

News on Right to Information

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2nd November, 2010

Promoters had eyes on another Colaba plot

The Times of India

MUMBAI: The controversial Adarsh Cooperative Housing Society (ACHS) had plans to undertake another residential project. It had even approached the Maharashtra government for allotment of a 7,500 sq m plot situated near the Spastic Society of India in Colaba.

ACHS had applied to the Maharashtra Coastal Zone Management Authority (MCZMA) in November 2007 and the state revenue ministry in December 2007 for the allotment of the second plot.

TOI has documents related to the applications by ACHS to both the authorities. The documents were procured under the Right to Information (RTI) Act. ACHS had proposed to develop the plot to build cheap houses for the "weaker sections, defence personnel and other deserving classes".

MCZMA's permission was necessary as the plot is in the CRZ-I belt. It's a foreshore land on the seaward side of residential development area.

In a letter dated November 2007 to the MCZMA chairman, the society requested the state government to redraw the high tide line (HTL) to clear the project from the "CRZ point of view". HTL is the line of intersection of the land with the water surface

at the time of high tide. Restrictions are imposed on development activity within 500m of the HTL. Minimal construction activity is permitted in these parts.

This plot was located close to the high tide line, where no construction activity is usually permissible. Arguing that there were at least two other buildings which had previously been permitted to be set up right next to the HTL, Adarsh promoters requested processing of their proposal and even urged the state government to modify the HTL to override CRZ concerns.

In another letter to revenue minister Narayan Rane on December 3, 2007, ACHS requested the plot's allotment by arguing that the site was free from mangroves and that development (construction activity) had been permitted in its vicinity.

Following the controversy, Sharma has now offered to surrender her flat.

3rd November, 2010

PM hails Sonia, says govt focused on aam admi

NEW DELHI: Prime Minister Manmohan Singh on Tuesday sought to defend his government's record on inclusive growth saying all policy initiatives were centred around the common man and were intended to reach every section of society.

While the PM's address had been prepared before hand, his elaboration of welfare programmes might have in part anticipated Congress chief Sonia Gandhi's criticism of the government's inability to tame inflation and the hardship this was causing to ordinary citizens.

After congratulating Sonia on her election as party president and crediting the electoral wins in 2004 and 2009 to her, Singh said care needed to be taken to ensure that benefits of higher growth went to the poor, dalits and tribals. He then included women, minorities and children in this category.

The PM said the government had provided employment through the Mahatma Gandhi National Rural Employment Guarantee Act and launched Bharat Nirman to upgrade the basic infrastructure of rural India. The Right To Education was a big plus for the nation's children. The Right To Information law made government more accountable while special programmes for minorities helped disadvantaged sections.

The PM ended by pointing to Sonia's "rehnumai (guidance)" under which the government was able to frame its programmes.

<http://timesofindia.indiatimes.com/india/PM-hails-Sonia-says-govt-focused-on-aam-admi/articleshow/6861142.cms>

4th November, 2010

Delhi HC charges Rs 50 for RTI info; Govt rate: Rs 10

The Hindustan Times

Despite the Central Information Commissioner's advice against it, the Delhi High Court continues to charge Rs 50 as fees for applications under the Right to Information (RTI) Act. The regular fee for seeking information under the RTI Act at all offices under the Government of India is Rs 10.

Activist Gopal Prasad recently sought certain information from the Delhi High Court and deposited R 10 fees as he does in other offices.

He was asked by the court's assistant public information officer to deposit the remaining Rs 40.

Prasad said, "How can one agency charge amount higher than the rest? Not just government of India offices, even the Supreme Court of India charges R 10 as application fees under the RTI Act."

"The man at the counter told me that the earlier rate was Rs 500, which was later brought down to R 50 after public pressure."

As per the RTI Act, the central government, state governments and the competent authorities as defined in section 2 (e) are vested with powers to make rules — regarding appeals, fees, etc., — to carry out the provisions of the RTI Act 2005 (section 27 and section 28).

Earlier RTI activist Subhash Agrawal, too, had raised the issue.

"I have been asking for repeal of Section 27 and section 28 of the RTI Act, which are being grossly misused by several public authorities and state governments to frame their own rules. These are at times in contradiction to even provisions of RTI Act itself. The authorities should follow 'One India One Rule' for RTI Act."

Chief information commissioner AN Tiwari told Hindustan Times, "We had advised the Delhi High Court that their rules should be brought on par with the government of India rules (for RTI Act). But theoretically they are competent to charge fees whatever they want under the rules to be framed by competent authorities."

Delhi high court registrar Rakesh Kapur said, "I am not aware of this and I will have to check the exact reasons for it (charging higher rates for getting information)."

8th November, 2010

Case against railways for denying info

The Daily News Analysis

Indian People's Right for Information & Democracy (Indian Pride), a group of RTI activists based in West Bengal, last week complained to the office of the chief information commissioner (CIC) accusing the railways of refusing to divulge crucial information about alleged financial irregularities in the department.

According to its secretary Dipti Patra, the group had sought the audit report of south eastern railways (SER) in July 2010. "In August, we were asked to pay a fee of Rs6,724 under a particular head of the Union government, which does not exist," Patra said.

Patra pointed out that the office denied having any soft copy of the audit report, which was unbelievable. Pride then made a second application in the name of a below poverty line (BPL) member, but still did not get the information on time.

"They must give information within a month. The deadline was October 15, but there is still no answer. So we decided to take the legal course by filing a complaint to the office of CIC," Patra added.

9th November, 2010

Obama conveys concern to Sonia over liability Act

The Hindu

United States President Barack Obama expressed concern over the impact of India's Nuclear Liability Act when the Congress president and the United Progressive Alliance (UPA) chairperson, Sonia Gandhi, called on him on Monday evening.

Congress sources told *TheHindu* that Mr. Obama appeared a "little worried" about certain provisions in the Act that seems to have dampened the enthusiasm of the U.S. nuclear companies to participate in India's ambitious civil nuclear energy programme.

They also discussed social issues during the half-hour conversation, with the focus on the string of existing and proposed laws that are creating a rights-based legal framework for Indian citizens, aimed at creating a more equitable society, the sources said.

Ms. Gandhi, who arrived at the ITC Maurya in the Capital to meet President Obama, was accompanied by Finance Minister Pranab Mukherjee, Minister of Commerce and Industry Anand Sharma and Chairperson of the Congress' Foreign Affairs Department Karan Singh. Assisting the U.S. President were National Security Adviser Tom Donilon and Ambassador to India, Timothy Roemer.

Interactive and friendly

The meeting was "interactive and friendly," and covered a "range of issues", according to the Congress sources, who added that "The Right to Information Act, the Right to Education Act, the proposed Right to Food Act and [India's experience with] poverty alleviation [schemes] were discussed in the meeting." President Obama said that he was happy with his visit so far and "impressed" by the way India was developing, especially in the area of education, the sources said.

Ms. Gandhi, as is her wont, allowed all her colleagues to participate fully in the conversation.

This was the second interaction Ms. Gandhi and Mr. Mukherjee had with Mr. Obama on this visit — they were seated at the same table at the dinner hosted by Prime Minister Manmohan Singh in honour of the U.S. President and First Lady Michelle Obama at his residence on Race Course Road on Sunday night.

10th November, 2010

Official violated law for Adarsh project, RTI activist complains to ACB

The Hindu

Right to Information (RTI) activist Santosh Daundkar on Tuesday gave a written complaint to the Maharashtra Anti-Corruption Bureau (ACB) against State Information Commissioner Ramanand Tiwari in connection with the Adarsh Housing Society scam.

Mr. Daundkar has requested the ACB to register an FIR against Mr. Tiwari, former Principal Secretary, Urban Development; MLC Kanhaiyalal Gidwani and R.C. Thakur, chief promoter of Adarsh, for violations for law.

In his complaint, supported by annexures of official letters and notifications, Mr. Daundkar has alleged that Mr. Tiwari transferred the floor space index (FSI) of a nearby bus depot to Adarsh, in violation of the Maharashtra Regional Town Planning (MRTP) Act, 1966.

'Son got a flat'

Also, Mr. Tiwari served as Principal Secretary of the Urban Development department for six years and three months, flouting the stipulation of three years. His son, Onkar Tiwari, got a flat in the building despite his being a non-government employee and earning more than the prescribed income limit of Rs. 12,500 for a house in Adarsh, the complaint said.

Reservation deleted

According to a copy of the location plan furnished by Mr. Daundkar, a plot of 2,669 square metres, next to Adarsh, had been reserved for the Brihanmumbai Electric Supply and Transport Undertaking (BEST). But Mr. Tiwari "fraudulently invoked" powers under Section 50 of the MRTP Act, to get the BEST reservation deleted, the complaint says.

This Section states reservation of land can be “deleted” provided the authority “makes such inquiry as it may consider necessary and satisfies itself that such reservation or designation or allocation is no longer necessary in the public interest.” Following Adarsh's request for additional FSI from the BEST plot, the government sought the opinion of BEST. A letter bearing the approval signature of Swadheen Kshatriya, then general manager of BEST, allowed the government to take a “suitable decision” provided an access road running through the plot was left untouched and BEST's interest “kept unaffected.”

But, according to Mr. Daundkar's complaint, this cannot be construed as “an NOC for dereservation.” The government has to conduct an inquiry under Section 50.

However, the government, in a March 3, 2006 notification, stated: “BEST has informed Government that they have no objection to its taking any decision regarding the said reservation with the condition that that approach road shall be kept open...Now therefore, Govt. find it necessary to delete the said land from the said reservation...”

The complaint also underlines violation of the provisions of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005. The Act lays down a tenure of three years for “all India service officers.” Mr. Tiwari, however, “remained as Principal Secretary of the Urban Development Department from February 26, 2002 to May 16, 2008, the complaint states.

As for Onkar getting a house in Adarsh, Mr. Daundkar's has alleged that his occupation was merely categorised under “service” to camouflage the fact of his employment in the private sector and therefore a higher income.

With respect to “pecuniary favours” accorded to Adarsh, Mr. Daundkar has asked the ACB to register a case under the IPC Sections 120 (b) for criminal conspiracy, 420 for cheating, 467 and 471 for creating and using fabricated documents, and Section 13 (1) (d) of the Prevention of Corruption Act pertaining criminal misconduct by a public servant.

16th November, 2010

Revisit your disclosure policy: CIC to RBI

The Indian Express

New Delhi: The Reserve Bank of India (RBI) has been asked to revisit its policy on disclosure of various reports, including inspection reports, based on which it takes decisions pertaining to the financial health of the various banks in the country, to the public at large under the Right to Information Act. A decision to this effect came from the Central Information Commission on Thursday which asked the country's apex bank to "revisit" its policy on disclosure of inspection reports.

Satyananda Mishra, the information commissioner deciding an appeal against the RBI, observed, "In the post-RTI Act times when every public action by public authorities is expected to be informed by transparency, to claim complete secrecy in matter of inspection reports of financial institutions and banks and not to share anything with the public is, to say the least, untenable."

Disapproving the stance taken by the RBI in not furnishing the information sought by one Madhav Balwant Karmarkar, a Pune resident, the Commission ordered the CPIO "to bring this to the notice of the authorities in the RBI for taking appropriate action by revisiting their policy."

16th November, 2010

Committed to transparency, says govt after Tata's comments

The Business Standard

Press Trust of India / New Delhi November 16, 2010, 15:33 IST

A day after Tata Group Chairman Ratan Tata's stated he was not comfortable with bribing for getting into airline business years ago, the government today assured it was committed to transparency in any project.

"We need more transparency. I think the government is committed to that," Heavy Industries and Public Enterprises Minister Vilasrao Deshmukh said when asked about Tata's comments.

Emphasising the use of Right to Information Act, Deshmukh said one gets any information through RTI on anything that goes wrong.

Yesterday, Tata had stated in Dehradun that he did not enter the airline business as he was not comfortable with the idea of bribing Rs 15 crore to a minister, as had been suggested by an industrialist.

On the occasion, Deshmukh conferred the Maharatna certificates to ONGC, NTPC, IOC and SAIL and Navaratna certificates to RINL and Oil India.

The government had announced conferring Maharatna status that provides greater financial autonomy to the four PSUs in December last year.

Deshmukh said, four Maharatna CPSEs achieved turnover of about Rs 4 lakh crore with a net profit of around Rs 42,000 crore in 2009-10.

This is 25 per cent more than their net profit for the previous year.

Talking about disinvestment, the minister said, "We have requested all the (profit-making) companies that they should be listed on the stock exchanges.

"Unless and until they list themselves on exchanges, they (PSUs) cannot be in the competition", he said.

Referring to the huge response to the recent initial public offers of Coal India and Power Grid Corporation of India, Deshmukh said, it reinforces the market strength of the CPSEs.

PSUs are increasingly showing their mettle on the stock exchanges also, the minister said.

On Oct 31, the market capitalisation of listed CPSEs, excluding the figures of CIL, was about Rs 14.85 lakh crore which was around 22 per cent of the total market capitalisation on BSE.

The government is expected to dilute its stake in four more PSUs, Steel Authority of India Ltd, Hindustan Copper, Manganese Ore India Ltd and Shipping Corporation of India by the end of the fiscal 2010-11.

It has targetted to raise Rs 40,000 crore through disinvestment in PSUs this fiscal.

The Centre and has already mopped up nearly Rs 25,000 crore from divestment in Satluj Jal Vidyut Nigam, Coal India, PowerGrid and Engineers India in the current fiscal.

There are 246 PSUs in the Central sector as on March 2009.

Meanwhile, Commerce and Industry Minister Anand Sharma said government will take strongest possible action on any issue of corruption brought to its notice.

"... This government and I myself will not hesitate to take the strongest action under the law if anything is brought to my attention," Sharma said here when asked about Tata's disclosure.

Tata group, one of the biggest corporate houses in the country, has presence in number of sectors spanning from automobiles to steel to software to consumer

goods.

"I have high respect for Ratan Tata because of his stature and his contribution", the minister said.

"Let me make it clear that this government is led by Prime Minister Manmohan Singh, a man of intellect and integrity.

"As India's commerce and industry minister, I can firmly make a statement that I not only believe in, but am firmly committed to the institution of integrity, transparency and dignity."

Recalling how he had spurned the bribery suggestion by a fellow industrialist, Tata yesterday had said in Dehradun: "We approached three Prime Ministers also. But an individual thwarted our efforts to form the airlines."

He, however, did not name the individual.

Amid Tatas' efforts to set up a joint venture with Singapore Airlines, a fellow industrialist had said: "You are stupid people. The Minister was asking for Rs 15 crore. Why didn't you pay the money?"

Narrating the incident, Tata said, "I did not want to go to the bed knowing well that I set up an airlines by paying Rs 15 crore."

Ratan Tata's predecessor, JRD Tata, had set up the first commercial airlines of India 'Tata Airlines' in the 1930s and that was later in the 1950s taken over by the Government and turned into Air India.

After taking over the reins of the group, Ratan Tata had tried at least on three occasion to pursue the aviation business in 1995, 1997 and 2001.

19th November, 2010

DDA assures housing scheme-2010 will be scam free

**Checks and balances have been put in place for the scheme to be launched on
November 25**

Governance Now – magazine

The Delhi Development Authority (DDA) claims to have learnt lessons from the housing scam 2008. To make sure that the allotment of flats does not get rigged this time, DDA has made some changes in the process of allotting flats under its housing scheme 2010 which will be launched on 25th of this month.

“Checks and balances have been put in place this time. We hope that nothing unlawful happens this time,” said Neemo Dhar, spokesperson, DDA. To minimize chances of corruption, the applicants will have to prove that the money deposited with the DDA is from their own bank accounts. “The idea is to avoid proxy applicants, who created trouble last time,” added Dhar.

In 2008 housing scheme, the accused allegedly targeted flats falling in S.C. (15 percent of total) and S.T. categories (5 percent of total) because these flats were available at a concession.

This time, the DDA is not giving any concession to flats in S.C./ S.T. category.

Around 16,000 flats will be offered under the housing scheme- 2010. The flats are located at 17 locations in the capital such as Vasant Kunj, Mukherjee Nagar, Motia Khan, Jasola, and Dwarka.

The cost of the flats ranges between Rs 9 lakh and Rs 1.12 crore.

“In order to reach all sections of the society there is a mix of one bed, two bed, three bed room houses expandable and janta one room houses. This is for the first time that one room tenements located in Narela, Trilokpuri and Shivaji enclave have also been included in the scheme,” said Dhar.

Unlike the 2008 scheme, this time, both husband and wife can apply for a flat each. However, if both are named in the draw, only one of them will be allotted a flat.

Also, an applicant getting the flat in the handicapped quota cannot sell his flat. DDA housing scheme 2008 was marred with controversies because of which the civic agency had to stall allotment for a year after the law of lots was done.

Some property agents in connivance with government officials allegedly purchased flats by submitting fake documents.

The Economic Offences Wing (EOW) of the Delhi Police arrested Laxmi Narayan Meena, a former State Bank of India employee as main accused in the fraud along with M.L. Gautam, a retired DDA employee. It is believed that Meena and Gautam together forged around 3, 000 applications.

The scam was unearthed in October 2008 when Dr Udit Raj, president of the Indian Justice Party filed a complaint with the Delhi police saying that the scheme was rigged. The basis of this complaint was information given by Deepak Kumar, a property agent based in West Delhi. Later, the EOW also arrested Kumar as an accused in the case.

“This time also there will be corruption because more or less, the process is the same,” said Raj.

Related report

All you wanted to know about the DDA housing scheme

If you are looking for a one bed room affordable flat in Delhi, this is your chance to try your luck.

Delhi Development Authority (DDA) launched its housing scheme 2010 on Thursday. Out of more than 16, 000 flats on offer, largest number of flats (11, 330) are in the one bed- room category.

Cost of these flats range from Rs 10 lakh to 37 lakh (the costliest one bed- room flats in the scheme are located in Vasant Kunj D-6).

One- bedroom flats with a lower price tag (Rs 9- 19 lakh) are spread over Rohini, Dwarka, Jasola, Loknayak Puram, Nerala, Zafrabad and Kondli Garholi.

However maximum number of one- bedroom flats is located in Rohini (4560) and Dwarka (2080).

If you can shell out a little more, there are 599 two- bedroom flats in the price range of Rs 21- 37 lakh. Bulk of these flats is located in Vasant Kunj D- 6, followed by Rohini, Pitampura and Jahangirpuri with 6 two- bedroom flats in each.

There are 3043 three bedroom flats under the scheme with maximum number of flats (947) located in Dwarka.

A three bed- room flat in Vasant Kunj D- 6 comes for Rs 1.10- 1.12 crore.

The scheme has many firsts to its credit.

With more than 16, 000 flats on offer in 15 locations across the capital, this is the biggest housing scheme ever by the civic agency.

This is also the first time that flats worth more than Rs 1 crore are available in the housing scheme.

Also, both husband and wife can apply for flats. This was not the provision in previous housing schemes launched by the DDA.

Some facts about the DDA housing scheme 2010

- Location with maximum number of flats- Rohini (5183)
- Location with minimum number of flats- Sarai Khalil (2)
- Number of one bedroom flats on offer- 11, 330
- Number of two bedroom flats on offer- 599

- Number of three bedroom flats on offer- 3043

Who can apply?

To apply for a flat under the DDA housing scheme 2010, you have to be a citizen of India, above 18 years of age.

You must have an account in any bank and a permanent account number (PAN card).

You must not own any residential flat or plot in full or in part on lease hold or free hold basis in Delhi.

Both husband and wife can apply for flats subject to fulfillment of eligibility condition. However, if both are found to be successful only one shall be allotted flat.

One person can submit one application only.

There is no income criterion.

How to apply:

Rs 105- cost of the form available on selected branches of ICICI, Axis, HDFC, IDBI and Central Bank, Union Bank and State Bank of India. The form can also be downloaded from the DDA website- www.dda.org.in.

Rs 1.5 lakh- Registration fees to apply for a flat.

Bank loans:

DDA has roped in ICICI, Axis, HDFC, IDBI and Central Bank, Union Bank and State Bank of India as nodal banks for the housing scheme 2010.

To apply for a flat, you can approach these banks for loans.

Reservations:

Scheduled castes- 17.5 percent

Scheduled Tribes- 7.5 percent

War widows- 1 percent

Physically handicapped- 1 percent

Ex-servicemen- 1percent

For more details, please visit DDA website www.dda.org.in.

20th November, 2010

'SC has delivered according to the times'

The Indian Express

BANGALORE: Former chief justice of India Justice S Rajendra Babu on Friday said the media had become proactive ever since the Right To Information Act was passed in 2005 and is sensationalising corruption and the judiciary was living up to that challenge.

Delivering PGC Chengappa Memorial Lecture on "Supreme Court and Democracy," Justice Rajendra Babu said, "Despite criticism and requests from various sections of judicial activism not to interfere in different issues, the Supreme Court had delivered what is expected of it". "The Supreme Court has interpreted laws to settle discrepancies in them and has ensured that the laws are enacted according to the need."

Justice Rajendra Babu also said though the SC was apolitical body, it is not altogether free from politics.

The executive appoints the judges to the Supreme Court and between 1970 and 1975, when Indira Gandhi became the Prime Minister, the judiciary was divided on various issues despite efforts by Justice Hegde and others to bring about a sort of unity and to enable it to counter the influence of Parliament.

He said during Emergency (1975-77), the judiciary became inactive. It reasserted itself after the Janata Party came to power. Between 1980 and 90, the country saw eight prime ministers and the Supreme Court saw 20 chief justices. Since the disintegration of the USSR, the economic forces brought about great changes in the society and the court had to decide many civil cases, he said "Democracy is a form of governance where the governing power is derived from the people," said Chief Justice J S Khehar. "People choose to forsake some of their independence for the sake of security. The courts have been effective in ensuring the individual freedom but when the collective security is at risk, the individual freedom has to be compromised."

22nd November, 2010

Land, building queries top RTI list

The Times of India

Guess what information-seekers want to know the most under the Right to Information (RTI) Act? Details on land and buildings.

In the season of land scams, data for 2007-08 from the Karnataka Information Commission (KIC) show that 51% of the total RTI applications in the state __ 30,432 of 59,772 __ from all 33 departments, were filed with those of the revenue and urban development sections. Public enterprises and infrastructure development got just three and seven applications respectively during the same period.

"Majority of the applications in these departments pertain to land sale deeds, khata conversions, mutation and record of rights copy. In the urban development department, which covers municipalities and corporations, many applications pertain to property disputes, illegal constructions and encroachments and building plan violations. The commission has asked the revenue department to digitise all land records in the state," H N Krishna, in-charge chief state information commissioner, told TOI.

The two departments earned Rs 4.1 lakh as fee by giving out information via the RTI act. The commerce and industries department (including mines, textiles and small scale industries), which collected Rs 1.46 lakh, is the other top grosser. In all, the 33 departments collected Rs 12.8 lakh through RTI applications.

Interestingly, the commission also admitted a whopping 2,112 complaints against the revenue and urban development departments for not sharing information under RTI act. Of the total 5,471 complaints during the period, 1,199 were against the urban development department. There were a mere three complaints against the office of the chief electoral officer for the same period.

The revenue department hasn't rejected a single application under section 8 of the RTI act. Curiously, the urban development department rejected 13 requests for

information under section 8 (1) (a) which deals with sovereignty and integrity of India and the security, scientific, strategic and economic interests of the state. Two applications were rejected stating that disclosure of information would amount to contempt of court and was forbidden by the court of law/tribunal.

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27th November, 2010

Ramesh strikes again; targets Lavasa, JSPL

The Business Standard

The environment ministry has raised the red flag on two-high profile projects: Hindustan Construction Company's real estate dream, Lavasa, and Jindal Steel & Power's plant in eastern Orissa.

The ministry, which has already acquired a high profile for stalling several large projects and its minister — Jairam Ramesh — the label of 'Dr No' from critics, suspects violation of regulations by these two projects as well.

In letters to these companies, Lavasa has been asked to provide reasons why the government should not raze all construction after 2006 at its project near Pune. Launched in 2002, Lavasa is touted as "India's first hill city". Days ago, its proposal to float an initial public offering to raise funds was cleared by stock market regulator Securities & Exchange Board of India.

JSPL has to defend the environment clearance given to its Rs15,000-crore, 6-million-tonne-a-year integrated steel plant and 1,000-Mw captive power plant at Kerjang in Angul district of Orissa.

"We have the environment and forest clearances for the project and haven't violated any norm. We are yet to receive the ministry's showcause notice and will respond to that once we get it," stated JSPL. A Lavasa Corporation statement said the same thing: "We are still to receive the notice. As and when such a notice is received, we will respond."

RED FLAGGED

- * Lavasa must provide reasons why the govt should not raze all post-2006 construction
- * JSPL must back environment clearance given to its steel and power units in Orissa

According to the notices, Lavasa has until December 10 to file its response, JSPL until December 7. They risk cancellation of their projects if they cannot satisfy the ministry. The shares of both HCC and JSP fell on a weak market today.

The ministry has already scrapped plans by Vedanta to mine bauxite and to expand a \$9.5-billion alumina refinery project in Orissa. Among other projects under its scanner is the \$12-billion steel plant proposed in Orissa by South Korea's Posco, potentially the largest single foreign investment into India.

The notice to JSPL says the divisional forest officer of Angul issued a showcase notice to the company on July 6 last year regarding construction work for industrial activities on non-forest government land until clearance was obtained. This comes on the back of a petition by the Wildlife Society of Orissa (WSO) seeking cancellation of environmental clearance to JSPL.

On the basis of documents obtained under the Right to Information Act, WSO has stated that the Angul DFO, in a letter on October 6, 2009, had pointed out that JSPL had violated the Forest Conservation Act of 1980 by starting construction work without forest clearance.

27th November, 2010

A 'minor' reason for rejecting RTI query

The Times of India

LUCKNOW: A 9-year-old cannot claim her right to information. Says who? None other than UP State Information Commission (UPSIC). The order by the chief information commissioner of UPSIC which questions the right of a "minor" to seek information under the RTI Act has raised a debate. The RTI experts have termed it "illegal".

The commission has ordered so in the case concerning Aishwarya Sharma, a 9-year-old girl. She had written to the CM's office in October, 2009 complaining about the garbage dumping ground in the vicinity of her school. She had requested the CMO to stop garbage disposal at the spot. After she got no response, the girl filed an RTI application. It was then that she was informed by the office that her letter was lost.

The girl filed another RTI application after this. "I asked them who misplaced my letter", said Aishwarya, a student of Class III in a city-based school. But she got no answer and had to file a complaint with the SIC. And in the same matter, the commission ordered that she cannot directly participate in the proceedings of the RTI Act.

The girl would have to get her appeals and complaints filed through a custodian or present a proof of her being a major so that she be heard directly, said an order by Ranjit Singh Pankaj, chief information commissioner, UP. The said order has already been termed "illegal" by the RTI experts and activists.

"This order is illegal," said Arvind Kejriwal, RTI campaigner. "I can share several instances where minors, even a third-standard student, have sought information under RTI in Delhi," he said. There is no mention in the Act that minors have to get their case represented through a custodian. The section 3 of the RTI Act clearly mentions, 'subject to provisions of this Act, all citizens shall have the right to information.'

The CIC's order said that since the girl is a minor, she does not come under the definition of a major as defined under the Indian Majority Act. The proceedings under RTI are quasi-judicial in nature. In such a situation, no minor can directly get involved in the RTI proceedings, be it filing of appeals or complaints. Besides, as per Civil Procedure Code, a minor can file a complaint or appeal only through a custodian.

When contacted, Shailesh Gandhi, information commissioner (IC), CIC, said, "The Act has been made by the Parliament and the Parliament has not barred minors from using RTI." The person seeking information under RTI should be a citizen of India, that is the only condition set by the Act. The Act does not say that RTI user has to be a major or a minor. "Even a year-old child can use RTI," said Gandhi, IC in Central Information Commission, Delhi.

With this, UPSIC may be headed towards setting its own RTI rules.

27th November, 2010

Constitution Bench to decide on RTI vs. right to judicial immunity

J. Venkatesan, The Hindu

A Constitution Bench of the Supreme Court will decide the conflict between the right of citizens to obtain information under the Right to Information (RTI) Act and the right to immunity enjoyed by the judiciary not to disclose information pertaining to appointment of judges.

A Bench comprising Justice B. Sudershan Reddy and Justice S.S. Nijjar on Friday referred to the Chief Justice of India, S.H. Kapadia, for posting before a Constitution Bench of appropriate strength the issues raised in the appeal preferred by the Central Public Information Officer (CPIO) of the Supreme Court against a Delhi High Court judgment directing furnishing of information on appointment of judges.

Acting on a petition from S.C. Agrawal, the Central Information Commission directed the CPIO to furnish information on the correspondence exchanged between constitutional authorities with file notings relating to the appointments of Justice H.L. Dattu, Justice A.K. Ganguly and Justice R.M. Lodha (all to the Supreme Court) superseding Justice A.P. Shah (who retired as Chief Justice of the Delhi High Court). The Delhi High Court confirmed this order. The present appeal is directed against this order.

The Bench in its order said: "We are of the considered opinion that a substantial question of law as to the interpretation of the Constitution is involved in the present case which is required to be heard by a Constitution Bench.

"The case on hand raises important questions of constitutional importance relating to the position of the CJI and the independence of the judiciary on the one hand, and on the other, the fundamental right to freedom of speech and expression."

Justice Reddy, writing the reference order, said: "The RTI Act merely recognises the constitutional right of citizens to freedom of speech and expression. Independence of judiciary forms part of the basic structure of the Constitution.

“The independence of the judiciary and the fundamental right to free speech and expression are of great value, and both are required to be balanced.”

Healthy nation

The Bench said: “The current debate is a sign of a healthy nation. This debate on the Constitution involves great and fundamental issues. Most of the times we reel under the pressure of precedents.”

The Bench said the questions that arise for consideration are whether the concept of independence of judiciary requires and demands the prohibition of furnishing of the information sought; whether the information sought amounts to interference in the functioning of the judiciary; and whether the information sought cannot be furnished to avoid any erosion in the credibility of the decisions and to ensure a free and frank expression of honest opinion by all the constitutional functionaries, which is essential for effective consultation and for taking the right decision.

It also covers the question of whether the information sought is exempt under Section 8 (i)(j) of the RTI Act.

RIGHT TO INFORMATION

Widening horizons

V. VENKATESAN, Frontline

The outgoing CIC interprets the RTI Act in a liberal spirit to direct the Calcutta High Court to provide information to an applicant.

SHANKER CHAKRAVARTY



Wajahat Habibullah, who completed his term as Chief Information Commissioner on September 30. He said that in the "context of the present when so-called Majesties have ceased... any claim of any public authority in India to have been established by an authority other than those mentioned under the RTI Act cannot be accepted".

IN a landmark decision before he completed his term as Chief Information Commissioner on September 30, Wajahat Habibullah rejected the Calcutta High Court's contention that it was not subject to the CIC's jurisdiction under the Right to Information Act, 2005.

The Calcutta High Court has the distinction of being the first High Court in India and one of the three chartered High Courts to be set up in India, along with the High Courts of Bombay and Madras. Formerly known as the High Court of Judicature at

Fort William, it was brought into existence by the Letters Patent dated May 14, 1862, issued under the High Court's Act, 1861, which provided that the jurisdiction and powers of the High Court were to be defined by Letters Patent. (As legal instruments, letters patent were issued by the monarch, in the form of open letters, granting an office or a right to an institution.) The Act vested the authority in Her Majesty to issue letters patent under the Great Seal of the United Kingdom to establish High Courts of Judicature at Calcutta, Madras and Bombay. The Charter establishing the Calcutta High Court was published on July 1, 1862, establishing the High Court from the next day.

This background to the Calcutta High Court constitutes a key milestone in the evolution of India's legal history. With the attainment of Independence and the inauguration of the Constitution of India in 1950, the above background must have been confined to history. Or so one would have assumed, as the Calcutta High Court came to be treated on a par with any other High Courts in India.

High Court's stand

In a bizarre response to the CIC, however, the Calcutta High Court claimed that the Commission had no jurisdiction over it under the Right to Information Act. The Act has defined the CIC's jurisdiction as per the constitution of public authorities. In case the public authorities are established, constituted, owned, controlled or substantially financed by the Central government, then the jurisdiction to hear appeals and complaints is of the Central Information Commission.

The Principal Information Officer (PIO) of the High Court of Calcutta, Imran Hafiz, claimed in his written submission to the CIC, in an appeal case, that the High Court did not qualify as a public authority because it was not constituted by the Central government or even under the Constitution of India but by Her Majesty the Queen of England under Letters Patent dating from the time of Queen Victoria. He argued that the powers of such legislation (letters patent) were preserved and therefore could not be deemed to have been transcended by the power of the Government of India. He went on to submit that as per Article 246 of the Constitution, which deals with the law-making powers of Parliament, the Calcutta High Court was not under the control of the President of India or the Government of India.

Item 78 of List 1 of the Seventh Schedule, which is referred to in defining the powers of Parliament under Article 246 of the Constitution, includes the following in the powers of the Union: Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practice before the High Courts.

Item 79 of the same list mentions: “Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union Territory.”

Whatever doubts one might have on the basis of the historical background of the Calcutta High Court about its present status must have vanished after these clear and unambiguous provisions of the Constitution, which did not make any exemption with regard to the Calcutta High Court.

However, Hafiz persisted with his outlandish claim in order to deny information sought by an applicant, Sundeep Goyal, under the RTI Act. Goyal sought the name and address of the person holding the position of “Receiver” in the Calcutta High Court in a pending suit. In two other applications, Goyal sought details of money held by the “Receiver” in the same suit, and copies of orders passed by the High Court in the same suit in 2006 and 2007.

To all his three applications, Goyal received an identical response from the PIO of the High Court: “The information asked for cannot be supplied as the matter being sub judice the disclosure of information may constitute contempt of court.”

RTI applicant's challenge

Goyal challenged this response in his first appeal to the Appellate Authority of the High Court saying that the PIO had not stipulated the relevant provision of the RTI Act under which he had rejected Goyal's request for information.

On not receiving any orders on his first appeal, Goyal moved his second appeal before the CIC, referring to various decisions of the CIC that had held that “sub-judice” is not a valid ground for withholding information sought under the RTI Act.

In the mean time, the High Court's First Appellate Authority gave the decision stating that according to the High Court's rules, search of records, copies, and inspection at the request of any person not a part to a suit or proceedings, should be allowed when the matter is pending before the court, subject to the order of the judge. He, therefore, justified the denial of information by the PIO as the suit Goyal had referred to in his application was pending for disposal and there was no specific order of the court to supply information to him.

Goyal appealed to the CIC to set aside Hafiz's and the Appellate Authority's decisions and direct the PIO to fulfil the obligations of the High Court under the RTI Act.

CIC's stance

In his decision, Habibullah, interpreting the RTI Act, held that in case public authorities are established, constituted, owned, controlled or substantially financed by the Central government, then the jurisdiction to hear appeals and complaints is of the CIC. He agreed with Hafiz that the Calcutta High Court was not established or constituted by the Government of India or the Constitution of India, but added:

“Quite clearly, in the context of the present when so-called Majesties have ceased to exist and have been succeeded within India or from outside by the Sovereign Democratic Republic of India of which the Head of State is the President of the Union of India, any claim of any public authority in India to have been established by an authority other than those mentioned under the RTI Act cannot be accepted.”

Interpreting Rule 10 of the Calcutta High Court (Jurisdictional Limits) Act 1919, Habibullah held that this rule does not debar disclosure of information in the manner prescribed. As part of the procedure for accessing such information, he held that it would be necessary for the PIO to make a reference to such judge, whose order would be required for the disclosure. It is not acceptable, he held, that because the application did not obtain the orders of the judge, it should be rejected.

Section 8(1) (h) of the RTI Act enables public authorities to deny information that would impede the process of investigation or apprehension or prosecution of offenders.

Interpreting this provision, the Delhi High Court held in 2007 that the authority withholding information must show satisfactory reasons explaining why the release of such information would hamper the investigation process. "Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material," the court held. Habibullah relied on this order of the Delhi High Court to reject the contention of the Calcutta High Court claiming exemption under this very provision.

Habibullah set aside the Calcutta High Court Appellate Authority's decision and directed the PIO of the High Court to supply Goyal the information he had sought, free of cost within 15 working days from September 29.