे से तेजा का तला	207/H/06 207/H/15	281731	7(1 से 51)
6	(i) ग्रेवल सड़क बामणोर से भलीसर सरहद तक 3 किमी (ii) ग्रेवल बिछाने का कार्य बामणोर से भलीसर सरहद तक किमी 1.5 से 4.0 किमी (2.5 किमी)	207/H/03	211628	8(1 से 45)
योग			967781	

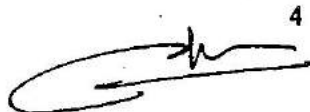
ग्रेवल सड़क मीठाबेरा से धनाणी छदरों की ढाणी तक 1.5 कि०मी० (परिशिष्ट-3)

(i) ग्रेवल की मात्रा - 86 घनमीटर ग्रेवल कम पाई गई। वसूली राशि रु0 34,274/-

(ii) ग्रेवल परिवहन - स्वीकृत तकमीना में 20 कि०मी० लीड अनुमत की गई है, जबकि भुगतान 55 कि०मी० लीड का किया गया है। वसूली राशि रु0 72,461/-

(iii) कॉम्पेक्शन - स्वीकृत तकनीकी एस्टीमेट के आईटम 5 के अनुसार ग्रेवल बिछाने रोलर से दबाने एवं पानी के खर्च इत्यादि के लिए मात्र रु0 5/- ही अनुमत है, जबकि रु0 12/- प्रति घनमीटर भुगतान किया गया है। वसूली राशि रु0 3,716/-







2. ग्रेवल सड़क निर्माण धिंगलपुरा से नवातला तक 1 कि०मी० (परिशिष्ट-4)
- (i) ग्रेवल परिवहन - स्वीकृत तकमीना में 45 कि०मी० लीड अनुमत की गई है, जबकि माप पुस्तिका अनुसार 55 कि०मी० लीड का भुगतान किया गया है। अतः 10 कि०मी० अतिरिक्त अनियमित लीड की राशि रु० 16,630/- वसूलनीय है।
- (ii) कॉम्पेक्शन - स्वीकृत तकनीकी एस्टीमेट के आईटम 5 के अनुसार ग्रेवल बिछाने, रोलर से दबाने एवं पानी के खर्च इत्यादि के लिए मात्र रु० 5/- ही अनुमत है, जबकि रु० 11/- प्रति घनमीटर भुगतान किया गया है। वसूली राशि रु० 2,558/-
3. ग्रेवल सड़क निर्माण गजुओं की होदी से तेजे का तला तक 3 कि०मी० (परिशिष्ट-5)
- (i) लम्बाई-ग्रेवल सड़क एमबी के अनुसार 2991 मीटर है परन्तु मौके पर 2884 मीटर पाई गई। 107 मीटर ग्रेवल सड़क मौके पर कम पाई गई। वसूली राशि रु० 80,357/-
- (ii) ग्रेवल की मात्रा-मौके पर 118.16 घनमीटर ग्रेवल कम पाई गई। वसूली राशि रु० 59,037/-
- (iv) कॉम्पेक्शन - स्वीकृत तकनीकी एस्टीमेट के आईटम 5 के अनुसार कॉम्पेक्शन हेतु अकुशल श्रमिक से रु० 5/- सहित कुल रु० 14/- अनुमत है। इस प्रकार कॉम्पेक्शन एवं पानी के रु० 9/- ही अनुमत है, जबकि रु० 13/- प्रति घनमीटर के हिसाब से भुगतान किया गया है, अतः रु० 4/- प्रति घनमीटर से वसूली राशि रु० 8,908/- की जानी है।
4. ग्रेवल सड़क पींगलपुरा रोड़ से भीलों की बस्ती तक (परिशिष्ट-6)
- (i) लम्बाई-एमबी के अनुसार ग्रेवल सड़क 1999.50 मीटर है जबकि मौके पर 1900 मीटर लम्बाई पाई गई। 99.50 मीटर ग्रेवल सड़क कम है, वसूली राशि रु० 71,043/-
- (ii) ग्रेवल की मात्रा-मौके पर जांच के दौरान 237.27 घनमीटर ग्रेवल कम पाई गई। वसूली राशि रु० 1,18,787/-
- (iii) कॉम्पेक्शन - स्वीकृत तकनीकी एस्टीमेट के आईटम 5 के अनुसार कॉम्पेक्शन हेतु अकुशल श्रमिक रु० 5/- सहित कुल रु० 14/- अनुमत है। इस प्रकार कॉम्पेक्शन एवं पानी के रु० 9/- ही अनुमत है, जबकि रु० 14/- प्रति घनमीटर के हिसाब से भुगतान किया गया है, अतः रु० 5/- प्रति घनमीटर अनियमित भुगतान की राशि रु० 6,651/- वसूलनीय है।
5. ग्रेवल सड़क मुहिबाणियों के फांटे से तेजा का तला (परिशिष्ट-7)
- (i) लम्बाई-प्रथम कार्य की एमबी नं. 44 एवं 79 के अनुसार लम्बाई 792 मीटर एवं द्वितीय कार्य की एमबी नं. 270 के अनुसार लम्बाई 1600 मीटर है। कुल लम्बाई 2392 मीटर है। मौके पर लम्बाई 2264 मीटर लम्बाई पाई गई। मौके पर 128 मीटर लम्बाई कम पाई गई। वसूली राशि रु० 38,895/-
- (ii) ग्रेवल की मात्रा-मौके पर 312 घनमीटर ग्रेवल कम पाई गई। वसूली राशि रु० 1,56,200/-
- (iii) ग्रेवल परिवहन-प्रथम स्वीकृत कार्य में तकनीकी एस्टीमेट के अनुसार 20 कि०मी० लीड अनुमत है जबकि माप पुस्तिका अनुसार भुगतान 55 कि०मी० लीड का किया गया है। 35 कि०मी० अतिरिक्त लीड का भुगतान राशि रु० 78,474/- वसूलनीय है।
- (iv) कॉम्पेक्शन - (1) प्रथम स्वीकृत कार्य के तकनीकी एस्टीमेट के आईटम 5 अनुसार ग्रेवल बिछाने, रोलर से दबाने एवं पानी के खर्च हेतु रु० 23/- अकुशल श्रम एवं कुल रु० 28 प्रति घनमीटर अनुमत है। तदनुसार कॉम्पेक्शन एवं पानी के रु० 5/-

0224

5

0224

अनुमत है, जबकि भुगतान रु0 11/- प्रति घनमीटर किया है। वसूली रु0 3,449/-

(2) द्वितीय स्वीकृत कार्य के तकनीकी स्वीकृति आइटम 7 के अनुसार अकुशल श्रम मद में रु0 5/- एवं कुल रु0 14/- अनुमत है। तदनुसार कॉम्पेक्शन एवं पानी के लिए रु0 9/- ही अनुमत है, जबकि भुगतान रु0 14/- प्रति घनमीटर की दर से किया है। वसूली राशि रु0 4,713/-

6 (i) ग्रेवल सड़क निर्माण बामणोर से भलीसर सीमा तक (परिशिष्ट-8)

(ii) ग्रेवल बिछाई कार्य बामणोर से भलीसर सरहद तक 1.5 कि0मी0 से 4 कि0मी0

(i) परिवहन-(1) प्रथम स्वीकृत कार्य-तकनीकी एस्टीमेट अनुसार ग्रेवल परिवहन की 20 कि0मी0 लीड अनुमत की गई, जबकि भुगतान 55 कि0मी0 की लीड का किया गया। 35 कि0मी0 अतिरिक्त परिवहन के लिए किया गया भुगतान रु0 1,50,400/- वसूलनीय है।

(2) द्वितीय स्वीकृत कार्य-तकनीकी एस्टीमेट अनुसार ग्रेवल परिवहन हेतु 50 कि0मी0 लीड अनुमत की गई, जबकि एम बी अनुसार 55 कि0मी0 लीड का भुगतान किया गया है। 5 कि0मी0 अतिरिक्त लीड का भुगतान रु0 43,785/- वसूलनीय है।

(iii) कॉम्पेक्शन - (1) प्रथम स्वीकृत कार्य-कॉम्पेक्शन एवं पानी हेतु रु0 7/- प्रति घनमीटर अतिरिक्त भुगतान किया गया है। वसूली रु0 7,713/-

(2) द्वितीय स्वीकृत कार्य-कॉम्पेक्शन एवं पानी हेतु रु0 5/- प्रति घनमीटर अतिरिक्त भुगतान किया गया है। वसूली राशि रु0 9,730/-

जांच निष्कर्ष एवं प्रस्तावित कार्रवाई :-

- (1) जांच दल द्वारा ग्राम पंचायत बामणोर में करवाए गए कार्यों का भौतिक स्तथापन कर विस्तृत जांच की गई जांच के दौरान 08 निर्माण कार्यों में मौके पर उपलब्ध कार्य के माप एवं माप पुस्तिका में दर्ज माप में अन्तर पाया गया तथा तकनीकी एस्टीमेट में अनुमत दर से अधिक दर पर ग्रेवल परिवहन की लीड, कॉम्पेक्शन, पानी का माप पुस्तिका में इन्द्राज कर भुगतान किया गया। माप पुस्तिका में दर्शाए गए माप गलत हैं एवं कार्यों के मूल्यांकन से स्पष्ट होता है कि श्री मोतीलाल गीणा, कनिष्ठ तकनीकी सहायक, पंचायत समिति, धोरीमना द्वारा बिना मौके की स्थिति को देखे माप पुस्तिका में इन्द्राज किए गए हैं। इन कार्यों को माप पुस्तिका में भुगतान हेतु मूल्यांकन राशि को पारित करने की कार्रवाई श्री सैय्यद गुलाम शाह, सरपंच, ग्राम पंचायत बामणोर एवं श्री मोहम्मद इकबाल अहमद, ग्राम सेवक, ग्राम पंचायत बामणोर द्वारा की गई है।
- (2) कार्यस्थल के मौके पर उपलब्ध निर्माण के वास्तविक माप से अधिक माप एमबी (माप पुस्तिका) में दर्ज करने एवं तकनीकी एस्टीमेट से अधिक दर पर अनियमित भुगतान के कारण अन्तर राशि रु0 9,67,781/- है।
- (3) गलत तरीके से माप पुस्तिका में अधिक माप दर्ज कर एवं अधिक मूल्यांकन दर्शाकर राजकीय राशि का अनियमित एवं फर्जी भुगतान करने के लिए श्री मोतीलाल गीणा, कनिष्ठ तकनीकी सहायक, पंचायत समिति, धोरीमना, श्री सैय्यद गुलाम शाह, सरपंच, ग्राम पंचायत बामणोर एवं श्री मोहम्मद इकबाल अहमद, ग्राम सेवक एवं पदेन सचिव, ग्राम पंचायत बामणोर प्रत्यक्ष रूप से उत्तरदायी हैं। इनसे नियमानुसार राशि रु0 9,67,781/- की वसूली करते हुए कानूनी एवं विभागीय कार्रवाई किया जाना उचित होगा।

- (4) अधिशाषी अभियन्ता, जिला परिषद् बाड़मेर एवं सहायक अभियन्ता, पंचायत समिति धोरीमना द्वारा ग्रेवल सड़क निर्माण कार्यों के तथ्यों का सत्यापन एवं मूल्यांकन किए बिना ही पूर्णता प्रमाण पत्र जारी किए हैं।

अधिशाषी अभियन्ता, जिला परिषद् बाड़मेर द्वारा निम्नलिखित 7 कार्यों के पूर्णता प्रमाण पत्र जारी किए गए :-

1. ग्रेवल सड़क मीठाबेरा से धनाणी छदरों की ढाणी तक 1.5 किमी
2. ग्रेवल सड़क निर्माण पिंगलपुरा से नवातला तक
3. ग्रेवल सड़क पिंगलपुरा रोड़ से भीलों की बस्ती तक
4. ग्रेवल सड़क मुहिबाणियों के फांटे से तेजा का तला
5. ग्रेवल बिछाने का कार्य मुहिबाणियों के फांटे से तेजा का तला
6. ग्रेवल सड़क बामणोर से भलीसर सरहद तक 3 किमी
7. ग्रेवल बिछाने का कार्य बामणोर से भलीसर सरहद तक किमी 1.5 से 4.0 किमी (2.5 किमी)

नियमानुसार अधिशाषी अभियन्ता व सहायक अभियन्ता द्वारा इनका निरीक्षण कर माप पुस्तिका में कार्य की मात्रा, गुणवत्ता एवं तकनीकी मापदण्डों की भौतिक जांच कर दिनांक सहित स्पष्ट टिप्पणी अंकित कर हस्ताक्षर किये जाने चाहिए थे, परन्तु सम्बन्धित अधिशाषी अभियन्ता व सहायक अभियन्ता द्वारा कभी भी इन कार्यों की भौतिक जांच नहीं की गयी एवं कर्त्तव्यों के प्रति लापरवाही की गयी तथा पूर्णता प्रमाण पत्र जारी कर दिए गए जिसके कारण उक्त अनियमितताएं हुई। अतः इनके विरुद्ध अनुशासनात्मक कार्रवाई की जावे।

- (5) श्री मेहताब सिंह उज्ज्वल, विकास अधिकारी एवं कार्यक्रम अधिकारी, पंचायत समिति धोरीमना द्वारा उक्त 8 ग्रेवल सड़कों का मूल्यांकन कर पूर्णता प्रमाण पत्र जारी किए हैं। उक्त 8 ग्रेवल सड़कों में राशि रु0 9,67,781/- का अनियमित भुगतान हुआ है। कार्यों की गुणवत्ता, तकनीकी मानदण्डों के अनुसार जांच करवाए बिना पूर्णता प्रमाण पत्र जारी कर श्री उज्ज्वल द्वारा अपने कर्त्तव्यों के प्रति लापरवाही की है। अतः इनके विरुद्ध अनुशासनात्मक कार्रवाई की जावे।

भाग-2

1. ग्राम पंचायत बामणोर में नरेगा योजनान्तर्गत करवाये गये कार्य जिनका जांच दल द्वारा भौतिक सत्यापन किया गया

वर्ष 2007-08 से 2009-10 तक 185 व्यक्तिगत टांके स्वीकृत किए गए। इनमें से 21 टांके निरस्त किए गए। शेष 164 व्यक्तिगत टांकों की भौतिक सत्यापन रिपोर्ट इस प्रकार है (परिशिष्ट-9) :-

- (1) 12 व्यक्तिगत टांके लोकेट नहीं हो सके :- ग्राम पंचायत द्वारा इन 12 कार्यों पर राशि रु0 5,81,325/- व्यय दर्शाया है।

क्र. सं.	नाम लाभार्थी	जाति	ग्राम	राशि
1	हसन/बभूता	मुसलमान	बांडाबेरा	98415
2	मुरीद/जखरा	मुसलमान	बांडाबेरा	97615
3	सुमार/फूला	मुसलमान	ठठर का डेर	36980
4	राणाराम/पुनूराम	मेघवाल	ठठर का डेर	38180
5	अली/समदा	मुसलमान	बामणोर अमीरशाह	14180
6	अब्दुल मजीद/खान मोहम्मद	मुसलमान	बामणोर अमीरशाह	38180
7	साविर/लाल मोहम्मद	मुसलमान	बामणोर अमीरशाह	38180
8	रतन/रणजीता	भील	अमी मोह0 की बस्ती	38180
9	माला/ठाकरा	भील	अमी मोह0 की बस्ती	38180

10	रघुमल/जुगता	भील	मीठा बेरा	38180
11	खेमा/धूडा	कुम्हार	बाण्डाबेरा	24450
12	उमर/हयात	मुसलमान	बाण्डाबेरा	81105

(2) 18 कार्य प्रारम्भ नहीं हुए :- ग्राम पंचायत द्वारा इन 18 कार्यों पर राशि रु0 6,38,402/- व्यय दर्शाया गया है।

क्र. सं.	नाम लाभार्थी	जाति	ग्राम	राशि
1	जीमयत/जुम्मा	मुसलमान	बामणोर भंवरशाह	24450
2	शकूर/ईशाक	मुसलमान	बामणोर भंवरशाह	38180
3	मेहबूब/जिन्दा	मुसलमान	बामणोर भंवरशाह	38180
4	अब्दुला/शोभदार	मुसलमान	बामणोर भंवरशाह	38180
5	नूरा/मोसा	मुसलमान	बामणोर भंवरशाह	24450
6	रहीम/मायद	मुसलमान	बामणोर भंवरशाह	24450
7	ज.मील/सिद्धिक	मुसलमान	बामणोर भंवरशाह	24450
8	सोना/हमीरा	मेघवाल	बामणोर भंवरशाह	24000
9	मूला/सुमार	मेघवाल	बामणोर भंवरशाह	24450
10	हेमा/चांदणा	मेघवाल	बामणोर भंवरशाह	24450
11	अमेदा/चांदणा	मेघवाल	बामणोर भंवरशाह	24450
12	पदमा/पूनमा	भील	बाण्डाबेरा	38180
13	दलू/बबरा	मुसलमान	बाण्डाबेरा	69618
14	चूना/तुलछा	सुथार	बाण्डाबेरा	69618
15	मदतअली/हुसैन	मुसलमान	बाण्डाबेरा	51618
16	हलीम/निहाल	मुसलमान	बाण्डाबेरा	24450
17	इब्राहिम/फादल	मुसलमान	बाण्डाबेरा	24450
18	कमाल/करीम	मुसलमान	बाण्डाबेरा	50778

(3) 8 टांके नहीं बने हैं :- ग्राम पंचायत द्वारा इन 8 कार्यों पर राशि रु0 2,23,060/- व्यय दर्शाया गया है।

क्र. सं.	नाम लाभार्थी	जाति	ग्राम	राशि
1	भेरा/अचला	जाट	अमीरगढ़	38180
2	गोगाराम/नगाराम	जाट	अमीरगढ़	24450
3	वीराराम/खेराजराज	जाट	अमीरगढ़	24450
4	तगा/दाजा	जाट	पींगलपुरा	24450
5	राउराम/कोशलाराम	मेघवाल	पींगलपुरा	24450
6	धोधा/करमाली	मुसलमान	पींगलपुरा	38180
7	हरलाल/वीराराम	मेघवाल	पींगलपुरा	24450
8	रेखाराम/गोमाराम	जाट	पींगलपुरा	24450

(4) 4 व्यक्तिगत टांकों पर आगोर नहीं बनाया गया एवं एक टांके की गुणवत्ता खराब है।

क्र. सं.	नाम लाभार्थी	जाति	ग्राम
----------	--------------	------	-------

8

1.	अदलकरीम/गनी	मुसलमान	बामणोर भंवरशाह
2.	आलम खान/इम्बू खान	मुसलमान	ठठर का डेर
3.	जुमा/अजीम	मुसलमान	ठठर का डेर
4.	साहेबना/रेशम	मुसलमान	बाण्डाबेरा

(5) 9 व्यक्तिगत टांकों के निर्माण में ग्राम पंचायत द्वारा दी गई सीमेन्ट एवं लामार्थी को प्राप्त सीमेन्ट की मात्रा में अंतर है। इन टांकों के निर्माण में लामार्थियों एवं टांके के निर्माण करने वाले कारीगर के कथन के अनुसार 180 सीमेन्ट बैग राशि रु 37,800/- कम दिए गए हैं (परिशिष्ट-10)।

क. सं.	नाम लामार्थी	जाति	ग्राम	जारी की गई सीमेन्ट (बैग)	प्राप्त सीमेन्ट (बैग)	अन्तर
1	हीरा/सगरा	मेघवाल	बामणोर भंवरशाह	35	20	15
2	हासम/काजी	मुसलमान	अमीरगढ	61	40	21
3	देवली/पता	मेघवाल	अम्बेडकर नगर	61	50	11
4	लूम्मा/नारु	मेघवाल	अम्बेडकर नगर	61	50	11
5	पूनमा/लाखा	भील	अम्बेडकर नगर	61	50	11
6	गफू/धीरा	लोहार	पींगलपुरा	61	32	29
7	भाना/भीया	सुथार	पींगलपुरा	61	30	31
8	माला/सगरा	मेघवाल	बामणोर भंवरशाह	61	35	26
9	सिमरथा/जला	मेघवाल	अम्बेडकर नगर	55	30	25

(6) व्यक्तिगत टांका रूपा/खीरा मेघवाल, राजस्व ग्राम ठठर का डेड के स्थान पर ग्राम अम्बेडकर नगर में बना है। एक टांका केवा/भीमा मेघवाल, ग्राम बामणोर भंवरशाह, में नहीं बनकर ग्राम अम्बेडकर नगर में बना है।

जांच निष्कर्ष एवं प्रस्तावित कार्रवाई :-

- (1) 12 व्यक्तिगत टांके जांच दल को लोकेट नहीं हो पाए, उनकी जांच कर लोकेट कराया जाए और यदि ये टांके लोकेट नहीं हो पाते हैं तो इन पर व्यय के लिए उत्तरदायित्व निर्धारित कर राशि रु 5,81,805/- की वसूली की जावे।
- (2) 18 कार्य प्रारम्भ नहीं हुए हैं, उन्हें अविलम्ब प्रारम्भ करवाया जावे एवं अब तक इन कार्यों को प्रारम्भ किए बिना राशि रु 6,38,402/- का अनियमित व्यय करने के लिए संबंधित कार्मिकों का उत्तरदायित्व निर्धारित किया जावे।
- (3) 8 टांके नहीं बने हैं, उन पर किए गए अनियमित व्यय के लिए उत्तरदायित्व निर्धारित किया जावे एवं राशि रु 2,23,060/- की वसूली की जावे।
- (4) 4 व्यक्तिगत टांकों पर आगोर नहीं बनाया गया है उन पर आगोर बनवाया जावे एवं 1 टांके की खराब गुणवत्ता के लिए संबंधित कार्मिकों का उत्तरदायित्व निर्धारित किया जावे।
- (5) 9 व्यक्तिगत टांका निर्माण कार्यों में लामार्थी एवं कारीगर के कथन के अनुसार 180 बैग सीमेन्ट राशि रु 37,800/- का अनियमित भुगतान किया गया है। अनियमित भुगतान के लिए श्री मोतीलाल मीना, कनिष्ठ तकनीकी सहायक, पंचायत समिति-धोरीमना, श्री गुलाम शाह, सरपंच एवं श्री मोहम्मद इकबाल अहमद, ग्राम सेवक एवं पदेन सचिव, ग्राम पंचायत बामणोर का उत्तरदायित्व निर्धारित कर वसूली की कार्रवाई की जावे।

- (6) रूपा/खीरा मेघवाल का व्यक्तिगत टांका ठठर का डेर के स्थान पर अम्बेडकर नगर में एवं केवा/भीमा मेघवाल व्यक्तिगत टांका बामणोर भंवरशाह के स्थान पर अम्बेडकर नगर में बनाने के लिए संबंधित कार्मिकों का उत्तरदायित्व निर्धारित किया जावे।
2. ग्राम पंचायत बामणोर द्वारा वर्ष 2001 से 2008-09 की अवधि में स्वीकृत कराए गए इन्दिरा आवास कार्यों का भौतिक सत्यापन (परिशिष्ट-11)
- (1) उक्त अवधि में स्वीकृत 96 इंदिरा आवासों का भौतिक सत्यापन किया गया।
- (2) 5 इंदिरा आवास लोकेट नहीं हुए :-
1. खतीजा/अजीम मुसलमान, बामणोर भंवरशाह,
 2. राहमत/जनाब अली मुसलमान, बाण्डाबेरा,
 3. मुरीदा/मुरीद,
 4. पनी देवी/प्रेमराम जाट, पिंगलपुरा,
 5. हकीमा/हलीम, मुसलमान
- (3) 7 इंदिरा आवास का भौतिक सत्यापन नहीं किया जा सका :-
1. भूरी देवी/जेठाराम जाट, मीठाबेरा,
 2. रूहेना/ओसमान मुसलमान, ठठर का डेर,
 3. साहेबा/हबीब मुसलमान, अम्बेडकर नगर,
 4. दरी/सतार मुसलमान, अमी मोह. की बस्ती,
 5. खातू/सिद्धिक मुसलमान, अमी मोह0 की बस्ती,
 6. उकेल/हसन मुसलमान, ठठर का डेर,
 7. खतीजा/सायल मुसलमान, ठठर का डेर
- (4) 6 इन्दिरा आवास अपूर्ण पाए गए :-
1. कैकू/तारा मेघवाल, बामणोर भंवरशाह
 2. मेहरों/गंगा जाट, अमीरगढ़
 3. हरियों/बीरा जाट, अमीरगढ़
 4. हाजी/अकलू मुसलमान, अमीरगढ़
 5. सतबाई/फेजू मुसलमान, बाण्डाबेरा
 6. केसरा/गजा, बाण्डाबेरा
- (5) 2 लाभार्थियों द्वारा राशि अपूर्ण भुगतान करने की शिकायत की गई :-
1. कमला/भीरा मेघवाल, बामणोर भंवरशाह
 2. सजनी/मूला मेघवाल, पिंगलपुरा

जांच निष्कर्ष एवं प्रस्तावित कार्रवाई :-

- (1) 5 इन्दिरा आवास जांच दल को लोकेट नहीं हो पाए, उनकी जांच कर लोकेट कराया जाए और यदि ये आवास लोकेट नहीं हो पाते हैं तो इन पर व्यय के लिए उत्तरदायित्व निर्धारित कर वसूली की जावे।
- (2) जिन 7 इन्दिरा आवासों का भौतिक सत्यापन नहीं हो सका है, उनका भौतिक सत्यापन कराया जाए और यदि कोई अनियमितता पाई जाती है तो संबंधित कार्मिकों के विरुद्ध कार्रवाई की जावे।
- (3) 6 अपूर्ण इन्दिरा आवासों को पूर्ण कराया जावे।
- (4) दो लाभार्थियों द्वारा अपूर्ण भुगतान करने की शिकायत की गई है, इनकी जांच की जावे एवं संबंधित कार्मिकों का उत्तरदायित्व निर्धारित किया जावे।




भाग-3

अन्य अनियमितताएं :-

1. रोकड़ पुस्तिका :-

ग्राम पंचायत बामणोर की नरेगा रोकड़ पुस्तिका में दिनांक 21.02.2011 को नकद 139 रुपये अवशेष बताया गया था जो सत्यापन पर सही पाया गया एवं जयपुर थार ग्रामीण बैंक अकाउन्ट संख्या 1002522 में 80,715 रुपये शेष बताया गया जो खाते की पासबुक के अनुसार सही था। रोकड़ पुस्तिका में दिनांक 02.04.2010 से 21.02.2011 तक की प्रविष्टियों पर सरपंच के हस्ताक्षर नहीं पाये गये। रोकड़ पुस्तिका के अनुसार दिनांक 11.5.2007 से 16.5.2008 तक श्रमिकों को नकद में भुगतान किया गया। उसके बाद से जयपुर थार ग्रामीण बैंक के माध्यम से मजदूरी का भुगतान किया जा रहा है। सामग्री आपूर्तिकर्ता फर्मों को दिनांक 16.7.2009 तक बियरर चेक से भुगतान किया गया है। उसके बाद अकाउन्ट पेयी चेक से भुगतान किया गया है।

2. स्टॉक रजिस्टर :-

ग्राम पंचायत द्वारा स्टॉक रजिस्टर का संधारण पंचायती राज नियम 1996 के नियम-239(1) व (2) द्वारा निर्धारित प्रक्रिया के अनुसार सामग्रीवार संधारित किया जा रहा है। इस नियम के अनुसार सामान का लेखा प्रत्येक मद के लिए पृथक-पृथक रखा जाएगा। सामान वास्तविक मांग-पत्र अनुसार जारी किया जाएगा और सामान के निर्गम के लिए समुचित रसीद अभिप्राप्त की जाएगी परन्तु स्टॉक रजिस्टर में सम्पूर्ण बिलों की प्रविष्टि नहीं की जा रही है। ग्राम पंचायत द्वारा सामान के लिये मांग पत्र जारी नहीं किया जाता एवं रसीद प्राप्त नहीं की जाती है।

3. परिसम्पत्ति मय संचयी व्यय रजिस्टर :-

ग्राम पंचायत द्वारा नियमानुसार कार्यवार परिसम्पत्ति का विवरण संधारित किया जा रहा है, लेकिन उसकी कॉलम वार पूर्तियां पूर्ण नहीं की जा रही है। इसमें केवल 87 कार्यों की प्रविष्टि की हुई है, उनके भी सभी कॉलमों की पूर्ति नहीं की गई है। जबकि ग्राम पंचायत में कार्यों की संख्या 264 है। कार्यों पर किये गये व्यय का भी पूर्ण इन्द्राज नहीं किया जा रहा है। परिसम्पत्ति मय संचयी व्यय रजिस्टर अपूर्ण है।

4. कार्यस्थल पर सूचना बोर्ड :-

ग्रामीण विकास एवं पंचायती राज विभाग के आदेश क्रमांक: एफ 4(16) ग्रा.वि./ग्रा.रो./नरेगा/06 दिनांक 27.03.2008 के बिन्दु संख्या 7.3.1, आदेश क्रमांक: एफ 4(16) ग्रा.वि./नरेगा/06 दिनांक 14.11.2008, आदेश क्रमांक: एफ 4(5) आर.डी./नरेगा/2009-10 दिनांक 30.09.2009 के द्वारा नरेगा कार्यस्थलों पर पूर्ण विवरण सहित सूचना पट्ट लगाने के निर्देश जारी किये गये हैं। जांच के दौरान पाया गया कि राज्य सरकार के आदेशों की पूर्ण अनुपालना नहीं की जा रही है। कई कार्यस्थलों पर सूचना बोर्ड नहीं लगे हुए हैं।

5. अपंजीकृत फर्मों से सामग्री क्रय करना एवं वैट नहीं काटना :-

ग्रामीण विकास विभाग के पत्र क्रमांक एफ 4 (32) आर.डी./आरई /एनआरईजीपी/मुप-3/07-08 दिनांक 18.06.2007, क्रमांक एफ 2 (22) आर.डी./नरेगा/06-07 दिनांक 16.02.2009 एवं क्रमांक एफ 2 (64) ग्रा.वि./नरेगा/09 दिनांक 27.07.2009 द्वारा अपंजीकृत

फर्मों से सामग्री क्रय नहीं करने तथा सामग्री क्रय पक्के बिलों पर जिसमें टिन नम्बर उपलब्ध हो से ही करने के निर्देश जारी किये गये थे।

जांच दल द्वारा ग्राम पंचायत बामणोर में स्थित 2 फर्म जिनके द्वारा नरेगा कार्यों के लिए सामग्री आपूर्ति की जा रही है, का भौतिक सत्यापन किया गया परन्तु एक भी फर्म मौके पर नहीं मिली। इन तीन फर्मों द्वारा आपूर्ति की गई निर्माण सामग्री यथा ग्रेवल, बजरी, मूंगिया, गिट्टी आदि के लिए ग्राम पंचायत द्वारा भुगतान की गई राशि का वर्षवार विवरण निम्नानुसार है (परिशिष्ट-12 एवं 13):-

वर्ष 2007-08 :-

क्र.सं.	फर्म का नाम	भुगतान की गई राशि
1	मैसर्स चनाखा मूसा खां बामणोर	3,93,917
	योग	3,93,917

वर्ष 2008-09 :-

क्र.सं.	फर्म का नाम	भुगतान की गई राशि
1	मैसर्स चनाखा मूसा खां बामणोर	16,95,396
2	मैसर्स हरिओम इचिंग वर्क्स, धोरीमना	32,400
3	मीर मोहमद बामणोर	59,774
	योग	17,87,570

वर्ष 2009-10 :-

क्र.सं.	फर्म का नाम	भुगतान की गई राशि
1	मैसर्स चनाखा मूसा खां बामणोर	15,07,000
	योग	15,07,000

उक्त तीनों फर्म अपंजीकृत हैं एवं इनके पास टिन(TIN) भी नहीं है। मौके पर ग्राम बामणोर की दोनों फर्म उपलब्ध नहीं थी।

उक्त तीनों फर्मों को समस्त भुगतान बियरर चैक से किये गये हैं। राशि रु0 1000/- से अधिक का नकद भुगतान करना राजस्थान पंचायती राज नियम 1996 के नियमों का उल्लंघन है।

वर्ष 2007-08 से 09-10 तक रु0 35.96 लाख की सामग्री आपूर्तिकर्ता मै0 चनाखा मूसाखां बामणोर बीपीएल चयनित है एवं गांव में इसकी कोई फर्म नहीं है। घर पर भी कोई सामग्री/रिकॉर्ड उपलब्ध नहीं है। इससे स्पष्ट है कि मै0 चनाखा मूसाखां द्वारा प्रस्तुत बिल/वाउचर्स संदिग्ध है।

जांच निष्कर्ष :-

1. ग्राम पंचायत द्वारा राज्य सरकार के निर्देशों की अवहेलना में निर्माण सामग्री क्रय एवं भुगतान की कार्रवाई की है इसके लिए उत्तरदायित्व निर्धारित किया जाकर नियमानुसार कार्रवाई की जानी चाहिए।
2. ग्राम पंचायत बामणोर द्वारा नरेगा योजना में क्रय की गई निर्माण सामग्री एवं आपूर्तिकर्ता फर्मों का पूर्ण विवरण वाणिज्यिक कर विभाग को भिजवाया जाकर एवं वेट वसूली की कार्रवाई की जानी चाहिए है।
3. मैसर्स चनाखा मूसाखां बामणोर द्वारा प्रस्तुत बिल/वाउचर्स जिनसे ग्रेवल क्व की गई है, की रॉयल्टी जमा कराने का भी सत्यापन किया जाना चाहिए।



 12



6. निविदा के माध्यम से सामग्री कय नहीं करना :-

ग्राम पंचायत द्वारा जांच के दौरान निविदा के माध्यम से दरें प्राप्त कर सामग्री कय की पत्रावली प्रस्तुत नहीं की गयी। ग्राम पंचायत द्वारा राजस्थान पंचायती राज नियम 1996 एवं सामान्य वित्तीय एवं लेखा नियम भाग-11 के प्रावधानों की अनुपालना में खुली निविदा के माध्यम से प्रतिस्पर्धात्मक दरें प्राप्त कर निर्माण सामग्री कय की जानी चाहिए थी। ग्राम पंचायत द्वारा नियमों की अवहेलना में बिना निविदा के निर्माण सामग्री कय की गयी है।

7. सामाजिक अंकेक्षण समिति को कार्यवार पत्रावलियों एवं रिकॉर्ड उपलब्ध नहीं कराना :-

महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार गारंटी अधिनियम-2005 की धारा 15 (5) (डी) एवं अनुसूची-1 के पैरा 13 (बी) (iv) (v) के अनुसार सामाजिक अंकेक्षण समिति को कार्यक्रम अधिकारी द्वारा नरेगा कार्यों से संबंधित समस्त रिकॉर्ड एवं कार्यवार पत्रावलियों की प्रति 15 दिन पूर्व में उपलब्ध करवायी जानी चाहिए। ग्राम पंचायत बामणोर में दिनांक 03.03.2011 को सामाजिक अंकेक्षण ग्राम सभा आयोजित की जानी थी एवं सामाजिक अंकेक्षण समिति को इससे 15 दिन पूर्व रिकॉर्ड एवं कार्यवार पत्रावलियों उपलब्ध करवानी चाहिए थी परन्तु दिनांक 03.03.2011 तक सामाजिक अंकेक्षण समिति को कार्यक्रम अधिकारी एवं विकास अधिकारी, धोरीमना द्वारा कोई रिकॉर्ड एवं पत्रावलियों उपलब्ध नहीं करवायी गयी (परिशिष्ट-14)। परिणामस्वरूप ग्राम पंचायत में सामाजिक अंकेक्षण का कार्य नहीं हो सका एवं सामाजिक अंकेक्षण ग्राम सभा में समिति द्वारा रिपोर्ट प्रस्तुत नहीं की गई। सामाजिक अंकेक्षण कार्य एवं ग्राम सभा का आयोजन केवल औपचारिकता मात्र था। जांच दल को सामाजिक अंकेक्षण ग्राम सभा की वीडियोग्राफी उपलब्ध नहीं कराई गई।

दिनांक 03.03.2011 को ग्राम पंचायत बामणोर में सामाजिक अंकेक्षण ग्राम सभा का आयोजन किया गया था। इसी दिन श्री मंगलाराम पुत्र नेहचलराम जाति मेघवाल, ग्राम-बामणोर भंवरशाह के साथ मारपीट हुई जिसमें श्री मंगलाराम के दोनों पैर टूट गए। इस बाबत पुलिस थाना धोरीमना में दिनांक 03.03.2011 को प्रथम सूचना रिपोर्ट दर्ज कराई जा चुकी है जिस पर पुलिस अनुसंधान कार्यवाई चल रही है।

श्री मंगलाराम का पक्का आवास ग्राम बामणोर भंवरशाह में स्थित है जिसमें दो कमरे मय बरामदा एवं पक्की बाउन्ड्री वाल बनी हुई है (परिशिष्ट-15)। दिनांक 09.03.2011 को जांच दल जब श्री मंगलाराम के घर पर गया तो पाया कि घर पर ताला लगा हुआ है। श्री मंगलाराम के भाई श्री भूराम/नेहचलराम ने अवगत कराया कि मंगलाराम का ईलाज बाड़मेर में चल रहा है एवं उसकी पत्नी भी उसके साथ ही है।

श्री मंगलाराम का नरेगा जॉब कार्ड सं. 884 है एवं वर्ष 2008-09 में 17 दिन एवं 2009-10 में 26 दिन नरेगा में कार्य भी किया है जिसका विवरण ग्राम पंचायत भवन की दीवार पर अंकित है। ग्रामवासियों के अनुसार श्री मंगलाराम ने वर्तमान सरपंच के विरुद्ध वर्ष 2010 में सरपंच का चुनाव भी लड़ा था।

श्री मंगलाराम का रिश्तेदार श्री केवाराम मेघवाल वर्तमान में ग्राम पंचायत बामणोर में ग्राम रोजगार सहायक है जिसको गत 11 माह से वेतन भुगतान नहीं हुआ है। गांव में आमजन से पूछताछ करने पर यह तथ्य सामने आया कि वर्तमान सरपंच श्री गुलामशाह एवं श्री मंगलाराम के बीच राजनैतिक टकराव रहती है। श्री मंगलाराम द्वारा पूर्व में सूचना का अधिकार अधिनियम, 2005 के अन्तर्गत लगभग 20 हजार पृष्ठों की सूचना चाही गई थी जिसका निस्तारण राज्य सूचना आयोग के यहां से अपील के दौरान हुआ। इसी क्रम में राज्य सूचना आयोग द्वारा श्री मंगलाराम को निर्धारित शुल्क लेते हुए 100 पृष्ठों की सूचना उपलब्ध कराने का निर्णय पारित किया था जिसकी अनुपालना में विकास अधिकारी एवं कार्यक्रम

अधिकारी, पंचायत समिति धोरीमना द्वारा 100 पृष्ठों की सूचना निर्धारित शुल्क जमा कर श्री मंगलाराम को प्रेषित की जा चुकी है।

8. सहायक अभियन्ता एवं अधिशाषी अभियन्ता द्वारा कार्यों का निरीक्षण नहीं करना :-

राज्य सरकार द्वारा जारी तकनीकी मार्गदर्शिका अनुसार महात्मा गांधी नरेगा योजनान्तर्गत करवाये जाने वाले कार्यों के निरीक्षण के मानदण्ड इस प्रकार हैं -

1. **सहायक अभियन्ता :-** स्वयं के क्षेत्र में चल रहे 2 लाख रु० से अधिक लागत के समस्त निर्माणाधीन कार्यों का उसी माह में एक बार आवश्यक रूप से निरीक्षण एवं माप पुस्तिका में सत्यापन करेंगे।
2. **अधिशाषी अभियन्ता :-** स्वयं के क्षेत्र में चल रहे 10 लाख रु० से अधिक लागत के निर्माणाधीन कार्यों का प्रत्येक माह में कम से कम एक बार निरीक्षण आवश्यक रूप से निम्नानुसार किया जावेगा -

निर्माणाधीन कार्य पर व्यय की गयी राशि	अधिशाषी अभियन्ता के पास पंचायत समितियों की संख्या 3 तक होने की स्थिति में	अधिशाषी अभियन्ता के पास पंचायत समितियों की संख्या 3 से अधिक होने की स्थिति में
रु० 5 लाख से अधिक एवं रु० 10 लाख से कम व्यय	प्रत्येक कार्य का दो बार निरीक्षण	प्रत्येक कार्य का एक बार निरीक्षण
रु० 10 लाख से अधिक एवं रु० 15 लाख से कम व्यय	प्रत्येक कार्य का दो बार निरीक्षण	प्रत्येक कार्य का एक बार निरीक्षण
रु० 15 लाख से अधिक एवं रु० 25 लाख से कम व्यय	प्रत्येक कार्य का दो बार निरीक्षण	प्रत्येक कार्य का एक बार निरीक्षण

सहायक एवं अधिशाषी अभियन्ता के द्वारा किये गये निरीक्षण को तभी मान्य माना जायेगा, जब उनके द्वारा निरीक्षण किये गये कार्य के संबंध में उनके द्वारा संबंधित कार्य माप पुस्तिका एवं कार्यस्थल पुस्तिका में कार्य की मात्रा, गुणवत्ता एवं तकनीकी मापदण्डों की भौतिक जांच कर दिनांक सहित स्पष्ट टिप्पणी अंकित कर हस्ताक्षर किये गये हो।

अधिशाषी अभियन्ता, जिला परिषद् बाड़मेर (आवंटित पंचायत समिति धोरीमना) एवं सहायक अभियन्ता, पंचायत समिति धोरीमना द्वारा उक्त निर्देशों की अवहेलना की गयी एवं एक बार भी ग्राम पंचायत बामणोर में कार्यों का निरीक्षण नहीं किया।

9. ग्राम पंचायत बामणोर पंचायत समिति धोरीमना में नरेगा योजनान्तर्गत स्वीकृत निर्माण कार्यों का अधिकारियों द्वारा निरीक्षण नहीं किया जाना :-

प्रमुख शासन सचिव, ग्रामीण विकास एवं पंचायती राज विभाग के परिपत्र क्रमांक- एफ 4(42)ग्रा.वि/आर.ई/नरेगा/ग्रुप-III/06-07 दिनांक 22.03.2007 के निर्देशानुसार नरेगा के कार्यों का जिले के संबंधित अधिकारियों द्वारा गहन निरीक्षण मापदण्डों के अनुसार समय-समय पर किया जाना चाहिए। निरीक्षण प्रतिवेदन अगले उच्चाधिकारी को निरीक्षण अवधि के पश्चात 2 दिन के अन्दर प्रस्तुत करना अनिवार्य है। प्रत्येक नियंत्रक अधिकारी के कार्यालय में इन निरीक्षण प्रतिवेदनों का रिकार्ड रखा जाएगा। कमियां निरीक्षण प्रतिवेदन में अंकित की जाएगी जिनको दूर करने हेतु प्रभावी कदम उठाने का उत्तरदायित्व नियंत्रक अधिकारी का होगा।

विस्तृत जांच के दौरान सामने आया कि ग्राम पंचायत बामणोर के नरेगा योजनान्तर्गत स्वीकृत निर्माण कार्य का अवधि 01.04.2008 से 31.12.2010 तक जिला कलेक्टर एवं जिला कार्यक्रम समन्वयक नरेगा, मुख्य कार्यकारी अधिकारी एवं अतिरिक्त जिला कार्यक्रम समन्वयक नरेगा, अधिशासी अभियन्ता, सहायक अभियन्ता, जिला परिषद बाड़मेर द्वारा कभी भी निरीक्षण नहीं किया गया। इसके अतिरिक्त विकास अधिकारी, पंचायत समिति, धोरीमना एवं कार्यक्रम अधिकारी नरेगा, पंचायत समिति, धोरीमना ने भी इस अवधि में नरेगा कार्यों का निरीक्षण नहीं किया। राज्य सरकार द्वारा निर्धारित मानदण्डानुसार निरीक्षण नहीं करने के कारण नरेगा कार्यों में गम्भीर अनियमितता की गई एवं अनियमित रूप से भुगतान कर दिए गए।

सहायक अभियन्ता, पंचायत समिति धोरीमना एवं कार्यक्रम अधिकारी एवं विकास अधिकारी, पंचायत समिति धोरीमना द्वारा भी नरेगा कार्यों का समय समय पर निरीक्षण नहीं किया गया। कनिष्ठ तकनीकी सहायक द्वारा केवल निर्माण कार्यों का गलत माप एवं मूल्यांकन माप पुस्तिका में अंकित किया गया है। निर्माण कार्यों के भौतिक सत्यापन के दौरान वास्तविक निर्माण कार्य के माप एवं माप पुस्तिका में दर्ज माप में भारी अन्तर पाया गया जिसके लिए कनिष्ठ तकनीकी सहायक एवं सहायक अभियन्ता, पंचायत समिति धोरीमना उत्तरदायी हैं।


जांच के निष्कर्ष :-

ग्राम पंचायत का राज्य सरकार द्वारा निर्धारित मानदण्डों के अनुसार निरीक्षण नहीं करने के कारण राजकीय धन की हानि एवं अनियमित कार्रवाई हुई है इसके लिए पर्यवेक्षणीय लापरवाही के लिए पंचायत समिति में दिनांक 01.04.2007 से 31.12.2010 तक पदस्थापित रहे विकास अधिकारी एवं कार्यक्रम अधिकारी पंचायत समिति, धोरीमना उत्तरदायी हैं।

ग्राम पंचायत क्षेत्र में करवाये गए कार्यों का समय-समय पर निरीक्षण नहीं करने एवं कार्यों के माप के संबंध में हुई अनियमितताओं के लिए दिनांक 01.04.2007 से 31.12.2010 तक पदस्थापित रहे सहायक अभियन्ता, पंचायत समिति, धोरीमना, अधिशासी अभियन्ता, नरेगा, जिला परिषद, बाड़मेर उत्तरदायी हैं।

दिनांक 01.04.2007 से 31.12.2010 तक पदस्थापित रहे जिला कलेक्टर एवं जिला कार्यक्रम समन्वयक नरेगा एवं मुख्य कार्यकारी अधिकारी एवं अतिरिक्त जिला कार्यक्रम समन्वयक, जिला परिषद, बाड़मेर नियंत्रक अधिकारी के रूप में अप्रत्यक्ष रूप से उत्तरदायी हैं क्योंकि इनके द्वारा ग्राम पंचायत का कोई निरीक्षण नहीं किया गया एवं इस ग्राम पंचायत के निरीक्षण एवं पर्यवेक्षण के लिए उत्तरदायी अधिकारियों से भी समय-समय पर ग्राम पंचायत में चल रहे निर्माण कार्यों की प्रभावी मॉनीटरिंग नहीं करवायी गई।


(महेन्द्र सिंह भूकर)
संयुक्त निदेशक
निदेशालय सामाजिक अंकेक्षण


(लालचन्द जीनगर)
अधिशासी अभियन्ता
जिला परिषद जालौर


(महेश गुप्ता)
सहायक लेखाधिकारी
सामाजिक अंकेक्षण, जयपुर

राजस्थान सरकार
ग्रामीण विकास एवं पंचायती राज विभाग
(अनुभाग-3, नरेगा)



एफ 50(3) ग्रावि/नरेगा/सीएमओ/शि./2011

जयपुर, दिनांक 19 MAY 2011

जिला कलेक्टर एवं जिला कार्यक्रम समन्वयक,
महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार गारंटी योजना,
जिला बाडमेर।

विषय: ग्राम पंचायत बामणोर, पंचायत समिति धोरीमना, जिला बाडमेर की विशेष
जांच बाबत।

महोदय,

उपरोक्त विषयान्तर्गत लेख है कि ग्राम पंचायत बामणोर, पंचायत समिति-धोरीमना, जिला बाडमेर के द्वारा महात्मा गांधी नरेगा योजना के अन्तर्गत करवाये गये कार्यों की जांच मुख्यालय से संयुक्त निदेशक, सामाजिक अंकेक्षण के नेतृत्व में टीम गठित कर करवाई गई है। इस जांच पर कुछ आपत्तियां प्रस्तुत करने पर पुनः आप द्वारा टीम गठित कराकर जांच करवाई गई है। आप द्वारा करवाई गई जांच के संबंध में कुछ बिन्दुओं पर स्पष्टीकरण चाहे गये थे, जो प्राप्त हो गये हैं। आपने अपनी जांच रिपोर्ट में लिखा है कि जिला स्तर पर गठित जांच दल द्वारा प्रस्तुत रिपोर्ट के परीक्षण में अनियमितताएं पाई गई हैं, परन्तु पूर्व जांच एवं पुनः जांच दोनों में अनियमितताएं एवं गबन की राशि भिन्न-भिन्न है तथा बहुत से बिन्दुओं पर निष्कर्ष में भी भिन्नता है। अतः पूर्व जांच एवं पुनः जांच रिपोर्ट की समीक्षा कर दोषी अधिकारियों/कर्मचारियों/जनप्रतिनिधियों के विरुद्ध कार्यवाही हेतु दिशा निर्देश जारी कराने का श्रम करावे।

दोनों जांच प्रतिवेदनों का परीक्षण किया गया। परीक्षण के बाद निम्नानुसार कार्यवाही करने हेतु आपको निर्देश दिये जाते हैं :-

1. **ग्रेवल सड़को का निर्माण:-** प्रकरण में संयुक्त निदेशक, सामाजिक अंकेक्षण ने ग्राम पंचायत द्वारा वर्ष 2007-08 से 2010-11 तक बनवाई गई 6 ग्रेवल सड़कों के निर्माण में कमियां पाकर रुपये 967781/- की वसूली निकाली है। यह वसूली रु. 190295/- सड़कों की लम्बाई मौके पर कम होने, रु. 368298/- ग्रेवल की मात्रा में कमी पाये जाने, रु. 361750/- परिवहन दूरी कम होने एवं रु. 47438/- कॉम्पेक्शन में कमी पाये जाने के कारण निकाली गई है।
- (i) **सड़कों की लम्बाई में कमी:-** आप द्वारा करवाई गई जांच में भी सड़कों की लम्बाई मौके पर कम पाई गई है। अतः उक्त रु. 190295/- को वसूली योग्य बताया है तथा ग्राम पंचायत के सरपंच, ग्राम सेवक, तकनीकी सहायक एवं सहायक अभियंता, पंचायत समिति धोरीमना के विरुद्ध अनुशासनात्मक कार्यवाही करने की अभिशंषा की है। संयुक्त निदेशक, सामाजिक अंकेक्षण ने भी अपनी जांच रिपोर्ट में उक्तानुसार राशि वसूली योग्य बताई है। अतः सड़कों की लम्बाई में कमी की राशि रु. 190295/- संबंधित से वसूल की जावे एवं ग्राम पंचायत के सरपंच, ग्राम सेवक, तकनीकी सहायक एवं सहायक अभियंता, पंचायत समिति धोरीमना के विरुद्ध अनुशासनात्मक कार्यवाही की जावे। यदि संबंधित अधिकारी/जनप्रतिनिधि यह राशि 30 दिन में जमा नहीं कराते हैं तो इनके विरुद्ध इस राशि का गबन मानते हुए एफ.आई.आर. दर्ज कराई जावे।

(ii) **सड़कों की ग्रेवल की मात्रा में कमी** —आपके द्वारा गठित टीम ने ग्रेवल की मात्रा में कमी पाये जाने के बारे में लिखा है कि सड़के डेढ़ से दो वर्ष पूर्व पूर्ण हुई थी। सार्वजनिक निर्माण विभाग के नियम तथा व्यवहारिक रूप से भारी बरसात, यातायात तथा पशुओं के चलने से ग्रेवल की मात्रा में कमी आना स्वाभाविक है। अतः उपरोक्त कारणों से जो वसूली निकाली है वह तर्कसंगत एवं स्वीकार्य नहीं है। अधीक्षण अभियंता, सार्वजनिक निर्माण विभाग जोधपुर के अनुसार ग्रेवल की सड़क की उम्र तीन से पांच साल होती है एवं प्रतिवर्ष 10 से 20 प्रतिशत की कमी आना स्वाभाविक है। इस कमी का प्रतिशत उस सड़क पर चलने वाले यातायात, वर्ष भर के मौसम, औसत बरसात तथा ग्रेवल की गुणवत्ता पर निर्भर है। इस आधार पर आपने उक्त सड़कों के निर्माण को डेढ़ से दो वर्ष होने, तेज आंधिया चलने, विगत वर्ष भारी वर्षा होने तथा सड़क पर चलने वाले यातायात को देखते हुए इन सड़कों का क्षरण निर्धारित नॉर्म्स से कम माना है। अतः उक्त वसूली निरस्त की जाती है।

(iii) **ग्रेवल परिवहन** :- इस संबंध में आपकी जांच रिपोर्ट में बताया है कि इन सड़कों के निर्माण में ग्रेवल कुर्जा क्वारी से लाई गई है। सार्व. निर्माण विभाग द्वारा निर्धारित ग्रेवल क्वारी ग्राम कुर्जा में है तथा ग्राम पंचायत द्वारा प्रस्तुत लीड चार्ट अनुसार यहीं से ग्रेवल परिवहन हुआ है। उक्त ग्रेवल क्वारी से बामणोर ग्राम पंचायत की ग्रेवल सड़कों की दूरी 55 से 60 कि.मी. के मध्य है। ग्राम पंचायत द्वारा औसत 55 कि.मी. की लीड मापपुस्तिका में दर्ज की गई है। तकनीकी कर्मचारियों द्वारा तकमीना बनाते समय लापरवाही बरती गई है। उन्होंने कुछ सड़कों की स्वीकृति में लीड कम अंकित की है।

ग्राम पंचायत बामणोर के सरपंच, ग्राम सेवक, कनिष्ठ तकनीकी सहायक, सहायक अभियंता पंचायत समिति धोरीमन्ना द्वारा तकनीकी एवं वित्तीय स्वीकृति संशोधित करवाये बिना ही कार्यों का भुगतान किया गया है, जो अनियमितता की श्रेणी में आता है। आपने ग्राम पंचायत बामणोर के सरपंच, ग्राम सेवक, कनि. तकनीकी सहायक एवं सहायक अभियंता के विरुद्ध अनुशासनात्मक कार्यवाही किये जाने की अनुशंसा की है। आपने अपनी रिपोर्ट में यह भी सुझाव दिया है कि सड़कों की लीड के मामले में तकनीकी एवं वित्तीय स्वीकृति को संशोधित करवाकर उक्त अनियमित भुगतान रु. 361750/- को नियमित किया जावे, अन्यथा यह राशि वसूली योग्य है। अतः इस संबंध में सड़कों की लीड के बारे में तकनीकी एवं वित्तीय स्वीकृति में उक्तानुसार संशोधन करने एवं अनियमित भुगतान रु. 361750/- को नियमित करने की कार्यवाही की जावे तथा नियमित नहीं करने की स्थिति में उक्त राशि की वसूली की जावे।

(iv) **सड़कों के कॉम्पेक्शन में कमी** :- आपने अपनी जांच रिपोर्ट में भी पूर्व जांच में बताई गई कॉम्पेक्शन की कमी को सही बताया है तथा रु. 43100/- वसूली योग्य बताये है। साथ ही अनियमित भुगतान के लिए दोषी सरपंच, ग्राम सेवक, तकनीकी सहायक एवं सहायक अभियंता के विरुद्ध अनुशासनात्मक कार्यवाही करने का सुझाव दिया है। अतः इसी अनुसार रु. 43100/- संबंधित से वसूल करें एवं दोषी सरपंच एवं कर्मचारी/अधिकारियों के विरुद्ध अनुशासनात्मक कार्यवाही की जावे।

2. व्यक्तिगत टांका निर्माण:-

(i) **12 व्यक्तिगत टांके लोकेट नहीं होना** :- संयुक्त निदेशक, सामाजिक अंकेक्षण ने अपनी रिपोर्ट में 12 व्यक्तिगत टांके लोकेट नहीं होना बताया है। आपने अपनी जांच रिपोर्ट में बताया है कि 12 व्यक्तिगत टांकों में से 3 टांके मौके पर बने हुए पाये गये तथा शेष 9 टांकों पर मौके पर बाड का कार्य पूर्ण पाया गया तथा मौके पर निर्माण सामग्री पाई गई। इन टांकों पर श्रम मद में व्यय राशि के अनुसार बाड बनाने इत्यादि का कार्य पाया गया है तथा मस्टररोल के अनुसार श्रम मद की राशि श्रमिकों को भुगतान हो चुकी हैं। कार्यस्थल पर बजरी, मुंगिया एवं गिट्टी पाई गई। सीमेन्ट एवं टांकों पर लगाई जाने वाली नेम प्लेट ग्राम पंचायत के पास थी। भौतिक सत्यापन के अनुसार सामग्री मद पर कुल व्यय की गई राशि रु. 169180/- के

पेटे कार्यस्थल एवं ग्राम पंचायत स्तर पर कुल रु. 95669/- की सामग्री पाई गई तथा रु. 73511/- की सामग्री मौके पर नहीं पाई गई। आपने अपनी जांच रिपोर्ट में सुझाव दिया गया है कि रु. 73511/- की सामग्री मौके पर नहीं पाये जाने के संबंध में ग्राम पंचायत के सरपंच, ग्राम सेवक, तकनीकी सहायक एवं रोजगार सहायक का उत्तरदायित्व निर्धारित किया जावे। यदि उक्त कार्य शीघ्र पूर्ण नहीं कराये जाते हैं तो उपरोक्त 9 टांको पर श्रम एवं सामग्री की व्यय राशि रु. 383981/- वसूली योग्य है।

- (ii) **18 व्यक्तिगत टांके निर्माण कार्य प्रारम्भ नहीं हुआ :-** संयुक्त निदेशक, सामाजिक अंकेक्षण ने इन 18 टांको का निर्माण कार्य प्रारम्भ नहीं होना बताया है। इन टांको के निर्माण में भी आपने अपनी रिपोर्ट में बताया है कि मौके पर बाड का कार्य पूर्ण है तथा निर्माण सामग्री मौके पर पाई गई है। श्रम मद में बाड/खाई फेंसिंग का कार्य करवाकर व्यय किया गया है। श्रमिकों को राशि भुगतान हो चुकी है। मौके पर बजरी, मुंगिया तथा गिट्टी डाली गई हैं। अन्य सामग्री यथा नेम प्लेट, सीमेन्ट कार्यस्थल पर नहीं पाये गये। उक्त सामग्री ग्राम पंचायत के पास है। उक्त कार्य बाड एवं खाई निर्माण के पश्चात् लम्बे समय से बंद पड़े है। इस प्रकरण में भी रु. 121870/- रु. की सामग्री मौके एवं ग्राम पंचायत स्टोर में नहीं पाई गई है। इसलिए सरपंच ग्राम पंचायत बामणोर एवं ग्राम सेवक के विरुद्ध अनुशासनात्मक कार्यवाही प्रस्तावित की गई है। उपरोक्त कार्यों पर पूर्ण सामग्री व्यय विवरण अनुसार नहीं भेजे जाने एवं कार्य बंद होने के कारण सरपंच ग्राम पंचायत बामणोर, ग्राम सेवक, तकनीकी सहायक दोषी अतः इनका उत्तरदायित्व निर्धारित करने, कार्य शीघ्र पूरा कराने एवं कार्य पूर्ण नहीं होने पर रु. 707233/- वसूली योग्य बताये है।
- (iii) **8 व्यक्तिगत टांके नहीं बने हैं :-** संयुक्त निदेशक, सामाजिक अंकेक्षण ने इन टांको को बनना नहीं बताया है। इन टांको के निर्माण में भी बाड कार्य पूर्ण होना एवं मौके पर सामग्री मौजूद होना आपने अपनी रिपोर्ट में बताया है। लेकिन इन टांको पर भी मौके पर रु. 37991/- की सामग्री कम पाई गई है। जिसके लिए सरपंच ग्राम पंचायत बामणोर, ग्राम सेवक एवं तकनीकी सहायक का उत्तरदायित्व निर्धारित करने का सुझाव दिया गया है तथा निर्माण कार्य शीघ्र पूरा नहीं कराने पर रु. 270048/- वसूली योग्य बताये है।
- (iv) **4 व्यक्तिगत टांको पर आगोर नहीं बनाया गया है :-** संयुक्त निदेशक, सामाजिक अंकेक्षण ने इन 4 टांको का आगोर नहीं बनना एवं 1 टांका गुणवत्तापूर्ण नहीं होना बताया है। आपने अपनी जांच में लिखा है कि एक टांके का आगोर बना था जो मिट्टी में दबा हुआ था। दूसरे का आगोर गुणवत्तापूर्ण नहीं पाया गया। शेष दो टांको का आगोर प्रथम जांच के बाद बनाया गया। इस प्रकरण में कनिष्ठ तकनीकी सहायक को दोषी बताया गया है तथा उसके विरुद्ध अनुशासनात्मक कार्यवाही करने का सुझाव दिया गया है।
- (v) **9 व्यक्तिगत टांको के निर्माण में सीमेन्ट की मात्रा में अंतर :-** संयुक्त निदेशक, सामाजिक अंकेक्षण ने इन टांको के निर्माण में सीमेन्ट की मात्रा में अंतर पाया है। आपने भी अपनी जांच रिपोर्ट में सीमेन्ट की मात्रा में अंतर के कारण रु. 37800/- की वसूली को उचित बताया है तथा सरपंच ग्राम पंचायत बामणोर, ग्राम सेवक एवं कनिष्ठ तकनीकी सहायक से वसूली करने एवं अनुशासनात्मक कार्यवाही करने का सुझाव दिया गया है।
- (vi) **स्वीकृत स्थल से अन्यत्र टांका निर्माण :-** संयुक्त निदेशक ने अपनी जांच में रूपा/खीरा, केवा/भीमा का टांका स्वीकृत स्थल से अन्यत्र होना बताया है। आपने बताया है कि लाभार्थियों की दोनो स्थानों पर जमीने हैं इसलिए टांका स्वीकृत स्थान से अन्य स्थान पर बनाया गया है। इसकी स्वीकृति को संशोधित करने एवं बिना संशोधित स्वीकृति के टांका निर्माण करवाने के लिए दोषी कार्मिकों का उत्तरदायित्व निर्धारित करने का सुझाव दिया है।

अतः ग्राम पंचायत बामणोर में उपरोक्त बिन्दु संख्या 2(i) से 2(iii) में वर्णित टांको पर केवल बाड का कार्य पूर्ण होना आपने अपनी रिपोर्ट में बताया है। इन टांको पर मौके पर निर्माण

सामग्री पाई गई है। अभी निर्माण कार्य पूर्ण होना नहीं पाया गया है। बाडमेर में टांको की स्वीकृति वर्ष 2007 में श्रम मद में रु. 41900/-, सामग्री मद में रु. 28100/- कुल रु. 70000/- की जारी की गई थी। वर्ष 2008-09 से 2010-11 तक टांको की स्वीकृति श्रम मद में रु. 60000/- एवं सामग्री मद में रु. 40000/- कुल रु. 100000/- की जारी की गई है। नीचे वर्णित टांको के निर्माण हेतु स्वीकृत राशि लगभग रु. 100000/- प्रति टांका है। उपरोक्त बिन्दु संख्या 2(i) से 2(iii) में वर्णित कुल 38 टांको में से 3 टांके निर्मित है तथा शेष 35 टांको पर व्यय की गई राशि एवं मौके पर पाई गई निर्माण सामग्री की राशि का विवरण निम्नानुसार है :-

क्र.सं.	टांको का विवरण	व्यय की गई राशि			मौके पर पाई गई सामग्री की राशि	कम पाई गई सामग्री की राशि
		श्रम	सामग्री	योग		
1	12 व्यक्तिगत टांके (3 टांके निर्मित)	214800	169180	383980	95669	73511
2	18 व्यक्तिगत टांके	423700	283533	707233	161663	121870
3	8 व्यक्तिगत टांके	189600	80448	270048	42457	37991
	योग	828100	533161	1361261	299789	233372

इन 35 टांको के लिए श्रम मद में रु. 2100000/- एवं सामग्री मद में रु. 1400000/- राशि स्वीकृत है। जिसके पेटे श्रम मद में रु. 828100/- एवं सामग्री मद में रु. 533161/- का भुगतान किया जा चुका है। सामग्री मद में रु. 299789/- की सामग्री मौके पर पाई गई है तथा रु. 233372/- की सामग्री मौके पर कम पाई गई है। खेत में भूमि सुधार कार्य, ढोला फेन्सिंग, दरेसी, खाई खोदने एवं स्थानीय झाड़ियों की बाड बनाने का कार्य करवाया जाना टांका निर्माण के तकमीने के अनुसार श्रम मद में शामिल है। आपने अपनी जांच रिपोर्ट में मौके पर बाड लगाकर फेन्सिंग का कार्य होना बताया है। श्रम मद में राशि रु. 828100/- उक्त भूमि सुधार कार्य हेतु व्यय करना आपने अपनी रिपोर्ट में बताया है। मौके पर रु. 233372/- की सामग्री कम पाई गई है। आपने अपनी रिपोर्ट में बताया है कि मौके पर रु. 233372/- की सामग्री कम पाये जाने के लिए ग्राम पंचायत के सरपंच, ग्राम सेवक, तकनीकी सहायक एवं रोजगार सहायक का उत्तरदायित्व निर्धारित किया जावे। यदि उक्त कार्य शीघ्र पूर्ण नहीं कराये जाते हैं तो उक्त 35 टांको पर श्रम एवं सामग्री पर व्यय समस्त राशि वसूली योग्य है।

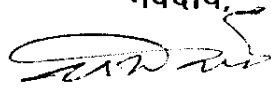
अतः उपरोक्त 35 टांको के लिए मौके पर रु. 233372/- की सामग्री कम पाये जाने के लिए सरपंच, ग्राम सेवक एवं ग्राम रोजगार सहायक, ग्राम पंचायत बामणोर तथा कनि. तकनीकी सहायक का उत्तरदायित्व निर्धारित कर इनके विरुद्ध अनुशासनात्मक कार्यवाही की जावे। साथ ही इन टांको का निर्माण 60 दिवस में पूरा करवाया जावे। यदि 60 दिवस में उक्त टांको का निर्माण पूरा नहीं करवाया जाता है तो इन टांको के पेटे श्रम एवं सामग्री मद में भुगतान की गई समस्त राशि की वसूली की जावे तथा राशि जमा नहीं कराने पर इनके विरुद्ध एफ.आई.आर. दर्ज कराई जावे।

बिन्दु संख्या 2 (iv) से 2 (vi) के संबंध में आप अपनी रिपोर्ट में बताये अनुसार कार्यवाही करें। अन्य अनियमितता यथा इन्द्रा आवासो के भौतिक सत्यापन एवं पूर्ण करवाये जाने

के बारे में भी आप अपनी रिपोर्ट के अनुसार कार्यवाही करें। संयुक्त निदेशक की जांच में रोकड़ पुस्तिका, स्टॉक रजिस्टर, परिसम्पत्ति मय संचयी व्यय रजिस्टर, कार्यस्थल सूचना बोर्ड, बिना निविदा के सामग्री क्रय एवं सामाजिक अंकेक्षण की पत्रावलियों के संधारण आदि के बारे में पाई गई कमियों के संबंध में आप अपनी रिपोर्ट में दिये गये सुझावों अनुसार कार्यवाही किया जाना सुनिश्चित करें।

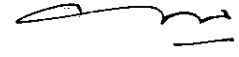
3. **अपंजिकृत फर्म से सामग्री क्रय करना एवं वेट नहीं काटना:**— संयुक्त निदेशक, सामाजिक अंकेक्षण ने बताया है कि ग्राम पंचायत बामणोर ने वर्ष 2007-08 से वर्ष 2009-10 तक ग्राम बामणोर में स्थित दो फर्मों से नरेगा कार्यों के लिए सामग्री क्रय की गई है। भौतिक सत्यापन के दौरान कोई भी फर्म मौके पर नहीं पाई गई। इन फर्मों में से एक मैसर्स चनाखों मूसाखों से उक्त अवधि में रु. 35.96 लाख का सामान क्रय किया गया है। इस फर्म के मालिक चनाखों मूसाखों बीपीएल चयनित है। घर पर भी कोई सामग्री/रिकॉर्ड उपलब्ध नहीं है। आपने भी अपनी जांच रिपोर्ट में बताया है कि इस फर्म के सामग्री आपूर्तिकर्ता स्वयं बीपीएल चयनित है एवं गांव में इसकी कोई फर्म नहीं है। घर पर सामग्री एवं रिकॉर्ड उपलब्ध नहीं है। उक्त फर्म बोगस है। अतः इस संबंध में आप संयुक्त निदेशक की जांच रिपोर्ट बताये अनुसार कार्यवाही करें।

अतः आप उक्तानुसार कार्यवाही किया जाना सुनिश्चित करें।

भवदीय,

(सी.एस. राजन)
प्रमुख शासन सचिव

प्रतिलिपि निम्न को सूचनार्थ एवं आवश्यक कार्यवाही हेतु :-

1. मुख्य सचिव, राजस्थान सरकार।
2. अतिरिक्त मुख्य सचिव, वित्त।
3. प्रमुख सचिव, मुख्यमंत्री, राजस्थान सरकार।
4. निजी सचिव, माननीय मंत्री, ग्रामीण विकास एवं पंचायती राज विभाग।
5. निजी सचिव, प्रमुख शासन सचिव, ग्रामीण विकास एवं पंचायती राज विभाग।
6. निजी सचिव, आयुक्त एवं शासन सचिव, ईजीएस।
7. निदेशक, सामाजिक अंकेक्षण निदेशालय, जयपुर।
8. अतिरिक्त जिला कार्यक्रम समन्वयक प्रथम, ईजीएस एवं मुख्य कार्यकारी अधिकारी, जिला परिषद, बाडमेर।
9. रक्षित पत्रावली।


अतिरिक्त आयुक्त (द्वितीय), ईजीएस

गोपनीय

॥ कार्यालय अतिरिक्त पुलिस अधीक्षक सी.आई.डी. (बी.आई.) जैसलमेर ॥

क्रमांक-सीआईडी/बीआई/जैसल/सीमा/10/

29/07

दिनांक- 24-6-10

प्रेषित:-

श्रीमान् कलेक्टर एवं जिला मजिस्ट्रेट
जिला जैसलमेर ।

विषय - सरकारी कर्मचारी का संदिग्ध गतिविधियों के कम में ।

प्रसंग - श्रीमान् के पत्रांक न्यायिक/2010/5361-82 दिनांक 08.6.10 के संदर्भ में ।

महोदय,

उपरोक्त विषयान्तर्गत निवेदन है कि सरकारी कर्मचारी बाबुराम पुत्र हरदान राम जाति मेघवाल की संदिग्ध गतिविधियों के संबंध में गोपनीय स्तर पर जॉच प्रमारी अधिकारी सी.आई.डी. बी.आई. पोस्ट रामगढ़ श्री नखतसिंह उज्जैन से करवाई गई तो निम्न तथ्य प्रकाश में आये है।

1- बाबुराम पुत्र हरदान राम मेघवाल पुलिस थाना रामगढ़ जिला जैसलमेर का रहने वाला है उक्त शरत् सीमा क्षेत्र स्थापित करवा में अध्यापक पद पर कार्यरत है उक्त शरत् का पदस्थान क्षेत्र व निवास क्षेत्र सामरिक दृष्टि से व उपनिवेशन क्षेत्र होने से संवेदनशील व अति संवेदनशील क्षेत्र है उक्त शरत् प्राथमिक विद्यालय स्थापित में 3.10.08 से पद स्थापित होगा जानकारी में आया है। उक्त शरत् द्वारा पूर्व राजकीय प्राथमिक विद्यालय खारडी पुश्ता मोहनगढ़ जिला जैसलमेर में पैरा टिचर राजीव सेवगार योजना के तहत होना जानकारी में आया है। उक्त शरत् का उक्त विद्यालय में 6 जुलाई 2002 से 1.10.08 तक पदस्थापन रहा है उक्त करवा मुस्लिम क्षेत्र में है।

2- उक्त शरत् का पदस्थापन स्थान निवास स्थान से करीबन 35 कि०मी० की दूरी पर स्थित है तथा पदस्थापन स्थान से सीमा करीबन 60-70 कि०मी० की दूरी पर है उक्त शरत् को वर्तमान में छुट्टीया होने से घर पर रहता है स्कूल टाईम में अपने स्वयं के वाहन सं० आर०जे० 15 एस०ए० 6711 का उपयोग करना जानकारी में आया है। मुख्यालय छोड़ने सम्बन्धी जानकारी हसिल करने पर बाद स्कूल टाईम मुख्यालय पर स्थाई रूप से नहीं रहना जानकारी में आया है।

3- सीमान्त सुरक्षा समिति भोजराज की टाणी रामगढ़ जिला जैसलमेर के बारे में खुफिया तौर पर जानकारी हासिल करने पर किसी प्रकार का सदस्य अध्यक्ष होना जानकारी में नहीं आया है और न ही कोई सदस्य, व्यक्ति खुल सामने आना पाया गया।

4- उक्त शरत् द्वारा सूचना के अधिकार के तहत निम्न सूचना चाही गई है।

(1) स्कवा राज भूमि पर अधिकार होने के बावजूद भी रिकार्ड में दर्ज नहीं करने से सम्बन्धी दोषी पटवारी के विरुद्ध राज सेवा नियम के अन्तर्गत कार्यवाही करवा कर स्कवा राज सूची अपडेट कराने बाबत दिनांक 18.02.10 को प्रार्थना पत्र श्रीमान् आयुक्त उपनिवेशन विभाग बीकानेर तथा मलेरिया रोग उपचार एवं रोकथाम नियंत्रण के सम्बन्ध में सूचना उपलब्ध कराने बाबत दिनांक 14.12.09 को प्रार्थना पत्र प्रेषित श्रीमान् मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी जैसलमेर राजा एवं नहर से पानी चोरी रोकने हेतु बनाये गए उल्लंघन दस्तों के सम्बन्ध में सूचना उपलब्ध कराने बाबत प्रार्थना पत्र प्रेषित दिनांक 2.03.10 श्रीमान् अधीक्षक अभियंता एवं प्रा० सा० ले० 10/200/30 कार्यालय मुख्य अभियंता इ०गा०न०प० जैसलमेर, आविद्याना जंशि गसूल करने एवं बकाया की मांग सम्बन्धी सूची

प्रति जिला

प्रति जिला

सेवामें,

श्रीमान् जिला पुलिस अधीक्षक महोदया,
जैसलमेर।

दिनांक :- 01/09/2011

विषय :- ऑन कॉल सुरक्षा उपलब्ध करवाने बाबत।

महोदया,

उपर्युक्त विषयान्तर्गत प्रार्थी बाबुराम चौहान पुत्र हरदानराम चौहान उम्र 32 वर्ष जाति मेघवाल निवासी बस्ता पाड़ा रामगढ़ व्यवसाय प्रबोधक रा.उ.प्रा.वि. रणाउ जिला जैसलमेर की ओर से सविनय निवेदन है कि प्रार्थी आर.टी.आई. कार्यकर्ता के रूप में विगत चार साल से रिश्त व भ्रष्टाचार के विरुद्ध परदर्शिता हेतु संघर्षरत है। ग्राम रामगढ़ के अनु० जाति, अनु० जन् जाति के भूमिहीन किसानों को नियमानुसार भूमि आवंटन करवाने में इन किसानों को यथोचित मदद कर रहा हूँ। प्रार्थी द्वारा सूचना के अधिकार के अंतर्गत ली गई सूचनाओं के आधार पर स्पष्ट हुआ कि इस वर्ग के लिए नियमानुसार आरक्षित 30 प्रतिशत भूमि के बजाय मात्र 18 प्रतिशत भूमि ही आरक्षित की है, शेष भूमि पर प्रभावशाली भूमाफिया वर्ग उपनिवेशन विभाग के अधिकारियों/कर्मचारियों की मिलीभगत से अवैध काश्त कर रहे हैं, जिसे रिकॉर्ड में भी दर्ज नहीं कर राजकोष को प्रति वर्ष लाखों रुपये का नुकसान पहुँचाया जा रहा है। (संलग्न-1,2,3) इस कार्यवाही से भूमाफिया वर्ग ने नाराज होते हुए हमीरसिंह सीमांत सुरक्षा समिति भोजराज की ढाणी रामगढ़ के छदम नाम से सरकारी कर्मचारी की संदिग्ध गतिविधियों में लिप्त होने की शिकायत करते हुए प्रार्थी द्वारा सूचना के अधिकार के अंतर्गत ली जा रही सूचनाओं के पीछे विदेशी एजेन्सी का हाथ होने का संदेह व्यक्त करते हुए देश विरोधी गतिविधियों को अंजाम देने के लिए प्रार्थी के माध्यम से कार्य करने का संदेह व्यक्त किया था। उक्त शिकायत के सम्बन्ध में श्रीमान् थानाधिकारी पुलिस थाना रामगढ़ के पत्र क्रमांक 1610 दिनांक 20.06.2010 (संलग्न-4,5,6) में सम्बन्धित शिकायतकर्ता की पुष्टि नहीं होने, भोजराज की ढाणी में सीमान्त सुरक्षा समिति नान की कोई संस्था नहीं होने तथा प्रार्थी के पक्ष में ग्राम रामगढ़ के भूमिहीन किसानों द्वारा दिये गये बयान कि सूचना के अधिकार अधिनियम के अंतर्गत ली जा रही सूचनाएं इन भूमिहीन किसानों को भूमि आवंटित करवाने के उद्देश्य की पूर्ति हेतु सामूहिक चंदे की राशि से ही ली जाने के कारण उक्त शिकायत की सत्यता की किसी भी स्तर पर पुष्टि नहीं हो रही है। उपनिवेशन तहसील रामगढ़-2 के भोजराज माईनर में सरकारी सम्पत्ति को नष्ट करके रकबाराज भूमि अवैध निर्माण होने से रोकने के विषय में भूमिहीन किसानों द्वारा श्रीमान् जिला कलक्टर को प्रेषित प्रार्थना पत्र दिनांक 20.09.2010 के संबंध में श्री गंभीरसिंह पुत्र श्री छोटूसिंह एवं गणपतसिंह पुत्र श्री दुर्गासिंह जाति राजपूत निवासी भोजराज की ढाणी रामगढ़ ने प्रार्थी को उक्त प्रकरण में केन्द्र-बिन्दू मानते हुए दिनांक 24.09.2010 को जान से मारने की धमकी देने पर पुलिस थाना रामगढ़ में दिनांक 28.09.2010 को प्रार्थना पत्र प्रस्तुत कर गंभीरसिंह, गणपतसिंह सहित इनके माफिया सरदार जगन्नाथसिंह के विरुद्ध नियमानुसार कार्यवाही करने का निवेदन किया था। (संलग्न-7,8,9) श्री जगन्नाथसिंह अध्यापक व उनके सभी सगे संबंधी भूमि संबंधी कई नियम विरुद्ध कामों संलिप्त होने की जानकारी प्रार्थी को होने के कारण प्रार्थी द्वारा वैधानिक कार्यवाही करने के भय से यह वर्ग प्रार्थी अथवा प्रार्थी को हतोत्साहित करने के उद्देश्य से उसके परिवार के किसी सदस्य के साथ कोई अनहोनी घटना घटित कर अथवा करवा सकते हैं। यदि प्रार्थी या उसके परिवार के साथ कोई अनहोनी घटना घटित होती है तो उसके जिम्मेदार पूर्णतया श्री जगन्नाथसिंह व उनका सरुपाणी परिवार ही होगा। वर्तमान में यही भूमाफिया वर्ग ने ग्राम रामगढ़ में सार्वजनिक भूमि पर अतिक्रमण कर अतिक्रमित स्थल पर दुकानें बनाकर लाखों रुपये में बेचने का व्यवसाय अपना रखा है। इस सम्बन्ध में प्रार्थी ने माननीय मुख्यमंत्री महोदय को प्रार्थना पत्र दिनांक 05.08.2011 एवं दिनांक 23.08.2011 से वस्तुस्थिति के सम्बन्ध में अवगत करवाते हुए नियमानुसार कार्यवाही का निवेदन किया है। (संलग्न-10-12) प्रार्थी को पूर्व में जान से मारने की धमकी देने से सम्बन्धित प्रकरण भोजराज माईनर में रकबाराज भूमि पर अवैध निर्माण के सम्बन्ध में श्रीमान् जिला कलक्टर जैसलमेर को प्रेषित प्रार्थना पत्र दिनांक 20.09.2010 पर उपनिवेशन विभाग द्वारा कोई कार्यवाही नहीं करने एवं आदतन अतिक्रमियों का

लगातार-2

(2)

सहयोग करने से सम्बन्धित तहसीलदार उपनिवेशन रामगढ़-2 का अन्यत्र पदस्थापन करने के सम्बन्ध में श्रीमान् आयुक्त उपनिवेशन बीकानेर को प्रेषित प्रार्थना पत्र दिनांक 23.08.11 एवं अवैध निर्माण से सम्बन्धित प्रकरण में सम्बन्धित तहसीलदार द्वारा की गई कार्यवाही से सम्बन्धित पत्रावली की प्रतिलिपि सूचना के अधिकार के अंतर्गत दिनांक 30.08.11 को प्रार्थना पत्र प्रस्तुत कर चाही है। (संलग्न-13-16) इस कारण यह भूमाफिया-अतिकमी वर्ग का मेरे साथ द्वेष-भाव रखना आदतन स्वभाविक है। प्रार्थी द्वारा बार-बार इन भूमाफिया वर्ग के अवैधानिक कार्यों को नियमानुसार प्रार्थना पत्र उच्चाधिकारियों को देने से इन पर कार्यवाही का भय सदा बना रहता है। इस भय को सदा के लिए दूर करने हेतु वे प्रार्थी को अपने कर्तव्य स्थल रा0उ0प्रा0वि0 रणाउ से स्वयं की मोटर साईकिल से आते-जाते सड़क दुर्घटना का रूप देकर अथवा अन्य किसी भी प्रकार से अनहोनी घटना घटित कर अथवा करवा सकते हैं। प्रार्थी के साथ ऐसी अनहोनी घटना घटित होने की स्थिति में भविष्य में जॉच इस प्रार्थना पत्र के संदर्भ में करते हुए इसका जिम्मेदार श्री जगन्नाथसिंह उनके सरुपाणी परिवार सहित इस भूमाफिया-अतिकमी वर्ग को मानते हुए इनके विरुद्ध नियमानुसार समुचित जॉच करते हुए कार्यवाही की जावे। वर्तमान में प्रार्थी इस प्रार्थना पत्र के जरिये उक्त प्रकरण में आरोपित भूमाफिया-अतिकमी वर्ग को पाबंद करवाने में पुलिस-प्रशासन का अमूल्य समय बर्बाद करना नहीं चाहता है। प्रार्थी अपनी सुरक्षा के प्रति भी पूर्णतया सजग है। यदि प्रार्थी इस वर्ग को नियमानुसार पाबंद करना अतिआवश्यक समझने पर इस प्रार्थना पत्र के संदर्भ में पुनः प्रार्थना पत्र प्रस्तुत कर देगा, तथा प्रार्थी द्वारा इन भूमाफिया- अतिकमी वर्ग के विरुद्ध की जा रही कार्यवाही से सम्बन्धित प्रार्थना पत्रों की प्रतिलिपि यथा समय श्रीमान्जी को भी प्रेषित करेगा। प्रार्थी के साथ किसी अनहोनी घटना घटित होने की स्थिति में यदि इस प्रार्थना पत्र के सम्बन्ध में कार्यवाही नहीं करने के सम्बन्ध में भविष्य में कोई कानूनी पेचीदगी उत्पन्न होती है तो इसकी जिम्मेदारी प्रार्थी की व्यक्तिशः होगी, पुलिस-प्रशासन की इसमें किसी भी प्रकार की कोई त्रुटि नहीं मानी जाने का निवेदन करता हूँ। प्रार्थी इस प्रार्थना पत्र के जरिये भविष्य में किसी भी प्रकार से सुरक्षा चाहने पर यथा-संभव शीघ्र सुरक्षा उपलब्ध करवाने का निवेदन करना चाहता है।

अतः श्रीमान्जी से निवेदन है कि प्रार्थी द्वारा सुरक्षा चाहने पर ऑन कॉल सुरक्षा उपलब्ध करवाने की कृपा करावें।

श्रीमान्जी की अति कृपा होगी।

सधन्यवाद

भवदीय

संलग्न :- उपर्युक्तानुसार

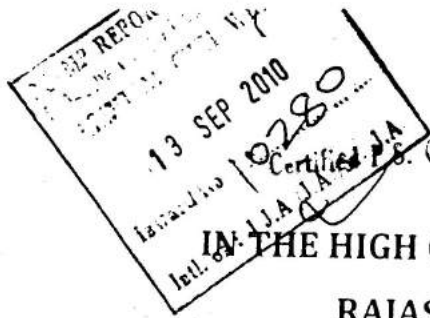
बाबूराम चौहान पुत्र श्री हरदान राम चौहान
बस्ता पाड़ा रामगढ़ जिला जैसलमेर
मो0न0 9460039132

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु सादर प्रेषित है :-

1. श्रीमान् पुलिस महानिदेशक जयपुर।
2. श्रीमान् पुलिस कमिश्नर जोधपुर।
3. श्रीमान् पुलिस महानिरीक्षक रेंज जोधपुर।

(बाबूराम चौहान)

Annexure 3.1 Court order in Goverdhan Singh's case



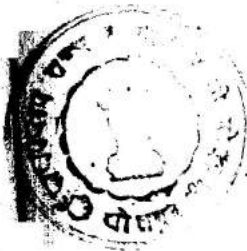
**IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JODHPUR**

S.B. CIVIL CONTEMPT PETITION NO. 400/2010
IN

S.B. CIVIL WRIT PETITION NO. 2360/2010
Goverdhan Singh & Ors Versus State of Rajasthan & Ors

PETITIONER/APPLICANT

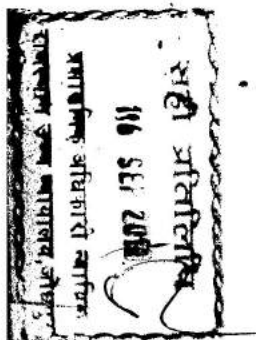
Goverdhan Singh son of Shri Bharat Singh, by caste Rajput, aged about 30 years, resident of nearby Narsingh Sagar Talab, Sarvodaya Basti, Bikaner, through Smt Sushil Kanwar wife of Shri Goverdhan Singh, by caste Rajput, aged about 26 years, resident of nearby Narsingh Sagar Talab, Sarvodaya Basti, Bikaner.



VERSUS

RESPONDENTS

1. Surjeet Singh Meena, presently Dy Superintendent of Police, Sardar C.O., Police Station Sadar, District Bikaner.
2. Satish Chandra Jangid, presently Addl Superintendent of Police [City], District Bikaner.
3. Dharam Punia, presently S.H.O., of Nayashahar Police Station, District Bikaner.
4. Indra Singh, presently A.S.I., Police Station Nayashahar, District Bikaner.



S.B. CIVIL CONTEMPT PETITION UNDER ARTICLE 215
OF THE CONSTITUTION OF INDIA & UNDER SECTION
12 OF CONTEMPT OF COURT ACT, 1971 FOR
DELIBERATE & WILFULL DISOBEDIENCE OF ORDER
DATED 8.9.2010 PASSED BY THE HON'BLE COURT, IN
WRIT PETITION NO. 2360/2010.

S.B. Civil Contempt Petition No. 400/2010
(Goverdhan Singh v/s Sh. Surjeet Singh Meena and ors.)
IN

S.B. Civil Writ Petition No.2360/2010
(Goverdhan Singh and ors. V/s State of Rajasthan and ors.)

Date of order: 13/09/2010.

HON'BLE DR. JUSTICE VINEET KOTHARI

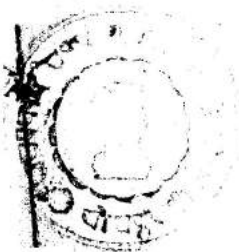
Mrs. Sushil Kanwar, present in person.

Mrs. Sushil Kanwar, wife of Sh. Goverdhan Singh is present in person as the lawyers are observing strike.

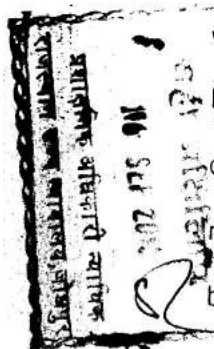
She submitted that when the order dtd.8.9.2010 passed by this Court in the writ petition was submitted to the respondent No.2-Satish Chandra Jangid, Addl. S.P.(City), Dist. Bikaner and respondent No.3 - Dharam Punia, SHC, Police Station Nayashahar for needful compliance, they not only tore the certified copy of the order of this Court, but instead of complying with the same, asked the brother-in-law of the petitioner present in person Smt. Sushil Kanwar, and detained Sh. Poonam Singh for 4 hours and late in the evening on 9.9.2010 also registered a false FIR No.227/2010 against said Poonam Singh. The petitioner also submitted that they approached the Superintendent of Police, Bikaner, but



still the compliance of the order of this Court could not be made and the vehicle Tata Safari as well as key of the residential house of the petitioner has not been returned back to them and all this happening because the husband of the petitioner Mr. Goverdhan Singh, an RTI activist took up the cudgels against the respondents and sought certain information against them under the RTI Act. She also submitted that number of false FIRs has been lodged against her husband and family members and the respondents are hell bent upon harassing the family members of the petitioner. She has prayed that the respondents may be directed to remain present in the Court to report compliance of the directions of this Court and also an interim protection may be granted to the husband and other family members of the petitioner against the threatened arrest of said persons in the aforesaid false FIRs.



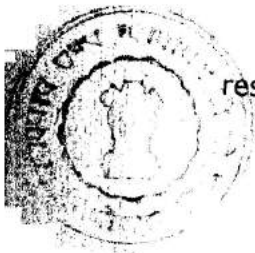
This Court passed a detailed order after hearing the petitioner on 8.9.2010 in presence of the respondent - contemnor Sh. Surjeet Singh Meena, Dy. Superintendent of Police, Police Station Sadar, Bikaner and since a responsible officer was present in the Court on the side of the respondents, it was naturally expected that the order would be communicated to the concerned persons for needful



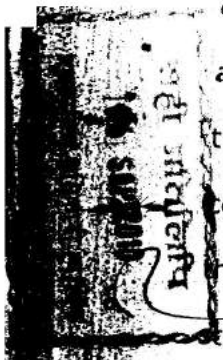
compliance. However, the allegations made in the present contempt petition is that the respondents No.2 and 3 when presented the said copy of order of this Court not only tore the copy of the same, but did not comply with the orders of this Court.

This Court views such alleged conduct on the part of the respondents very seriously.

Issue notice of the contempt petition to the respondents.



Notice be given 'dasti' to learned counsel for the petitioner for effecting direct service upon the respondents. The direct service would mean that PF and notice after being sealed and signed by the Office Superintendent will be handed over back to the learned counsel for the petitioner **and it will be his responsibility to send the notices along with copy of this order and contempt petition with annexures by registered AD Post/Speed Post/courier to the respondent directly and if proof of postal receipt/original courier receipt/AD receipt is filed along with the affidavit of the counsel for the petitioner/s in the office before the stipulated date, then the said service will be treated as**

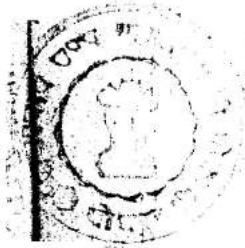


complete.

If proof of service is not filed before the next date as aforesaid, contempt petition shall be dismissed.

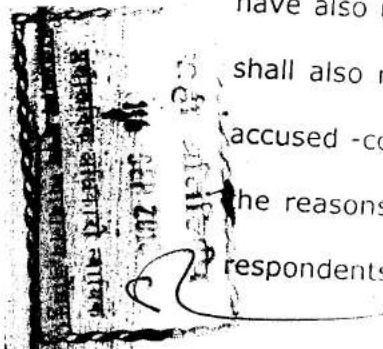
The respondents may :

- (i) either report compliance of the judgment/directions for alleged non-compliance of which this contempt petition has been filed on the next date; and
- (ii) If the respondents want to contend that compliance is not possible for specified reasons, they may pass appropriate speaking orders and file the same along with his reply affidavit before the next date.



No further time shall be granted to the respondents for this purpose.

All the four respondents - contemnors shall remain present in this Court on 16.9.2010 positively. The Superintendent of Police, Bikaner to whom the petitioners have also made a representation on 9.9.2010 vide Annex.C/4 shall also remain present in this Court along with these four accused -contemnors on the next and apprise the Court about the reasons for non-compliance and conduct of the said four respondents as alleged in the contempt petition.



In the meanwhile, no coercive steps shall be taken against the petitioner, Poonam Singh, Hanuman Singh, Ranvijay Singh, and Narendra Puri.

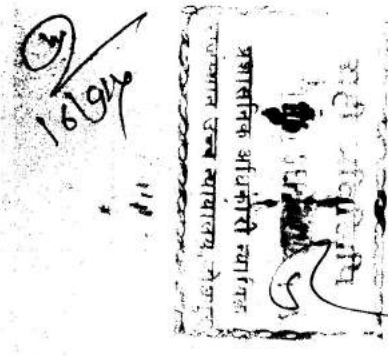
A copy of this order be sent to all the four respondents and Superintendent of Police, Bikaner immediately and the same may also be supplied to the petitioner Smt. Sushil Kanwar today.

A copy of this order may also be placed in the file of the main writ petition.

Put up on 16.9.2010 along with the SBGWP No.2360/2010.

sd
(DR. VINEET KOTHARI), J.

ss/-
Item No. C1



परिवाद

(सूचना का अधिकार अधिनियम 2005, धारा 17 के अन्तर्गत)

सेवा में,

श्रीमान महामहिम राज्यपाल
श्री शिवराज पाटिल
राजभवन, सिविल लाईन्स, जयपुर।

सन्दर्भ: राजस्थान सूचना आयोग, जयपुर के मुख्य सूचना आयुक्त श्री टी. श्रीनिवासन के विरुद्ध भ्रष्टाचार निरोधक ब्यूरो में पी सी एक्ट 1988 के तहत दर्ज फौजदारी प्रकरण तथा सेशन न्यायाधीश, भ्रष्टाचार निवारण अधिनियम, बीकानेर द्वारा भ्रष्टाचार का फौजदारी प्रकरण संख्या 57/2011 में टी. श्रीनिवासन वगैरह के विरुद्ध पारित आदेश दिनांक 08.12.2011 के सन्दर्भ में।

विषय: भ्रष्टाचार प्रकरण संख्या 57/2011 अन्तर्गत धारा 13(1)(डी), 13(2) भ्रष्टाचार निवारण अधिनियम, 1988 तथा 420, 466, 467, 468, 471, 167, 217, 218 सपठित धारा 120बी भारतीय दण्ड संहिता, 1860 के प्रकरण में सूचना का अधिकार अधिनियम, 2005 के तहत प्रावधान की गयी धारा 17 के तहत मुख्य सूचना आयुक्त श्री टी. श्रीनिवासन के आपराधिक क्रियाकलाप (एक प्रकरण के दो फैसले लिखाये जाने के तथ्य) को दृष्टिगत रखते हुए उक्त प्रकरण को रिकॉर्ड के साथ माननीय उच्चतम न्यायालय में रेफरेंस करने एवं भिजवाने के सम्बन्ध में।

मान्यवर,

उपर्युक्त विषय में लेख है कि प्रार्थी गोवर्धन सिंह ने एक भ्रष्टाचार का फौजदारी परिवाद निम्न आशय का भ्रष्टाचार निवारण अधिनियम के तहत गठित विशेष न्यायालय जो कि सेशन न्यायाधीश स्तर का है एवं बीकानेर(राजस्थान) न्यायक्षेत्र में कार्यरत है। एक फौजदारी परिवाद निम्न तथ्यों परिस्थितियों पर सम्बन्धित माननीय न्यायालय के समक्ष प्रस्तुत किया जो निम्न प्रकार है :-

प्रस्तुत किया दिनांक 07.12.2011

न्यायालय विशिष्ट न्यायाधीश
भ्रष्टाचार निरोधक ब्यूरो मामलात,
बीकानेर।

परिवाद संख्या...../2011

गोवर्धन सिंह पुत्र श्री भरत सिंह पड़िहार आयु 31 वर्ष, जाति-राजपूत, निवासी-नृसिंह सागर तालाब के पास, सर्वोदय बस्ती, बीकानेर।

.....परिवादी

बनाम

1. टी. श्रीनिवासन, मुख्य सूचना आयुक्त, राजस्थान सूचना आयोग, वित्त भवन, जयपुर।
2. एम. डी. कौरानी, पूर्व मुख्य सूचना आयुक्त, राजस्थान सूचना आयोग, वित्त भवन, जयपुर।
3. सतीशचन्द्र जांगिड़, अतिरिक्त पुलिस अधीक्षक(शहर), बीकानेर।

4. ओमप्रकाश जांगिड़, अतिरिक्त पुलिस अधीक्षक(सतर्कता); पुलिस महानिरीक्षक कार्यालय, बीकानेर।
5. एच जी राघवेन्द्र सुहासा, पूर्व पुलिस अधीक्षक, बीकानेर।
6. हबीब खान गौराण, पूर्व पुलिस अधीक्षक, बीकानेर।
7. पुलिस के अन्य अधिकारी-कर्मचारीगण।
8. राजस्थान सूचना आयोग के अन्य अधिकारी-कर्मचारीगण।

.....अभियुक्तगण

परिवाद अंतर्गत धारा 190 सीआरपीसी

अपराध अन्तर्गत धाराएँ 13(1)(डी), 13(2) भ्रष्टाचार निवारण अधिनियम 1988 तथा 420, 466, 467, 468, 471, 167, 217, 218, 120बी भारतीय दण्ड संहिता

श्रीमानजी,

परिवादी अपना परिवार निम्नलिखित आधारों पर प्रस्तुत कर रहा है:-

1. यह कि परिवादी बीकानेर स्थित उपर्युक्त स्थान पर निवास करता है एवं कानून में पूरी आस्था रखता है।
2. यह कि अभियुक्त संख्या 3, 4, 5 व 7 ने मिलीभगत कर अपराधिक कृत्य करते हुए परिवादी के विरुद्ध माह 11 दिसम्बर 2010 में कई झूठे मुकदमे दर्ज कर परिवादी के घर से सामान एवं गाड़ी अवैध रूप से ले जाते हुए मकान पर ताले लगा दिए थे तथा परिवादी की नियमविरुद्ध हिस्ट्रीशीट पत्रावली खोलकर राजस्थान विधानसभा में गृह मंत्री श्री शांति धारीवाल को गानत तथ्य एवं दस्तावेज दिए थे। पुलिस महानिदेशक ने समस्त प्रकरण सीआईडी सीबी में भेज दिया था।
3. यह कि परिवादी की पत्नी शोमती लुशोल कँवर ने इस संबंध में सूचना का अधिकार अधिनियम 2005 के तहत दिनांक 23.03.2010 को एक प्रार्थना-पत्र सूचना प्राप्त करने के लिए पुलिस महानिदेशक, राजस्थान पुलिस, पुलिस मुख्यालय, जयपुर को दिया था। जिस पर कार्यवाही करते हुए पुलिस महानिरीक्षक(अपराध) ने लोक सूचना अधिकारी अभियुक्त संख्या 4 ओमप्रकाश जांगिड़ को भेज दिया तथा अभियुक्त संख्या 4 ओमप्रकाश जांगिड़ ने असा लोक सूचना अधिकारी अभियुक्त संख्या 3 सतीशचन्द्र जांगिड़ को भेज दिया क्योंकि अभियुक्त संख्या 3 व 4 भी सूचना का अधिकार अधिनियम 2005 के तहत लोक सूचना अधिकारी थे।
4. यह कि अभियुक्त संख्या 2 ने अपने नाम अभियुक्त संख्या 5 को बचाने की नीयत से नियमों को ताक पर रखकर भारतीय दण्ड संहिता की धारा 8(1)(एच) का हवाला देकर सूचना देने से इन्कार कर दिया। इसी आधार पर अभियुक्त संख्या 4 एवं पुलिस महानिरीक्षक(अपराध), जयपुर ने भी सूचना देने से इन्कार कर दिया।
5. यह कि अभियुक्तगणों ने जानबूझकर दुर्भावनावश, परिवादी की पत्नी द्वारा चाही गई सूचना निर्धारित अवधि में उपलब्ध नहीं करवाई।

6. यह कि सूचना नहीं मिलने पर परिवादी की पत्नी ने दिनांक 18.05.2010 को श्री प्रदीप कुमार व्यास, अति. पुलिस महानिदेशक (अपराध), जयपुर को धारा 19 के तहत प्रथम अपील की। तब श्री प्रदीप कुमार व्यास ने भी अभियुक्तगणों को बचाने की गरज से जानबूझकर परिवादी की पत्नी की अपील पर कोई सुनवाई नहीं करते हुए प्रथम अपील को सही निर्णित नहीं किया।
7. यह कि परिवादी की पत्नी ने प्रथम अपील करने के बाद भी वांछित सूचना नहीं मिलने पर दिनांक 16.07.2010 को अभियुक्त संख्या 2 श्री एम डी कौरानी, मुख्य सूचना आयुक्त, राजस्थान सूचना आयोग, जयपुर के समक्ष द्वितीय अपील प्रस्तुत की। जिस पर दिनांक 27.08.2010 को राजस्थान सूचना आयोग द्वारा एक पत्र पुलिस महानिरीक्षक(अपराध), जयपुर को लिखा गया जिसमें परिवादी की द्वितीय अपील का बिन्दुवार उत्तर 21 दिवस के भीतर राजस्थान सूचना आयोग एवं परिवादी को भेजने का निर्देश दिया गया था, साथ ही यह भी लिखा गया था कि "धारा 20(1) में दण्डित किये जाने का प्रावधान है।"
8. यह कि आरटीआई एक्ट की धारा 20(1) में आज्ञापक प्रावधान है कि यदि लोक सूचना अधिकारी द्वारा निर्धारित 30 दिवस की अवधि में सूचना उपलब्ध नहीं कराई जाती है तो लोक सूचना अधिकारी एवं दोषी अधिकारियों के विरुद्ध 250/- रुपये प्रतिदिन एवं अधिकतम 25000/- रुपये जुर्माना लगाना आवश्यक है। इसके बावजूद भी पुलिस महानिरीक्षक (अपराध), जयपुर ने सूचना आयोग को धत्ता बताते हुए बिन्दुवार जवाब नहीं भेजा।
9. यह कि सूचना आयोग ने बिन्दुवार जवाब नहीं भेजने को गम्भीरता से लेते हुए दिनांक 30.09.2010 को पुलिस महानिरीक्षक(अपराध) के उच्चाधिकारी पुलिस महानिदेशक, जयपुर को बिन्दुवार जवाब भेजने के लिए आदेशित किया। इसके बावजूद भी पुलिस अधिकारियों ने बिन्दुवार जवाब नहीं भेजा।
10. यह कि राजस्थान सूचना आयोग की पुलिस महानिदेशक, जयपुर को दिनांक 22.02.2011 को दोपहर 12 बजे अनैतकीय रूप से उपस्थित होने का आदेश दिनांक 21.12.2010 को दिया। इसी आदेश में परिवादी की पत्नी को भी सुनवाई चाहने पर उपस्थित रहने का कहा गया।
11. यह कि दिनांक 22.02.2011 को राजस्थान सूचना आयोग की डबल बेंच की सुनवाई में पुलिस महानिदेशक, जयपुर उपस्थित नहीं हुए एवं कान सिंह उपनिरीक्षक को आयोग में भेज दिया। उस दिनांक आयोग के डबल बेंच की सुनवाई अभियुक्त संख्या 1 टी श्रीनिवासन तथा अभियुक्त संख्या 2 एम डी कौरानी कर रहे थे। परिवादी की पत्नी की ओर से पैरवी के लिए परिवादी स्वयं अपने मित्र एडवोकेट वीरेन्द्र सिंह के साथ आयोग में हाजिर हुए।
12. यह कि अभियुक्त संख्या 1 श्री प्रदीप कुमार व्यास तथा अभियुक्त संख्या 2 एम डी कौरानी ने द्वितीय अपील की सुनवाई में दोनों पक्षों की बहस सुनकर आदेश पारित कर खुले में सुनाया। जिसमें अपील स्वीकार करते हुए प्रार्थी पक्ष की विधिक त्रुटि पर भविष्य के लिए चेतावनी देते हुए उर्फ प्रार्थीया को रजिस्टर्ड डाक से 21 दिवस में निःशुल्क सूचना देने का आदेश दिया गया था। परिवादी द्वारा आदेशों की प्रति के बारे में पूछने पर डाक से भेजने के लिए बताया गया। परिवादी माह फरवरी, मार्च 2011 में

28. यह कि परिवादी बीकानेर का रहने वाला है तथा उक्त कूटरचित फर्जी दस्तावेज परिवादी के बीकानेर स्थित आवास पर प्राप्त हुआ है अतः यह इस्तगासा आपके क्षेत्राधिकार एवं श्रवणाधिकार में है।
29. यह कि अभियुक्तगण का यह उक्त कृत्य लोक सेवक के पदीय कर्तव्यों (Discharge of official duties) के अन्तर्गत नहीं आता। अतः अभियुक्तगणों को धारा 197 दण्ड प्रक्रिया संहिता का लाभ नहीं मिल सकता।
30. यह कि अभियुक्तगणों ने आपराधिक षड़यन्त्र रचकर, परिवादी की पत्नी द्वारा चाही गई सूचनाओं को जानबूझ कर दुर्भावनावश न देकर, पुलिसकर्मियों पर लगने वाले दण्ड, जुर्माने एवं अनुशासनात्मक कार्यवाही से बचाने के लिए बेक डेट में कूटरचित दस्तावेज तैयार कर, बेईमानीपूर्वक आशय से नकली (कूटरचित एवं फर्जी) ऑर्डर तैयार कर, लोक रजिस्टर आदि की कूटरचना कर, लोक दस्तावेज नष्ट करने, परिवादी एवं अपने विभाग के साथ धोखा-घड़ी करने तथा अपने को सदोष लाभ पहुँचाने एवं परिवादी को सदोष हानि पहुँचाने के लिए पद का दुरुपयोग कर, स्वीय लाभ प्राप्त कर, रिश्वत की मोटी रकम प्राप्त कर, दस्तावेज को कूट रचित जानते हुए असली के रूप में उपयोग में लिया। इसके साथ-साथ अभियुक्त संख्या 1 व 2 ने परिवादी को क्षति कारित करने तथा अन्य पुलिस कर्मियों को बचाने के लिए अशुद्ध दस्तावेजों की रचना की एवं लोक दस्तावेजों को नष्ट कर दिया। इस प्रकार अभियुक्तगणों ने 13(1)(डी), 13(2) भ्रष्टाचार निवारण अधिनियम 1988 तथा भारतीय दण्ड संहिता की धारा 420, 466, 467, 468, 471, 167, 217, 218, 120बी के तहत दण्डनीय आपराधिक कृत्य किया है।

अतः परिवाद पत्र प्रस्तुत कर निवेदन है कि इसे धारा 156(3) दण्ड प्रक्रिया संहिता के तहत पुलिस चौकी, भ्रष्टाचार निरोधक ब्यूरो, बीकानेर को आदेश फरमावे कि प्रथम सूचना रिपोर्ट दर्ज कर बाद अनुसंधान रिपोर्ट न्यायालय में पेश करे।
आपकी अति कृपा होगी।

दिनांक: 07.12.2011

परिवादी

गोवर्धन सिंह
पुत्र श्री भरत सिंह पड़िहार
नृसिंह सागर तालाब के पास,
सर्वोदय बस्ती, बीकानेर।
पिन - 334004

मामले में माननीय सेशन न्यायाधीश भ्रष्टाचार निवारण अधिनियम, बीकानेर द्वारा दिनांक 08.12.2011 को निम्न आदेश पारित किया गया। आदेश श्रीमान के अवलोकनार्थ निम्न प्रकार से प्रस्तुत है:-

अजअदालत सेशन न्यायाधीश, भ्रष्टाचार निवारण अधिनियम, बीकानेर

गोवर्धनसिंह बनाम टी श्रीनिवासन वगैरह

क्रि.सं. मु. दमा प्रा० 57/2011

तारीख
हुक्म

हुक्म या कार्यवाही मय इनिशियल्स जज

नम्बर व तारीख
अहकाम जो इस
हुक्म को तामील
में जारी हुए

08.12.11 परिवारी गोवर्धन सिंह स्वयं उपस्थित। लिपिक की रिपोर्ट व परिवार का अवलोकन किया गया, परिवारी को सुना गया, परिवार दर्ज रजिस्टर किया जावे।

परिवारी ने आरोपीगण मुख्य सूचना आयुक्त व अन्य के विरुद्ध पी.सी. एक्ट 1988 की धारा 13(1) (डी)(2) एवं भारतीय दण्ड संहिता की धारा 420, 467, 468, 471, 167, 217, 218, 120-बी के तहत पेश परिवार को जांच व अनुसन्धान बाबत धारा 156(3) दण्ड प्रक्रिया संहिता के तहत ए.सी.बी. चौकी, बीकानेर को प्रेषित करने की प्रार्थना की।

परिवार में उल्लेखित तथ्यों व संलग्न पेश अभिलेख अवलोकन पश्चात यह उचित प्रतीत होता है कि परिवार जांच बाबत ब्यूरो चौकी बीकानेर को प्रेषित किया जावे। अतिरिक्त पुलिस अधीक्षक ए.सी.बी. बीकानेर को आदेशित किया जाता है कि वह प्रकरण में प्रारम्भिक जांच कार्यवाही करें, तथा जांच कार्यवाही में किसी अपराध का सृजन होना पाया जावे तो नियमित प्रकरण दर्ज कर तपतीश कार्यवाही की जावे तथा नतीजे से न्यायालय को अवगत करावे। परिवार के साथ संलग्न प्रलेख भी संबंधित ब्यूरो चौकी को प्रेषित हो। परिवार की प्रति न्यायालय में रखी जावे जो तपतीश नतीजा पेश होने पर संलग्न की जावे।

देवेन्द्र जोशी
सेशन न्यायाधीश
भ्रष्टाचार निवारण अधिनियम,
बीकानेर

प्रार्थी मामले के तथ्यों, परिस्थितियों में सूचना का अधिकार अधिनियम, 2005 के तहत कार्य करने वाला व्यक्ति है। अतः अधिनियम 2005 में वर्णित प्रावधान जो कि धारा-17 में वर्णित है, को दृष्टिगत रखते हुए मुख्य सूचना आयुक्त द्वारा की गयी आपराधिक कार्यवाही जो कि उनके द्वारा बतौर लोकसेवाक पद के दुरुपयोग करते हुए की गयी है। इसके सम्बन्ध में श्रीमान से अपेक्षा है कि अपराध प्रकरण के धारा-7 में वर्णित प्रावधान के तहत मामले के तथ्यों, परिस्थितियों व संबंधित लोकसेवाक द्वारा सम्बन्धित अधिनियम, 2005 की भावना के विपरीत कार्य किये जाने के फलस्वरूप कदाचार व भ्रष्टाचार की जांच के लिए माननीय सर्वोच्च न्यायालय में श्रीमान के द्वारा रिपॉर्त्स की जाए। श्रीमान के अवलोकनार्थ सूचना का अधिकार अधिनियम, 2005 की सम्बन्धित धारा 17 निम्न प्रकार से टंकित की जा रही है :-

THE RIGHT TO INFORMATION ACT, 2005/23
CHAPTER - IV
THE STATE INFORMATION COMMISSION

Removal of State Chief Information Commissioner or State Information Commissioner:

1. Subject to the provisions to sub section (3), the State Chief information Commissioner or a State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehavior or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State information Commissioner, as the case may be, ought on such ground be removed.
2. The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State Information Commissioner in respect of whom a reference has been orders on receipt of the report of the Supreme Court on such reference.
3. Notwithstanding anything contained in sub-section (1) the, Governor may by order remove from office of the State Chief Information Commissioner or a State Information Commissioner if a State Chief Information Commissioner or a State Information Commissioner, as the case may be, -
 - (a) is adjudged as insolvent; or
 - (b) has been convicted of an offence which, in the opinion of the Governor involves moral turpitude; or
 - (c) engages during his term of office in any paid employment outside the duties of his office; or
 - (d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or
 - (e) has required such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.
4. If the State Chief Information Commissioner or a State Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emoluments arising there from otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehavior.

राजस्थान सूचना आयोग, जयपुर के मुख्य सूचना आयुक्त श्री टी. श्रीनिवासन के द्वारा लोकसेवक होने के नाते मामले के तथ्यों, परिस्थितियों में पद के दुरुपयोग की जो कार्यवाही की गयी है उसको दृष्टिगत रखते हुए तथा वर्तमान में उनके विरुद्ध दर्ज भ्रष्टाचार का फौजदारी प्रकरण गोवर्धन सिंह बनाम टी. श्रीनिवासन वगैरह जो कि सेशन न्यायाधीश भ्रष्टाचार निवारण अधिनियम, बीकानेर द्वारा प्रथम दृष्टया प्रमाणित मानकर फौजदारी भ्रष्टाचार प्रकरण संख्या 57/2011 डाला गया है तथा मामले में पारित आदेश दिनांक 08.12.2011 के सन्दर्भ में अन्तर्गत धारा 13(1)(डी), 13(2) भ्रष्टाचार निवारण अधिनियम 1988 तथा 420, 466, 467, 468, 471, 167, 17 218 संपठित धारा 120बी भारतीय दण्ड संहिता, 1860 का प्रकरण भ्रष्टाचार निरोधक ब्यूरो, राजस्थान पुलिस, जयपुर के पास अनुसंधानाधीन है। इसको दृष्टिगत रखते हुए सूचना के अधिकार अधिनियम, 2005 के तहत प्रावधान की गयी धारा 17 के तहत मुख्य सूचना आयुक्त श्री टी. श्रीनिवासन के आपराधिक क्रियाकलाप (एक प्रकरण के दो फौजदारी लिखाये करने के तथ्यों) को दृष्टिगत रखते हुए प्रकरण को माननीय उच्चतम न्यायालय में रेफरेंस करने की कृपा करें। मामले में यदि कोई साक्ष्य मौखिक अथवा दस्तावेजी श्रीमान को उपलब्ध है तो प्रार्थी उसको प्रस्तुत करने को तैयार है। श्रीमान से त्वरित कार्यवाही की अपेक्षा रखते हुए परिवाद प्रस्तुत किया जा रहा है।

स्थान : जयपुर
दिनांक : 17.12.2011

परिवादी

गोवर्धन सिंह

गोवर्धन सिंह

पुत्र श्री भरत सिंह पड़िहार
निवासी-नृसिंह सागर तालाब के पास,
सर्वोदय बस्ती, बीकानेर (राजस्थान)

मोबाईल : 09828440666

Email : goverdhan.rti@gmail.com

प्रतिलिपि :-

1. माननीय मुख्य न्यायाधिपति श्री एस. एच. कपाडिया सर्वोच्च न्यायालय, दिल्ली को भेजकर लेख है कि सूचना का अधिकार अधिनियम, 2005 अन्तर्गत धारा-17 के तहत यह परिवाद महामहिम राज्यपाल, राजस्थान को दिया गया है सम्भव है कि प्रार्थी के प्रकरण की भांति ही अन्य राज्यों से भी श्रीमान को सम्बन्धित राज्यपालों के माध्यम से परिवाद प्राप्त हुआ हो, जिनको रेफरेन्स के माध्यम से निस्तारण किया जाना होगा। ऐसी परिस्थिति में अग्रिम कार्यवाही करते हुए सूचना का अधिकार अधिनियम, 2005 के अन्तर्गत धारा-17 के तहत प्राप्त रेफरेन्सेस के निस्तारण हेतु आदेश करके पीठ पहले ही गठित करने की कृपा करे जिससे भविष्य में भ्रष्ट मुख्य सूचना आयुक्त अथवा अन्य सूचना आयुक्त पीठ गठन में लगने वाले समय का लाभ उठाकर अपनी भ्रष्ट गतिविधियों को आगे जारी नहीं रख सके तथा उनका प्रकरण आते ही त्वरित रूप से सम्बन्धित रेफरेन्स पीठ के समक्ष निस्तारण हो सकें।

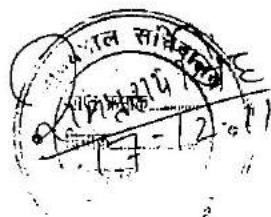
परिवादी

गोवर्धन सिंह

(गोवर्धन सिंह)

संलग्न:

1. मुख्य सूचना आयुक्त श्री टी श्रीनिवासन का अपील संख्या 2765/2010 में असली आदेश दिनांक 22.02.2011
2. मुख्य सूचना आयुक्त श्री टी श्रीनिवासन का अपील संख्या 2765/2010 में नकली(फर्जी) आदेश दिनांक 15.04.2011
3. दैनिक भास्कर न्यूज दिनांक 9 दिसम्बर 2011
4. राजस्थान पत्रिका न्यूज दिनांक 9 दिसम्बर 2011
5. दैनिक भास्कर - पूजा दिनांक 12 दिसम्बर 2011
6. दैनिक भास्कर - न्यूज दिनांक 17 दिसम्बर 2011



RECEIVED
RTI CELL
JAYPUR
17.12.2011
15:45
गोवर्धन सिंह, परिवादी
सर्वोदय बस्ती, बीकानेर
राजस्थान

Annexure 3.3 ACB's report into allegations against Rajasthan information commissioners

कार्यालय महानिदेशक, भ्रष्टाचार निरोधक ब्यूरो, राजस्थान, जयपुर।

क्रमांक :- अनिब्यूरो / विंग / प्रा.जा.सं.151/11/ 826

दिनांक :- 11-6-2012

श्रीमान् विशिष्ट न्यायाधीश सेशन न्यायालय, भ्रष्टाचार निवारण अधिनियम, 2005 के अन्तर्गत प्रा.जा.सं. 151/11/826 अन्वये
श्रीमान् विशिष्ट न्यायाधीश सेशन न्यायालय, भ्रष्टाचार निवारण अधिनियम, 2005 के अन्तर्गत प्रा.जा.सं. 151/11/826 अन्वये

प्रति-हस्ताक्षरित

सेशन न्यायाधीश

भ्रष्टाचार निवारण अधिनियम, 2005 के अन्तर्गत प्रा.जा.सं. 151/11/826 अन्वये

विषय :- प्रा.जा. संख्या 151/11 विरुद्ध श्री टी. श्रीनिवासन, मुख्य सूचना आयुक्त व अन्य
प्रसंग :- श्रीमान् जी का आदेश दिनांक 08.12.2011

महोदय,

विषयक प्राथमिक जाँच प्रासांगिक आदेश के संलग्न प्राप्त इस्तागासा अन्तर्गत धारा 156 (3) सीआरपीसी पर दर्ज की जाकर जाँच की गई :-

1. आरोपो का सूक्ष्म विवरण :-

परिवादी के इस्तागासे में मुख्य रूप आरोप है कि तत्कालीन मुख्य सूचना आयुक्त एवं सूचना आयुक्त द्वारा भारी रिश्वत प्राप्त कर बेईमानी पूर्वक कूटरचित दस्तावेज तैयार किये।

2. गवाह जिनका परीक्षण किया गया :-

जाँच के दौरान श्री गोवर्धन सिंह पुत्र श्री भरत सिंह पडिहार निवासी नर्सिंग सागर तालाब के पास, सर्वादय बस्ती बीकानेर, श्री विरेन्द्र सिंह प्रजापत पुत्र श्री हनुमान प्रसाद प्रजापत निवासी विशनोई मन्दिर के सामने, बंगला नगर, पुंगल रोड, बीकानेर, श्री कान सिंह पुत्र स्व० श्री सबल सिंह राव, निवासी प्लॉट नं० 13 लक्ष्मण कालोनी, श्याम नगर विस्तार के पास न्यू सांगानेर रोड सोडाला, जयपुर सेवानिवृत्त उप निरीक्षक पुलिस, (अपराध शाखा) पुलिस मुख्यालय, जयपुर, श्री शोलेन्द्र कुमार मिश्रा पुत्र श्री गिरीराज प्रसाद मिश्रा निजी सिचिव, निदेशक, माध्यमिक शिक्षा राजस्थान बीकानेर हाल प्रति नियुक्ति कार्यालय मुख्य सूचना आयुक्त राजस्थान, जयपुर, श्री शोलेन्द्र सिंह पुत्र स्व० श्री हनुमान सिंह राठौड़, कम्प्यूटर ऑपरेटर कार्यालय मुख्य सूचना आयुक्त राजस्थान, जयपुर, व श्री मनीष जैन पुत्र श्री रमेश चन्द शर्मा, कम्प्यूटर कर्मी कार्यालय मुख्य सूचना आयुक्त राजस्थान, जयपुर।

3. रिकार्ड जो प्राप्त किया गया/ प्राप्त हुआ:-

- 1- अपील संख्या 2765/10 श्रीमति सुशील कवर बनाम पुलिस महानिदेशक से सम्बंधित पत्रावली राजस्थान सूचना आयोग से प्राप्त की गई।
- 2- दो सी.डी. जिनमें दिनांक 22.02.2011 एवं 15.04.11 के आदेश व आदेश डिस्पेच, नम्बर है श्री गोवर्धन द्वारा प्रस्तुत की गई।
- 3- दिनांक 15.04.11 की कॉज लिस्ट राजस्थान सूचना आयोग की प्रति श्री विरेन्द्र सिंह प्रजापत द्वारा प्रस्तुत की गई।
- 4- अपील संख्या 2765/10 की पत्रावली के कवर की फोटोप्रति श्री विरेन्द्र सिंह प्रजापत द्वारा प्रस्तुत की गई।
- 5- दिनांक 22.02.11 एवं 15.04.11 के आदेशों की कॉपी जो श्री गोवर्धन सिंह द्वारा प्रस्तुत की गई।
- 6- श्री गोवर्धन सिंह द्वारा प्रस्तुत पत्र दिनांक 08.05.12

4. रिकार्ड जो प्राप्त नहीं हुआ/उपलब्ध नहीं करवाया गया:-

- 1 फरवरी 2011 से अप्रैल 2011 तक के डिस्पेच रजिस्टर प्रमाणित फोटो प्रति
- 2 दिनांक 22.02.11 की एवं 15.04.2011 के आदेशों की कम्प्यूटर हार्डकॉपी व साफ कॉपी
- 3 पेशी रजिस्टर वर्ष 2010 से 15.04.11 तक की प्रमाणित प्रति
- 4 कॉज लिस्ट दिनांक 22.02.11 एवं 15.04.11

आदि रिकार्ड चाहा गया था लेकिन राजस्थान सूचना आयोग के उप सचिव-द्वितीय ने अपने पत्रांक 8552 दिनांक 08.02.2012 से सूचना का अधिकार अधिनियम 2005 की धारा 21 एवं 23 का हवाला देकर रिकार्ड उपलब्ध नहीं करवाया व अपने पत्र में निम्नलिखित कानूनी प्रावधानों को उल्लेखित किया :-

सूचना का अधिकार अधिनियम-2005 की धारा 21 :

“ कोई वाद अभियोजन, या अन्य विधिक कार्यवाही किसी भी ऐसी बात के बारे में, जो इस अधिनियम या उसके अधीन बनाए गए किसी नियम के अधीन सद्भावपूर्वक की गई है या की जाने के लिए आशयित है, किसी व्यक्ति के विरुद्ध न होगी।”

सूचना का अधिकार अधिनियम-2005 की धारा 23 :

“ कोई न्यायालय, इस अधिनियम के अधीन किए गए किसी आदेश के संबंध में कोई वाद, आवेदन या अन्य कार्यवाही ग्रहण नहीं करेगा और ऐसे किसी आदेश को, इस अधिनियम के अधीन किसी अपील के रूप में के सिवाए किसी रूप में प्रश्नगत नहीं किया जाएगा”।

इस प्रकार सूचना का अधिकार अधिनियम -2005 की धारा 23 का हवाला देकर ऊपर वर्णित कम संख्या 1 से 4 तक का रिकार्ड उपलब्ध नहीं करवाये जाने के कारण प्राथमिक जांच के स्पष्ट निष्कर्ष पर नहीं पहुँचा जा सका।

5 जाँच का प्राथमिकता के आधार पर निष्कर्ष :-

प्राथमिक जांच के तथ्य इस प्रकार है कि सेशन न्यायाधीश, भ्रष्टाचार निवारण अधिनियम बीकानेर से प्राप्त इस्तगासा संख्या 57/2011 गोवर्धन बनाम श्री टी. श्रीनिवासन वगैरा का मुख्यालय द्वारा बाद परीक्षण प्राथमिक जांच पंजीबद्ध करने का निर्णय लिया जाकर इस्तगासा मय पत्रादि आदि की छाया प्रति के शाखा में प्राप्त हुआ। जिस पर प्राथमिक जांच हाजा दर्ज की जाकर जांच की गई।

1- सूचना आयोग द्वारा परिवादी श्री गोवर्धन सिंह को सूचना के अधिकार के तहत उपलब्ध करवाई की सी.डी. में दिनांक 22.02.11 एवं 15.04.2011 के दो अलग-अलग निर्णय आदेशों के प्रारूप है जिन पर हस्ताक्षर नहीं है।

2- आयोग में अपील संख्या 2765/2010 की सुनवाई दिनांक 22.02.11 को हुई थी जो फाईल कवर में अंकित तारीख पेशी एवं कॉज लिस्ट से स्पष्ट है।

3- अपील संख्या 2765/2010 दिनांक 15.04.11 की काज लिस्ट में सुनवाई हेतु नहीं लगी थी एवं फाईल कवर पर दिनांक 22.02.11 को काटकर दिनांक 15.04.11 लिखा हुआ है।

4- अपील संख्या 2765/2010 की सूचना आयोग की मूल पत्रावली के फाईल कवर की प्रति के अनुसार अपील दिनांक 21.07.2010 को आयोग में प्रस्तुत हुई तत्पश्चात दिनांक 20.09.2010, 07.12.2010 एवं 22.02.2011 तारीख पेशीया नियत हुई। फाईल कवर पर निर्णय दिनांक 22.02.2011 अंकित की हुई थी जिसको काट कर दिनांक 15.04.2011 की हुई है जो स्पष्ट रूप से दिखता है।

5- कॉज लिस्ट दिनांक 15.04.2011 के अनुसार उस दिन अपील संख्या 2765/2010 सुनवाई में ही नहीं थी। श्री गोवर्धन सिंह व श्री कान सिंह तत्कालीन उप निरीक्षक आयोग में उपस्थित नहीं थे ये उनके बयानों से स्पष्ट है।

6-सेवानिवृत्ति के दिन दिनांक 15.04.2011 को उक्त प्रकरण काज लिस्ट में नहीं होना, पत्रावली का सुनवाई में नहीं होना तथा परिवादी गोवर्धन सिंह व पुलिस मुख्यालय के प्रतिनिधि की उपस्थिति के अभाव में तत्कालीन मुख्य सूचना आयुक्त श्री एम.डी. कौरानी का न्यायालय में सुनवाई करना या उससे सम्बंधित आदेश पारित करना एक असामान्य प्रक्रिया प्रथम दृष्टया प्रतीत होती है। (सूचना आयोग द्वारा मांगने पर रिकार्ड उपलब्ध नहीं करवाया गया है)

राज्य सूचना आयोग से संबंधित रिकार्ड व स्पष्ट सूचना के अभाव में निष्कर्ष टिप्पणी अंकित किया जाना संभव नहीं है।

रिपोर्ट अवलोकनार्थ एवं उचित आदेशार्थ सेवामें प्रेषित है।

21/6/12 तक के अन्त डम्मा।
वागजात के साथ पत्रा हो।

4-4
सोहन न्यायाधीश
भ्रष्टाचार निवारण अधिनियम
बीकानेर जंज.

भुवदीय
(मनीष त्रिपाठी)
अति. पुलिस अधीक्षक
स्पेशल इन्वेस्टिगेशन ऑफिस,
भ्रष्टाचार निवारण विभाग,
जयपुर।
उक्त प्रमाणित प्रतिलिपि
मुख्य प्रतिलिपिकार
सेशन न्यायालय
भ्रष्टाचार निवारण अधिकारी
बीकानेर

Annexure 3.4 FIR filed by Satishbhai Rana

G.P.R.IJ Std.816 1-2004 15,000 BKKs, કા.ક.એમ.સી.કાસેરબાઈના નામ પર
C.R.F.D.NO 1561, dated 6-9-09 તા.ક.અ.ઈ.સી.એમ.એ.ચાવડા સી.પો.સ.ઈ મહુધા
૬.૧.૨.૧.૧૧/૦૭

કોજદારી કામ ચલાવવાની રીત બાબતના કાવદાની ૧૫૪મી કલમની રૂએ પોલીસ ધાજા ઉપર અપેલી
કોમિનએમલ ગુન્હાની પહેલી ખબર
સબ-ડિસ્ટ્રીક્ટ- મહુધા કપડવંજ ડિસ્ટ્રીક્ટ- ખેડા
ગુન્હો ધરાની તારીખ તથાકલાક:- તા. ૧૮/૮/૦૭ કલાક:- ૧૫/૩૦ ના સુમારે

૧. ખબર આપ્યાની તારીખ તથા કલાક:- તા. ૨૦/૮/૦૭ કલાક:- ૧૪/૧૫
૨. ગુન્હાની જગ્યા તથા પોલીસ ધાજાથી અંતર તથા દિશા:- મોજે, મહુધા મામલતદાર ની કચેરી
ના સામે દ.કી.મી. ૧/૨ ટાઉન બીટ
૩. પોલીસ ધાજા ઉપરથી મોકલ્યાની તારીખ:- તા. ૨૦/૮/૦૭
૪. ખબર આપનાર તથા ફરીયાદીનું નામ તથા રહેવાનું ઠેકાણું :- કી.સતીષભાઈ રમણભાઈ રાજા
ઉ.વ.૩૮ રહે. અલીજા રાજા ચોક તા. મહુધા
૫. તલોપતવાળાનું નામ તથા રહેવાનું ઠેકાણું :- ૭ (૧) ઉદેશિંહ તલાટી (૨) કનુભાઈ ભક્તીભાઈ
(૩) રામસીંગભાઈ મણીભાઈ પરમાર (૪) નંદુભાઈ
ભોજાકી (૫) શાનાભાઈ તથા ૧ બીજા બે એક માણસો
જેઓ ના પુરા નામ કામ જણાવેલ નથી

૬. ગુન્હાનું હુક વર્ણન કલમ સુધ્યાં અને કાંઈ માલ મતા
લઈ જવામાં આવી હોતો તેનું હુક વર્ણન:- ઉ.પી.કો.ક.૩૯૫, ૩૬૫, ૩૨૮, ૩૨૭, બી.પી.એક્ટ.૧૩૪ મુજબ
એવી રીતે આ કામ ના આરોપી એ એ ફરીયાદી ને મહુધા મામલતદાર કચેરી સામે રોક પાસે આવી ફરીયાદી ને
જણાવેલ કે તુ ગામ ના વિકાસ ના કામો ની તેમજ ૧૬૭ સામ સંચાલન ના બાવબો ની માહિતી કેમ માગે છે. તારે તો
જરૂર છે. તેમ કહેતા ફરીયાદી એ જણાવેલ કે હું અલીજા ગામ નો કાર્પકર છું જેથી માહિતી મારે માગવી પડે તેમ
જણાવતા આ કામ ના આરોપી એ એ ઉદેશિંહ જઈ ફરીયાદી ને ગડદાપાટ નો માર મારી આરોપી નં. ૨ પોતાની
મોટર સાયકલ ઉપર ફરીયાદી એ બેસાડી સડારપુર ગામે જવાની ધાવ ઉપર લઈ જઈ બાકીના આરોપી એ
મોટર સાયકલ પર આવી ફરીયાદી ને હોડી તથા ગા.કી.જી નં.૧૨ મારી આરોપી નં. ૩ નામે ફરીયાદી ને ઈશ્લીસ
દાર પીવડાવી ફરીયાદી નો મોબાઈલ ફોન તથા રા.ની લુર કરી ફરીયાદી ને એક મોટર સાયકલ ઉપર બેસાડી
લઈ જઈ મોટી ખડોલ જવાના રસ્તા ઉપર છોડી દઈ મહે.ચીલ્લા મેજી.સા.ના નં.૬૨ નામાનો ભંગ કરી ગુન્હા
કરવામાં એક બીજાએ મદદગારી કરી ગુન્હો ક્યાં વિ.બાબત
૭. સાબરમાં મળેલી રીત બાબત ગુનાનો
ગુનાનો નિર્ણય:-

તા. ૨૦/૮/૦૭
મહુધા
કોમિનએમલ ગુન્હાની પહેલી ખબર
સબ-ડિસ્ટ્રીક્ટ- મહુધા કપડવંજ ડિસ્ટ્રીક્ટ- ખેડા
ગુન્હો ધરાની તારીખ તથાકલાક:- તા. ૧૮/૮/૦૭ કલાક:- ૧૫/૩૦ ના સુમારે

Annexure 3.5 Communication between CIC and district collector in Bharatbhai-Bhanjibhai's case



H. S. PATEL

IAS

Collector & District Magistrate
Rajkot District

OPP. JAMTOWER, SHROFF ROAD,
RAJKOT - 360 001.

PHONE : (O) 2473900 (R) 2472900

FAX No.: 0281 - 2453621

PRO/RTI/PA/WS/533-11

DATE : 14.03.2011

To
Shri R.N. Das, IAS (Rtd)
Chief Information Commissioner,
Gujarat Information Commission,
Bureau of Economics and
Statistics Building, 1st floor,
Sector No. 18,
Gandhinagar

Respected **Das Saheb,**

Please refer to your letter dated 08/03/2011, regarding taking necessary steps in respect of MAGP representation of Bhanjibhai Jogal and Bharabhai Ghughal, in this case I had also received phone call from the RTI help line on 05/03/2011 evening and I had immediately responded and Mamlatdar, Upleta and PSI, Bhayavadar where inform to take immediate action against the Sarpanch of Dhank village, accordingly, on the same day the police complaint is lodged against the Sarpanch and sufficient protection is given to Bhanajibhai and Bharabhai. The District Development Officer, Rajkot is directed to take action against Sarpanch for allotting the Indira Awas Yojna, house, as he has committed to irregularity.

In view of the above you will be happy to know that I have responded to this case without loosing any time and we have take appropriate action.

Email : Collector-raj@gujarat.gov.in

R. N. Das
Chief Information Commissioner



Gujarat Information Commission
1st Floor, -360 001,
Bureau of Economics & Statistics Building
Sector-18
Gandhinagar-382018 (GUJARAT) INDIA

Date :

D.O.No. GIC-COMP-507/2010-11,
Dated March 19, 2011.

Dear

I thank you for your D.O.Letter No.PRO/RTI/PA/W.S./533-11 dated 14-3-2011 with reference to my letter dated 8-3-2011 regarding the complaint of Shri Bhanjibhai Jogal and Barabhai Ghughal.

I appreciate the prompt action taken by you in the matter.

With regards,

sd/-
(R. N. Das)

Shri H.S.Patel, IAS
Collector & District Magistrate,
Jilla Sevasadan,
Opp. Jamtower, Shroff Road,
Rajkot-360 001.

Copy with a copy of the D.O.letter of the Collector, Rajkot to:-

Ms. Pankti Jog,
Mahiti Adhikar Gujarat Pahel (MAGP)
B-3 Sahajanand Towers,
Jivaraj Park Cross Road,
Ahmedabad.

Rmny
(R. N. Das)

Annexure 3.6 Letter to DSP in Bharatbhai-Bhanjibhai's case

GUJARAT INFORMATION COMMISSION,
Bureau of Economics & Statistics Building,
1st Floor, Sector-18, Gandhinagar.

URGENT/MALE/RII MATTER.

No. GIC-Comp. 507/2010-11,
Dated the 8th March, 2011.

To
The District Superintendent of Police,
Rajkot (Rajst.)
At Rajkot, Dist. Rajkot.

Subject: Complaint dated 7-3-2011 received from
Shri Ghunghal Bharatbhai Madhavjibhai
& four others of Village-Dhank,
Taluka Upleta, District Rajkot.

I am directed to enclose herewith a copy of the above mentioned complaint received in the Commission. It appears that the complainant had sought and obtained certain information regarding implementation of the Indira Avas Yojana (IAY) in his village. It also appears that the information received by the complainant revealed, *en a facto*, some irregularities in the implementation of the IAY in the said village for which the complainant approached the State Vigilance Commission, which ordered an enquiry into the matter. As per the complaint the complainant and the four others had received threats from certain persons for which an F.I.R., it appears from a copy furnished with the complaint, has been filed in the Police Station on 5-3-2011.

Separately, the Commission has also brought the above mentioned matter to the attention of the Collector and district Magistrate, Rajkot dated 8-3-2011. (Copy enclosed for ready reference).

I am directed to request you to look into the complaint and take appropriate measures as per law and the rules and to inform the Commission.

Yours faithfully,


08-03-11
(K.S. Divan)
Deputy Secretary.


5-3-2011

R. N. Das
Chief Information Commissioner



Gujarat Information Commission

1st Floor,
Bureau of Economics & Statistics Building
Sector-18
Gandhinagar-382018 (GUJARAT) INDIA

Date :

D.O.NO. GIC/MAGP/2011-1

Dated February 17, 2011.

Dear

Please find enclosed herewith a letter dated nil received on 15.2.2011 from the Mahiti Adhikar Gujarat Pahel (MAGP) on the subject of difficulties being faced by the citizens regarding obtaining of information on P.D.S. in respect of Fair Price Shops.

2. It appears that in the particular application enclosed with the above mentioned letter, the applicant Shri Bhadresh Kumar B. Vamja sought information related to the APL quota of foodgrains and kerosene issued to the particular Fair Price Shop and alleged diversion of the APL quota by the Fair Price Shop Keeper, and that after the said application was made on 11.2.2011, the Vigilance Committee did make necessary enquiry but as stated in the said letter under reference, neither the details (names etc. and functions) of the Vigilance Committee were proactively disclosed at the village level/ Fair Price Shop level nor the stocks issued to the F.P. shops were proactively disclosed.
3. The Commission, in a number of its past decisions, has given directions to the concerned public authorities under your department for proactive disclosure of PDS related information under section 4 (1) (b) of the Right to Information Act not only in the office of the Mamlatdar at the taluka level but also at the village level.
4. A copy of the proactive disclosure material at the village level/F.P.S. level which was prepared during the Panchmahals district Abhiyan in active collaboration with the Panchmahals district administration, the civil society groups in particular, the Mahiti Adhikar Gujarat Pahel (MAGP); the Commonwealth Human Rights Initiative (CHRI), Panchmahals; and the ANANDI is enclosed herewith for your ready reference. The proactive disclosure material is in two parts. Part – I deals with critical information which is more or less static, and is required to be painted on the walls etc. While Part – II deals with substantial information which may be dynamic and is, therefore, required to be revised periodically.

5. I would request you to consider the above mentioned proactive disclosure material for its adoption and implementation by your department and to issue necessary administrative instructions to the District Supply Officers, Mamlatdars and the F.P. Shop Licensees. I would be grateful if the result of your consideration of the above mentioned proposal and a copy of the administrative instructions are sent to the Commission within one month.

With regards,

Yours

Encl: As above.

(R.N. Das)

Shri Raj Kumar
Secretary
Food, Civil Supplies and Consumer Affairs Department
Govt. of Gujarat
Sachivalya
Block No. 14, 6th Floor
Gandhinagar.

Copy forwarded with compliments to:

(1) Ms Pankti Jog
Mahiti Adhikar Gujarat Pahel (MAGP)
B-3, Sahajanand Towers
Jivraj Park Cross Road
Ahmedabad - 380 051.

(2) Shri Aslam Divan
President
Nagarik Adhikar Kendra
Pahel Sarvajani Trust
Jagatamba Society
Kalol
Dist: Panchmahals - 389 330

(3) Ms. Neeta Hardikar
ANANDI
Parekh Sheri
Devgadhi Baria
Dist: Dahod.

Rnu
13/2

ક્રમાંક-આરટીઆઈ-૧૦૨૦૧૦-૫૦-ક/૧
અન્ન નાગરિક પુરવઠા અને ગ્રા.બા.વિભાગ
૧૪, સરદાર ભવન, છઠ્ઠો માળ
સચિવાલય, ગાંધીનગર.

તા. 4 MAR 2011

પ્રતિ,
સચિવશ્રી,
ગુજરાત માહિતી આયોગ
અર્થશાસ્ત્ર અને આંકડાશાસ્ત્ર ભવન
પહેલો માળ, સેક્ટર-૧૮
ગાંધીનગર

7 MAR 2011

વિષય:-માહિતી આપવા બાબત

સંદર્ભ:-આયોગ ના તા.૧૭/૨/૧૧ ના પત્ર નં.D.O.No GIC/
MAGP/2011-1

શ્રીમાન,

ઉપર્યુક્ત વિષય તથા સંદર્ભ અન્વયે જણાવવાનું કે આયોગ ના
તા.૧૭/૨/૧૧ ના પત્ર માં આપેલ સુચના ગુજબ વિભાગ દ્વારા કરવામાં આવેલ
કાર્યવાહી ના પરિપત્ર ની નકલ આ સાથે જાણ માટે મોકલી આપવામાં આવે છે. જે
વિદિત થવા વિનંતી છે.

આપનો વિશ્વાસુ

(મુકેશ મોદી)

નાયબ સચિવ

અ.ના.પુ. અને ગ્રા.બા.વિભાગ
ગુજરાત સરકાર

લક્ષિત જાહેર વિતરણ વ્યવસ્થા હેઠળ
વ્યાજબી ભાવની દુકાનમાં રેશનકાર્ડ
ધારકો (લાભાર્થીઓની) જાણ માટે
માહિતી પ્રદર્શિત કરવા બાબત

ગુજરાત સરકાર
અન્ન નાગરિક પુરવઠા અને ગ્રાહકોની બાબતો નો વિભાગ
પરિપત્ર ક્રમાંક:આરટીઆઈ/૧૦૨૦૧૦/૫૦/ક-૧
સચિવાલય, ગાંધીનગર
તા.૪-૩-૨૦૧૧

પરિપત્ર

જાહેર વિતરણ વ્યવસ્થા અંતર્ગત એએવાય,બીપીએલઅને એપીએલ કેટેગરી ના લાભાર્થીઓને આવશ્યક ચીજ વસ્તુઓનો જથ્થો પંડિત દિન દયાલ ગ્રાહક ભંડારો મારફતે પુરો પાડવામાં આવે છે આ પુરો પાડવામાં આવતો જથ્થો સમયસર ન મળવા બાબતે,મળવાપાત્ર જથ્થો ન મળવા બાબતે તથા ગુણવત્તા બાબતે ફરિયાદો મળે છે આવી ફરિયાદો મહદઅંશે ઓછી થાય તે માટે પંડિત દિન દયાલ ગ્રાહક ભંડારો ખાતે નીચે મુજબ ની માહિતી લાભાર્થીઓ વાંચી શકે તે રીતે દુકાન ખાતે પ્રદર્શિત કરવા દરેક પંડિત દિન દયાલ ગ્રાહક ભંડાર ની દુકાન ના સંચાલક ને આથી નીચે મુજબ ની સુચના પરિપત્ર કરવામાં આવે છે.

૧. સસ્તા અનાજ ની દુકાનના સંચાલકો એ નીચે મુજબ માહિતી દર્શાવવાની રહેશે.

- લાયસન્સ ધારક નું નામ
- દુકાન સંચાલક નું નામ
- લાયસન્સ નંબર
- દુકાન ખોલવાનો સમય
- દુકાન બંધ કરવાનો સમય
- અઠવાડિયામાં કેટલા દિવસ દુકાન ખુલ્લી રહેશે
- લાયસન્સ ની નકલ
- સ્ટોક રજીસ્ટર

...૨...

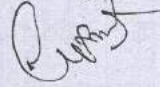
—૨—

- જુદી જુદી યોજના ના રેશનકાર્ડ ધારકો ની સંખ્યા
- ફરિયાદ રજીસ્ટર
- વિતરણ રજીસ્ટર
- દર માસે રેશનકાર્ડ ઉપર મળવાપાત્ર જથ્થો તથા તેના તમાવ ની માહિતી

૨. ઉપર્યુક્ત માહિતી દુકાનની બહાર સામાન્ય નાગરિકો અને ખાસ કરીને લાભાર્થીઓ જોઈ શકે તે રીતે જાહેરમાં રાખવાની રહેશે. જાહેર વિતરણ વ્યવસ્થા હેઠળ ના રેશનકાર્ડ ધારકોની સગવડતા માટે આ પ્રકારની માહિતી પ્રદર્શિત થાય તે જોવાની જવાબદારી જિલ્લા પુરવઠા અધિકારીશ્રી ઓની રહેશે.

૩. આ પરિપત્રનો અમલ પરિપત્રની તારીખથી કરવાનો રહેશે.

ગુજરાત રાજ્યપાલના હુકમથી અને તેમના નામે



(મુકેશ મોદી)

નાયબ સચિવ

અન્ન ના.પુ. અને ગ્રા.બા નો વિભાગ

નકલ રવાના:-

૧. સચિવશ્રી ના અંગત સચિવશ્રી, અ.ના.પુ. અને ગ્રા.બા. વિભાગ
૨. નિયામકશ્રી, અન્ન ના.પુ ની કચેરી, બ્લોક નં-૧૪, ૭મો માળ સચિવાલય, ગાંધીનગર
૩. અન્ન નાગરિક પુરવઠા નિયંત્રકશ્રી અમદાવાદ શહેર, આશ્રમરોડ, અમદાવાદ.
૪. સર્વે જિલ્લા પુરવઠા અધિકારીશ્રી ઓ,
૫. સીલેક્ટ ફાઈલ

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WRIT PETITION (PIL) No. 65 of 2012
With
CIVIL APPLICATION No. 5649 of 2012
In
WRIT PETITION (PIL) No. 65 of 2012
With
CIVIL APPLICATION No. 4790 of 2012
In
WRIT PETITION (PIL) No. 65 of 2012
With
CIVIL APPLICATION No. 6534 of 2012
In
WRIT PETITION (PIL) No. 65 of 2012

For Approval and Signature:

HONOURABLE THE CHIEF JUSTICE MR.BHASKAR BHATTACHARYA
HONOURABLE MR.JUSTICE J.B.PARDIWALA

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
- =====

JAGTERAHO - BRANCH OF SENIOR CITIZEN'S SERVICE TRUST -
PETITIONER

Versus

CHIEF SECRETARY GOVT. OF GUJARAT & 1 - RESPONDENT

=====

Appearance :

PARTY-IN-PERSON for PETITIONER : 1,
MR PK JANI, GOVERNMENT PLEADER for RESPONDENT : 1
MR KAMAL TRIVEDI, AG WITH MR SHIVANG M SHAH for RESPONDENT : 2

=====

**CORAM : HONOURABLE THE CHIEF JUSTICE MR. BHASKAR
BHATTACHARYA**

and

HONOURABLE MR. JUSTICE J. B. PARDIWALA

**Date : 14/08/2012
CAV JUDGMENT**

**(Per : HONOURABLE THE CHIEF JUSTICE MR. BHASKAR
BHATTACHARYA)**

1. By this Public Interest Litigation, the writ-petitioner has prayed for the following reliefs:-

- “a. Appoint within a period of two months seven Additional Information Commissioners; so as to have total staff of 10 Information Commissioners, including Chief Information Commissioner, in terms of sec. 15(2) of the Act.*
- b. Ensure that, in future necessary processing work is done in time so as to appoint new incumbent(s) on cession of the service period of the existing Commissioner(s).*
- c. To advertise for the post(s) of Information Commissioner(s), as and when necessary and appoint panel of election Committee for recommendation of candidates for appointment and select the candidates therefrom as per the provisions of the Act. And the whole process issuing advertisement to appointment of Information Commissioner should be completed in two month s time [Ref Para 4.12].*
- The Chief Information Commissioner [Gujarat] to –*
- d. Reintroduce earlier formats of information [which prevailed as on 31st December, 2011] providing up to date information about receipt and disposal of cases month and year wise.*

- e. *That the programme of one day camps of mass disposal of cases launched state wide being ultra vires of law is illegal and hence cases if any disposed off in such camps be re-examined as per the provisions of RTI Act, 2005.*
- f. *Take strict actions in terms of section 20 of the Act regarding "penalty" [Ref. Para 4.13[IV][A] and [B].*
- g. *Personally reimburse the expenses incurred for illegally launching state wide camps for disposal of long pending cases.*
- h. *Introduce hearing procedure through video conference."*

2. The case made out by the writ-petitioner may be summarized thus:-

2.1 The preamble of the Right To Information Act, 2005 ["the Act is enacted to promote transparency and accountability in the working of every public authority.

2.2 To file any complaint, it is essential to have full information and for that matter, the usage of the Act is required to be made vibrant. However, either on account of non-filling up of the vacancies of Chief Information Commissioner and/or Additional Commissioners, the proceeding under the Act has slowed down or almost stalled, with the result that the citizens continue to suffer on account of on-going corruption and consequently, corrupt people become fearless.

2.3 Therefore, it is necessary to have not only adequate posts of Information Commissioners but also to see that the posts do not remain vacant.

2.4 However, with the recent appointment of new Chief Information Commissioner, he has introduced such changes that whatsoever information was made available through the website to the public at large has been withdrawn. Earlier, on the website of the Commission, the information about the receipt, disposal and pending cases of appeals and complaints was available but the said formats earlier used have been withdrawn. Introduction of the new formats hardly gives any information which was earlier available.

2.5 The Commission has stopped giving up to date position of the pending number of cases. The Central Information Commission on its website displays details about the pending cases so as to make the appellant know about the status of his appeal. Gujarat Information Commission's website does not give the information and also does not acknowledge or give token number of the appeals.

2.6 Recently, the Commission has issued Circular/letters to the Government Departments informing them that it proposes to arrange number of camps on different dates at difference places, when at a time, 200 appellants or the complainants would be called, to dispose of the appeals or the complaints.

2.7 The camps organized for mass disposal of RTI appeals and complaints not only make mockery of the RTI Act but are also in

violation of the provisions of the Act and the Rules framed thereunder. There is no provision which permits such mass disposal of cases. The Chief Information Commissioner has no such power to introduce the procedure beyond the one laid down for disposal of appeals and complaints under the Act including what is stated in Section 18[3 of the Act.

2.8 The Chief Information Commissioner is required to function as a Court and not like an IAS bureaucrat running the State Departments for the innovative programme introduced by the fertile mind of the Chief Information Commissioner [“CIC .

2.9 The Government of Gujarat is bent upon to see that it employs every trick to see that the information which can be sought under the Act is hardly made available to the citizens in reasonable time. With the introduction of the Act, States like U.P., Maharashtra and Punjab initially appointed 11, 6 and 9 Information Commissioners respectively whereas the Government of Gujarat appointed only 1 Chief Information Commissioner. Similarly, only in 2009, when one late Amit Jethwa, an RTI activist who was murdered opposite the gate of the Gujarat High Court filed a PIL, the government appointed two Additional Information Commissioners. In the year 2011, the post of Chief Information Commissioner remained vacant for five months and also that of Additional Information Commissioner for two months, with the result, the Commission was working with one sole

Information Commissioner for months together and only after filing of a writ-petition by the present petitioner, the government filled up those two vacancies.

2.10 The Right to Information activists from across the State are frustrated because of highly unsatisfactory performance of the Commission on account of meager disposal of cases, obviously because of inadequate number of posts and unfilled vacancies for months together, despite huge arrears of work. As a result, the appeals remain undisposed of for more than five years.

2.11 As on December 2011, over 8000 cases were pending and in subsequent three months, the Commission must have received additional cases. No data except disposal of 127 cases in January 2012 and 107 cases in February 2012 is available on the website of the Commission. This makes it clear that position of arrears of cases must have far increased. The petitioner has sought up to date position *vide* RTI application dated March 5, 2012 but the information is awaited.

3. This application is opposed by the State-respondents by filing affidavit and the defence of the State-respondents may be summed up thus:-

3.1 In the past, the petitioner filed another Public Interest Litigation

being No. 118 of 2011 and the same was disposed of by directing the State Government to take into consideration the number of pending appeals and other complaints after the period of four months from that date and to take a decision as to whether there was any necessity of appointing Additional Information Commissioner having regard to the number of pending appeals and other complaints after the expiry of four months from that date.

3.2 The State Government is of the opinion that no Additional Information Commissioners are required to be appointed as presently three Commissioners are working in full swing.

3.3 Over and above, the establishment and creation of the post in question is long-drawn procedure and for appointing persons at such important position, a detailed scrutiny is required to be undertaken. Necessary budgetary allocations are also required to be planned and made and considering the number of matters pending, the State Government is of the considered view that at present three officers are sufficient to deal with the pending cases.

3.4 The writ-petitioner has no *locus standi* to question the decision of the State Government which is administrative in nature and therefore, the application is liable to be dismissed.

3.5 This Court, *vide* its order dated May 3, 2012 directed the

respondents to file an affidavit disclosing therein whether the information published in the newspaper "Gujarat Samachar" that the respondent no.2 was disposing of the matters by way of Lok Adalats, was correct or not and if it was correct, to disclose the provision of the Act under which such recourse was taken.

3.6 Pursuant to such direction, the respondent no.2 affirmed the affidavit stating therein that under the programme of special drive, no hearing of Second Appeals was made but on the basis of the reports received in certain number of cases, the Commission took decisions in the pending appeals and complaints. According to the said affidavit, the programme was arranged to arrive at voluntary settlement of appeals or complaints through the medium of dialogues between the applicants and the concerned officers. Further, the idea is to have dialogues between the parties concerned so as to have voluntary settlement of the appeals or complaints. It is further contended that if the parties did not agree to arrive at a settlement, no matter was disposed of on the basis of such special drive.

3.7 The petitioner, by filing further application, prayed for a direction upon the State-respondent to take strict action in terms of Section 20 of the Act regarding penalty.

4. Mr. Praful Desai, the President of the petitioner, appearing in person has strenuously contended before us that having regard to

number of pending cases and appeals, this Court should immediately pass a direction for making appointment of at least 10 Information Officers, the maximum number created by the Statute. According to Mr. Desai, otherwise, it would take huge amount of time for disposal of the cases.

5. Mr. P.K. Jani, learned Government Pleader, appearing with Mr. Rashesh Rindani, learned AGP on behalf of the State-respondent and Mr. Kamal B. Trivedi, learned Advocate General appearing with Mr. Shivang M. Shah, appearing on behalf of the respondent no.2-Commission have, on the other hand, opposed the aforesaid contention of Mr. Desai and submitted that the pendency of the matters arose in view of the vacant position of the officers for few months. According to them, since all the three officers have now been appointed, the pending matters would be disposed of within a short period of time. According to the learned Advocate General, out of 1047 applications received during the period between March 2012 and May 2012, 539 applications were disposed of already at the stage of admission by exparte order; in 158 cases, the applications concerned were not found fit for admission for want of necessary papers and the details and documents had been asked for. Number of applications admitted for detailed hearing by the Commission was only 296 and thus, all the complaints and appeals will be heard out within two to three months from the date of the admission. According to the learned counsel for the respondents, there is no necessity of

appointing any or creation of further post of Information Officers.

5.1 Mr. Jani, learned Government Pleader further submits that this Court, sitting in jurisdiction under Article 226 of the Constitution of India cannot pass any direction for creation of post which is within the exclusive domain of the Executives and thus, the prayer made in this application cannot be entertained by this Court.

5.2 In support of his contention, Mr. Jani relied upon the decision of the Supreme Court in the case of ***Divisional Manager, Aravali Golf Club and Another v. Chander Hass and Another, reported in [2008] 1 SCC 683*** and another decision in the case of ***Official Liquidator v. Da anand and Others, reported in [2008] 10 SCC 1***.

6. Therefore, the questions that arise for determination in this application is whether having regard to number of pending cases, this Court can pass any direction for creation of new posts and whether the matter under the Act can be disposed of by way of special drive camp.

7. After hearing the petitioner-in-person and the learned counsel for the respondents and after going through the affidavit filed by the respondents, we find that by way of special drive, no matter is disposed of if the applicant is not agreeable for disposal of his

matter in that fashion. Only those matters where the applicants or appellants agreed for settlement of dispute or were satisfied by the information supplied, were disposed of; otherwise, if the applicants or the appellants did not want disposal of their matters by way of special drive, their matters were referred back to the concerned officer.

8. Therefore, we do not find that by special drive complained of in the application, the State-respondent has committed any act in violation of the Act or the Rules framed thereunder.

9. The next question is whether this Court can pass any direction in a writ-application for creation of further posts within the scope of RTI Act.

10. According to Section 15[2] of the Act, the State Information Commission shall consist of the State Chief Information Commissioner and such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

11. Therefore, the maximum number of State Information Commissioner fixed by the Act is eleven including the Chief Information Commissioner but no minimum number is specified and it is for the respondent authority to decide that number in accordance with the number of pending cases.

12. We do not find any substance in the contention of Mr. Jani, the learned Government Pleader, appearing on behalf of the State respondent that a citizen, who is conferred certain benefit by the the legislature by virtue of creation of a legislation, has no right to complain before a judicial forum that the Executives are not taking appropriate action for implementation of the said statutory provision. The legislature itself has specified that for enforcement of right under the Right to Information Act, 2005, the posts of Additional Information Commissioner including the Chief Information Commissioner can be appointed depending upon the deemed necessity.

13. Therefore, if it appears that the Executives have not taken any step to appoint sufficient number of Additional Information Commissioners for the purpose of giving effect to the intention of the legislature, or if it appears that insufficient number of Additional Information Commissioner has been appointed, by which it is impossible to give effect to the desire of the legislature, a beneficiary under the statute can definitely complain before a writ-court complaining inaction on the part of the Executives.

14. The decision in the case of a Divisional Manager, Aravali Golf Club & Anr. V Chand [supra] relied upon by Mr. Jani, dealt with creation and sanction of a post in the Golf Club run by Haryana Tourism Corporation. In such facts, the Supreme Court held that the Court cannot direct creation of post, as creation and sanction of post

is a prerogative of the Executive or legislative authorities.

15. In the case before us, the legislative authority has already enacted a provision in the statute authorizing creation and sanction the posts not exceeding 11. Such being the position, if in a given circumstance, it appears that total number of three posts of Information Commissioner including Chief Information Commissioner is not sufficient to dispose of the number of pending cases within a near future and for not appointing further Commissioners, the purpose of the Act is frustrated, this Court, in exercise of power under Article 226 of the Constitution of India can definitely pass appropriate order.

16. Similarly, in the case of **Official Liquidator v. Da anand and Ors., reported in [2008] 10 SCC 1**, a three-judge-bench of the Supreme Court held that a writ court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts should be created or filled up by a particular mode of recruitment. According to the said decision, the power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or vitiated by mala fides. Therefore, in a situation, if it appears that the legislative intention behind the enactment of the statutory provision contained in the Right to Information Act, 2005 cannot be given effect to by insufficient number

of Information Commissioners, a beneficiary under the statute has right to move a writ court for appropriate remedy.

17. We, therefore, propose to consider whether having regard to the number of pending cases and the rate of disposal, the existing three Information Commissioners including Chief Information Commissioner, are sufficient to give effect to the purpose of the Act.

18. It appears from the materials on record that in the months of March, April and May, 2012, total number of matters disposed of by three officials is 456, 703 and 625 respectively. We are further told that during the course of the hearing in the month of June, 2012, 820 matters have been disposed. Thus, the mean rate of disposal in the last four months with the existing officials is $456 + 703 + 625 + 820 = 2604/4 = 651$. It further appears from the affidavit dated March 23, 2012 filed by the Deputy Secretary, General Administration Department, Sachivalaya that on March 1, 2012, total number of 10060 appeals and complaints were pending whereas the said number, at the end of November, 2011 was 8729. Therefore, in the course of three months, namely, December, 2011, January, 2012 and February, 2012, the number has been increased by 1331. It appears from the Chart supplied to us that number of appeals and complaints received during the year 2011 was as follows:

Month of 2011	Number of appeals and complaints received:
January	345
February	321
March	402
April	353
May	398
June	459
July	377
August	350
September	447
October	243
November	377
December	386

Thus, total number of complaints and appeals received comes to 4458. If we divide the number by 12, average monthly filing comes to 371.5. For the disposal of 10060 matters at the rate of 651 a month it will take $10060 \div 651 =$ about 16 months and in the next 16 months, $371 \times 16 = 5936$ new cases will be accumulated and it will take further 9 months to dispose of those 5936 cases. Similarly, in the next 9 months further $371 \times 9 = 3339$ cases will be filed and it will take further 5 months to dispose of those cases. Thus, the position would be normal after about 3 years.

19. Having regard to the time limit fixed by the legislature for disposal of request as provided in Section 7 of the Act which is thirty

days from the date of receipt of the request, in our opinion, the appeal against refusal or wrong information cannot be kept pending for more than that period of time. If an applicant seeking information gets the desired information by preferring an appeal after the period of even three months, in most of the cases, the purpose of information will become frustrated.

20. We, therefore, find that in the facts of the present case, at least two Additional Information Commissioners should be appointed temporarily in order to give effect to the the purpose of the Act.

21. So far as the other question raised in this application as to making provision of penalty compulsory is concerned, we find that under Section 20 of the Act, power has been conferred upon the State Information Commission at the time of deciding any complaint or appeal, to impose a penalty of two hundred and fifty rupees each day till the application is received or information is furnished, subject to the condition that the total amount of such penalty shall not exceed twenty-five thousand rupees, if the State Information Commission is of the opinion that the State Public Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section [1 of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed the information which was the

subject of the request or obstructed in any manner in furnishing the information.

22. Therefore, the legislature has vested the power with the State Information Commissioner to decide whether a case comes within the purview of Section 20 justifying grant of penalty. What is a reasonable cause is to be decided by the concerned Information Commissioner. In such a situation, this Court cannot pass any direction for imposing the penalty mandatory by ignoring the plea of reasonable cause that may be taken.

23. We, therefore, find that the aforesaid prayer on the question of penalty is not tenable in the eye of law.

24. On consideration of the entire materials on record, we, thus, dispose of the writ application by directing the State respondent to immediately appoint two Additional Information Commissioners and to continue with such additional posts so long as the pendency of the appeals is not reduced to such a state that those can be disposed of within two months of its filing, if not earlier.

25. The writ-application is thus disposed of with the above direction to be complied with within two months from today.

26. In view of the above order passed in the main writ-application, the respective Civil Applications do not survive and are disposed of accordingly.

[BHASKAR BHATTACHARYA, C.J.]

[J.B.PAR

WALA, J.]

pirzada/-



Annexure 4.1 Order by first appellate authority in Michael Martin's case

માહિતી મેળવવાના અધિકાર અધિનિયમ-૨૦૦૫ ના નિયમ-૬ (૧) હેઠળ અપિલ આદેશ.

અરજદાર :- શ્રી માયકલ માર્ટીન ૦૧૮-કાવેરી પ્લાઝા, સરદાર પટેલ ભવન સામે, નડીયાદ. -૩૮૭૦૦૧.

જાહેર માહિતી અધિકારી :- જાહેર માહિતી અધિકારી અને મેડીકલ ઓફીસરશ્રી, પ્રા.આ.કે.રોહીણી તા. ખંભાત. જી.આણંદ.

અરજદાર શ્રી માયકલ માર્ટીન ૦૧૮-કાવેરી પ્લાઝા, સરદાર પટેલ ભવન સામે, નડીયાદ ની માહિતી મેળવવાના અધિકાર અધિનિયમ-૨૦૦૫ હેઠળની તા.૨૦-૧-૨૦૧૦ ની અરજી તા. ૪-૧-૨૦૧૧ ના રોજ જાહેર માહિતી અધિકારી અને મેડીકલ ઓફીસરશ્રી, પ્રા.આ.કે.રોહીણીને રૂબરૂમાં આપેલ છે. જે તા. ૩૦-૧-૧૧ થી તા. ૪-૨-૧૧ સુધી કોઈ પ્રત્યુત્તર ન મળવાથી જાહેર માહિતી અધિકારી અને મેડીકલ ઓફીસરશ્રી રોહીણીથી નારાજ થઈ શ્રી માયકલ માર્ટીને તા. ૧૭-૩-૨૦૧૧ ની પ્રથમ અપીલ તા. ૧૮-૩-૨૦૧૧ ના રોજ અગ્રેની કચેરીએ રજુ કરેલ છે.

જે સંબંધે પ્રથમ અપીલની સુનાવણી તા. ૭-૪-૧૧ ના રોજ બપોરના ૨.૩૦ કલાકે અગ્રેની કચેરીમાં અપીલ અધિકારીએ અને મુખ્ય જીલ્લા આરોગ્ય અધિકારી, જી.પં.આણંદની સમક્ષ અરજદાર શ્રી માર્ટીન તથા જાહેર માહિતી અધિકારી અને મેડીકલ ઓફીસરશ્રી, પ્રા.આ.કે.રોહીણીને રૂબરૂ હાજર રહેવા તા. ૨૮-૩-૧૧ ના પત્રથી જાણ કરેલ હતો. તેથી જાહેર માહિતી અધિકારી પ્રા.આ.કે.રોહીણી અને અપીલ કરનાર અરજદારશ્રી માર્ટીન આજ રોજ તા. ૭-૪-૨૦૧૧ સમય બપોરના ૨.૩૦ કલાકે સુનાવણીમાં હાજર રહેલ છે. અને રૂબરૂમાં સાંભળી રાજકામ કરવામાં આવેલ છે. જે ધ્યાને લઈ નીચે મુજબ હુકમ કરવામાં આવે છે.

- ૪૭૪ : (૧) અરજદારશ્રી માર્ટીને તા. ૨૦-૧૨-૧૦ ની અરજી તા. ૪-૨-૧૧ ના રોજ જાહેર માહિતી અધિકારી અને મેડીકલ ઓફીસરશ્રી, રોહીણીને રૂબરૂ આપેલ છે.
- (૨) પરંતુ સદર અરજીમાં આર.ટી.આઈ.૨૦૦૫ ના નિયમોનુસાર રૂ. ૨૦/- નો સ્ટેમ્પ કે જરૂરી ફી ભરેલ નથી.
- (૩) જેથી હવે રૂ.૨૦/- ની ફી સાથેની આર.ટી.આઈ.હેઠળની અરજી મેડીકલ ઓફીસરશ્રી પ્રા.આ.કે.રોહીણીને આપવી અને અરજી આપ્યા બાદ દિન. ૧૫ માં મેડીકલ ઓફીસરશ્રીએ તારીખ આપવી.
- (૪) કાળજીપૂર્વક વિચારણાને અંતે મેડીકલ ઓફીસરશ્રી તથા અરજદારશ્રી વચ્ચે સ્થળ અને તારીખની પરામર્શ કરતા દિન. ૫ માં અરજદારે ટુની અરજીની ઝેરોક્ષ નકલ ઉપર રૂ. ૨૦/- ની જરૂરી પોતાનો સ્ટેમ્પ લગાવી મેડીકલ ઓફીસરશ્રી રોહીણીને પહોંચાડવી અને તા. ૨૦-૪-૨૦૧૧ ના રોજ અરજદારશ્રીને મેડીકલ ઓફીસરશ્રીએ આર.ટી.આઈ. ગિયન હેડળ રેકર્ડ તપાસણી કરવા તથા જરૂરી નકલો આપવા આથી હુકમ કરવામાં આવે છે.
- હુકમ આજ તારીખ ૮-૪-૨૦૧૧ મના રોજ અમારી સહીથી ઈસ્યુ કરવામાં આવે છે.

જા.નં. આરો. મહે. ૧/અપીલઆદેશ/વશી/૩૮૮
આરોગ્ય શાખા, જીલ્લા પંચાયત કચેરી,
આણંદ. તારીખ : ૮-૪-૨૦૧૧.

(ડૉ. એસ.બી.શાહ)
અપિલ અધિકારી
અને

મુખ્ય જીલ્લા આરોગ્ય અધિકારી
જીલ્લા પંચાયત આણંદ.

પ્રતિ,

જાહેર માહિતી અધિકારી અને મેડીકલ ઓફીસરશ્રી, પ્રાથમિક આરોગ્ય કેન્દ્ર રોહીણી તા.ખંભાત તરફ.
જાણ તથા અમલવારી સારું.

નકલ રવાના :- શ્રી માયકલ માર્ટીન ૦૧૮-કાવેરી પ્લાઝા, સરદાર પટેલ ભવન સામે, નડીયાદ. -૩૮૭૦૦૧. જી.ખંભાત તરફ.