IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO \_\_\_ OF 2018

In the matter of Articles 14, 19 & 21 of the Constitution of India;

AND

In the matter of Right to Information Act 2005

AND

In the matter of Mumbai Municipal Corporation Act and Maharashtra Regional and Town Planning Act

AND

In the matter of statements made and circular issued by Municipal Commissioner of MCGM.

Kamlakar Shenoy )

Age 59 , Residing at )

2/7, Kishore Kunj CHS, )

OPP. Kalverts Co., )

Shanti path Marg, )

Mazgaon, Mumbai-400010 ) … Petitioner

**VERSUS**

1. Ajoy Mehta )

Municipal Commissioner )

Municipal Corporation of Greater Mumbai, )

Head Quarter, )

Legal Department, )

Mumbai C.S.T. 400001. )

1. Municipal Corporation of )

Greater Mumbai )

Head Quarter, )

Legal Department, )

Mumbai C.S.T. 400001, ) ……Respondents

**TO,**

**THE HON’BLE CHIEF**

**JUSTICE OF THIS HON’BLE**

**COURT AND OTHER PUISNE**

**JUDGES OF THIS HON’BLE COURT**

**THE HUMBLE PETITION OF**

**THE PETITIONER ABOVENAMED**

**MOST RESPECTFULLY SHEWETH**

1. That the Petitioner is an alert citizen and social activist and has been actively involved in bringing about social justice and in the past been the front runner in various initiatives and Public Interest Litigations a list of which is annexed hereto and marked as **Exhibit-“A”**.
2. The present petition under article 226 of the Constitution of India is being filed by way of Public Interest Litigation and the Petitioner has no personal interest and no personal grievances against Respondent no. 1save and except that the Petitioner as a public spirited activist is also aggrieved by the impugned circulars issued by Respondent No.1 as per media reports asking the Deputy Municipal Commissioners (DMCs) of the seven zones in the city to prepare a list of “professional complainants” who file bulk Right to Information (RTI) applications, seeking details of building plans to allegedly extort money from property owners. The petition is being filed in the interest of constitutional governance transparency and accountability in the working of public servants and public authority in the country which is only in the interest of public at large.
3. The Petitioner states that he has filed complaints against Respondent No.1 in capacity as a BMC officer, and other officers of Respondent no. 2, with regards to wrongful loss caused to public and BMC for making alteration of the land reserved for public amenity and none of such complaints arise out of any interest on the part of the Petitioneragainst the Respondents.
4. That the petitioner is filing the present petition on his own and not at the instance of someone else.The advocate isgiving service probono in the interest of public at large.
5. Facts in brief, constituting the cause:
6. On 29th December 2017 at least 14 people were killed and 54 persons injured after a [major fire](http://www.news18.com/news/india/mumbai-kamala-mills-fire-green-card-holder-back-home-for-holidays-dies-along-with-brother-aunt-1617719.html) in a building in [Kamala Mills Compound](http://www.news18.com/news/india/mumbai-kamala-mills-fire-women-got-pushed-into-mens-washroom-suffocated-to-death-1617559.html) in Lower Parel. The fire broke out around 12:30am on the top floor of a four-storied building on Senapati Bapat Marg, a commercial hub of the city. The massive fire quickly engulfed the entire building after it started at '1 Above', a rooftop pub and raged for several hours before it could be brought under control."Police have booked Haresh Sanghvi, Jigar Sanghvi and Abhijeet Manka of C Grade Hospitality, which manages the pub, along with others, under IPC sections 304 (culpable homicide not amounting to murder), 337 (causing hurt by act endangering life or personal safety of others) and 338 (causing grievous hurt by act endangering life or personal safety of others).
7. The above incident has occurred as the said premises has without obtaining mandatory permissions, including but not restricted to permissions from Fire Department and Building Proposal Department, constructed 10,000Sq.Ft. of illegal Restaurant and Bar sitting area on the Building Rooftop in violation of M.R.T.P. Act. It appears that thesaid premises was only approved for commercial office space yet the Heath Department of G south ward had brazenly issued eating house license to this particular rooftop restaurant despite there being no requisite permissions from the building proposal department. Terrace area was illegally converted into rooftop pub/bar which was covered with flammable material shed and alcohol and hookah were being served along with other inflammable materials stored without following due process of law and without obtaining requisite permissions and complying with safety measures, thereby endangering life and limbs of the occupants and citizens in the vicinity.
8. On 29thDecember 2017 it is allegedly stated a massive fire broke out due to the short circuit caused by temporary wiring and quickly the fire spread to adjoining areas and restaurants due to all the inflammable materials stored. In order to house more patrons than realistic capacity this restaurant had blocked exit gates and the only way for the patrons to exit in case of fire was through the elevator and a narrow staircase. Over 100 persons were stuck due to no visible exit routes and several persons took shelter in the toilets and died due to asphyxiation.
9. This tragedy could have been prevented if the M.C.G.M. officials would have put a check on such massive irregularities and violations and would have taken action under Section 354-A of MMC Act and demolished the same. The wilful and deliberate act of omission was committed due to the existence of a deep rooted nexus between M.C.G.M. officials, Restaurant Owners and the Landlords. The Landlord in this matter being promoter and owner of Kamala Mills, one Mr. Ramesh Govanihas also been booked by N M Joshi Marg Police Station for such violations of MRTP Act and other offences. The said nexus has facilitated grant of Eating Premises License to all 65 restaurants in Kamala Mills which have only been approved as office premises and till date have not even received Completion Certificateas per Mumbai Mirror Article dated 3rd January 2018 hereto marked and annexed as **Exhibit-“B”**.
10. The BMC has suspended five of its officials so far. The terrace area is free of floor space index (FSI) and cannot be used for any purpose commercial or residential. Granting Permissions to Rooftop bars and restaurants is contrary to the development control regulations. Grant of such illegal permissions is in direct conflict with the mandatory fire safety norms in buildings yet these establishments were granted permissions. Despite a series of violations recorded by the BMC during inspections of 1Above and the adjoining Mojo’s Bistro, officials permitted 1Above to renew its licence barely ten days ago as per newspaper reports. These are deliberate act of omission and disobedience of direction of law committed by concerned officials which Includes the officers of M.C.G.M. headed by the Respondent no. 1, thereby causing loss of lives and limbs of the common man.
11. In the aftermath of the incident the Mumbai Municipal Commissioner gave interviews in various newspapers and TV News Channels wherein he mentions issuing a circular asking the Deputy Municipal Commissioners (DMCs) of the seven zones in the city to prepare a list of “professional complainants” who file bulk Right to Information (RTI) applications, seeking details of building plans to allegedly extort money from property owners in exchange for getting them permissions or licences with the help of civic officials in order to “crack down” and “break their backs”. Hereto marked and annexed are copies of interviews IndianExpress(02.01.2018), Mumbai Mirror(03.01.2018) and The Hindu(01.01.2018) as **Exhibit-“C”Colly.**
12. The statements made by The Respondent No 1 were in his capacity as acting Commissioner MCGM. Respondent no. 1 instead of taking action against errant officials responsible for giving out permissions to various illegal extensions in restaurants causing mishaps, he intends to shift the burden and responsibility of loss of lives and limbs and property caused by connivance of MCGM officials which is headed by Respondent no. 1 on RTI users / civic and social activists. This circular as reported by newspaper articles is a crackdown on activism and a violation of the Complainants rights under Article 14, 19 and 21 wherein the RTI activists / alert citizens will now be dissuaded from filing complaints against illegal activities / construction, additions and alteration, which endangers life and limbs of citizens and loss to public property.
13. The Respondent No 1 has admitted in various above referred statements to the press that there is corruption in various BMC departments whereby illegal encroachments in various restaurants across the city are being overlooked. Despite the same in order to divert the attention of the public at large and the resources of the MCGMwith a view to protect the real culprits the Respondent No.1 is issuing press statements and circulars pursuant thereto to crackdown on RTI Activism. The Respondent No.1 is doing so to reduce the volume of RTI applications and complaints pursuant thereto in order to facilitate the close doors and non-transparent style of functioning that would enable the various offenders to operate in secrecy with the blessing of Respondent No.1.
14. The above referred statements arise out of a misplaced and malafide view of RTI Activism as even if it is assumed only for the sake of argument and without prejudice to the rights and contentions of the Petitioner that several RTI usersoperating with dishonest intentions, The remedy for the same should not be such illegal clampdown by way of illegal circulars and slanderous statements deeming RTI Activists as extortionist / blackmailers and middlemen.
15. If there is concrete information and evidence of such blackmailing and extortion such MCGM official and/ or restaurant owner should resort to the Police Machinery for filing an FIR or any other remedy available to the concerned victim against such illegal act by certain class / section of RTI users. It is also pertinent to note that the intention of the complainant is also immaterial and / or proved otherwiseas long as the complaint contains truthful facts disclosing an offence and the authority is bound to take action on the same. In the event, if such complaint does not disclose a prima facie offence/ violation the same can be dismissed with further scrutiny and thus it is immaterial whether a complainant has made one complaint or multiple frivolous complaints as alleged by Respondent No.1.In fact the Respondent No 1 himself admits in Mumbai Mirror article dated 1st January 2018 that there is a nexus between BMC officials and Restaurant owners.
16. The Respondent No 1 is taking suo moto illegal and unwarranted action by making a list of so called “Professional Complainants” who in his opinion are blackmailers. The Respondent no. 1 has failed to take legal remedial steps by filing complaints with police and /or any other competent authority, but is predetermined to use such incidences to deny the alert citizens the right to collect information and take consequential legal action. The same is a violation of Art 19(1)(a*) In State of Uttar Pradesh vs Raj Narain* the Supreme Court states that the said Article not only guarantees freedom of speech and expression it also ensures and comprehends the right of the citizens to know, the right to receive information regarding matters of public concern. Thus classifying certain persons as bulk RTI applicants and subsequently, assuming from the preconceived opinions of Respondent No.1 as per the above referred press statements, setting policies to deter such activism will only deter the free flow of information that would otherwise keep a check on the illegal policies in practice with full awareness and knowledge of Respondent no.1.
17. There are no instances / action taken by Respondent no. 1 and the officers of Respondent No.2 disclosing any complaints being filed against the concerned officers of BMC and the alleged blackmailers with police / ACB about the connivance / conspiracy to commit extortion and to blackmail. The Respondent no. 1, instead of booking the culprits by following due process of law goes out of way to demean and demoralize the RTI users/ social activists.
18. In *Secretary Minister of Information and Broadcasting Govt of India vs Cricket Association of Bengal* the Supreme Court reiterates that the freedom of speech and expression guaranteed by Art 19(1)(a) includes right to acquire information and disseminate the same and the policies of the Respondent No.1 are in contempt of such ratio laid down by the hon’ble apex court.
19. The Government of India in Office Memorandum No. 1/6/2011-IR dated 15th April 2013 having subject “IMPLEMENTATION OF SUO MOTO DISCLOSURE U/S 4 OF RTI ACT OF 2005-ISSUE OF GUIDELINES REGARDING” itself states that there is a lack of suo moto proactive release of information by Public Authorities u/s 4 of the RTI Act which is imperative to make the functioning of Public Authorities more transparent and also reduce the need for filing many individual RTI applications. Hereto marked and annexed is the Govt of India Office Memorandum No. 1/6/2011-IR dated 15th April 2013 as **Exhibit-“D”**. The Government of Maharashtra has also initiated steps to enforce such proactive release of information.A Letter dated 25.08.2015 from Under Secretary (State Government) to Deputy Secretary RTI in furtherance of implementation of the above referred proactive release of information policy is annexed hereto and marked as **Exhibit-“E”**.The Respondent No 1 instead of following the recommendations is malafidely targeting RTI Users/ Civic Activists and has not taken any steps in pursuance to the above referred policy. In absence of proactive disclosure of information and in light of active blocking to RTI applications by activists the Respondents want to create an environment of opaqueness. In fact if the Respondents are of the opinion that information sought would result in extortion and blackmailing then the same as per the above referred policy of proactive disclosure should be displayed on the website of the Respondents in pursuance to an application under RTI instead of only providing the information the individual applicant.
20. The Petitioner submits that there are instances as under wherein the above referred policy of targeting RTI Users/ Civic Activists has manifested into illegal and malafide actions against RTI Users/ Civic Activists:
    1. Asst. Municipal Commissioner P/North Ward Shri. Devendra Jain filed a complaint with Malad Police station dated 22.12.2012 (PG 20 EXH A) naming 77 citizens as RTI blackmailers and extortionists asking for their criminal records. Hereto annexed and marked is a copy of the said letter dated 22.12.2012 marked as **Exhibit-“F”**. One of the aggrieved persons being one Advocate Pankaj Pandey issued a notice to the said Asst. Municipal Commissioner through his Advocate 15.10.2013, hereto annexed and marked as **Exhibit-“G”**. Subsequently the said officer issued a letter to the police station stating that Pankaj Pandey’s name should be removed and the said letter dated 18.10.2013 is annexed hereto and marked as **Exhibit-“H”**. Pursuant to the same the said Pankaj Pandey filed a complaint with the Borivali Magistrate Court Case No. C/3790/SS/2015, wherein the Learned Magistrate was pleased to issue process u/s 500 of IPC vide order dated 14.10.2016, hereto annexed and marked as **Exhibit-“I”** is a copy of the said order. Pursuant to the same the said Asst. Municipal Commissioner filed Criminal Writ 206 of 2017 before this Hon’ble Court against the said order which Petition is pending. Petitioner craves leave to refer and rely upon copy of the said Petitioner as and when produced.
    2. The said Assistant Municipal Commissioner has also issued a letter dated 03.04.2013 to the Press Council of India requesting them to initiate action against12 newspapers that print articles regarding the functioning of his officers making bold allegations without any proof thereof. Instead of making the necessary complaint against the said newspapers u/s 500 to the Magistrate Court and to the Police Station under various sections of IPC the said Asst. Municipal Commissioner decided to write a libellous letter to the Press Council. A copy of the said letter dated 03.04.2013 is hereto annexed and marked as **Exhibit-“J”**. An NGO named “PRAJA” and its employees have been declared by Order MGC/S/4885 dated 21st October 2017 “Persona Non-Grata” by the Respondent No 1 and now the office of the Respondents refuse to reply to any RTI application made by the NGO Praja or its representatives pursuant to the said order.Hereto marked and annexed is a rejection of an RTI application by the said NGO along with internal circular dated 16.12.2017 pursuant to the said order of Respondent No.1 dated 21.10.2017 declaring the said NGO as “Persona Non-Grata” as **Exhibit-“K”.**
21. The Petitioner also being an RTI User/ Alert Citizenis aggrieved by the circular issued by the Respondent No 1 as he apprehends that his name maybe included in the list of so called “professional complainants” and he will be targeted by the M.C.G.M. and his mission of social activism will be affected, and his name will be maligned and his years of standing up against injustice and corruption will now be branded as blackmailing.
22. The matter relates to public interest as it is important to protect whistle blowers and activists who with the power of pen facilitate justice in the country.
23. The Petitioner has obtained the impugned notifications / circulars from official websites of the Respondents and various newspaper articles and media interviews by the Respondent No 1.
24. Nature and extent of injury caused / apprehended:
    1. The impugned notifications / circulars will cause enormous misery, hardship and inconvenience to alert citizens / RTI users / social and civic Activists, Social Workers, NGO’s etc. who are striving to keep transparency and accountability in the activities and operations of MCGM with relation to action against illegal acts and offenders which cause wrongful losses to BMC and also endanger lives and limbs of the citizens.
    2. Right To Information Act has today become the backbone of Freedom of Speech and making a list of persons who make complaints against illegal additions/alterations and branding them as “professional complainants” in order to “crackdown” on them is a violation of the Fundamental Right guaranteed by the Constitution of India.
    3. This kind of suo moto crackdown by Respondent No.1 is illegal and misuse of his power by taking law in his own hands.
    4. Instead of checking corruption in the M.C.G.M. the Respondent No 1 is more concerned about putting a tab and check on the bonafide work done by RTI users / social and civic Activists.
    5. It is pertinent to note that the act of gathering of information is not an illegal act but the right guaranteed by the Constitution of India. Thus the using of the information with dishonest intention and ulterior motives to have wrongful gains and / or to cause wrongful loss is an offence. As such the gathering of information under RTI act is an independent act and has nothing to do and is no way connected with the subsequent act after gathering of information.
    6. It is also pertinent to note that no RTI user can commitextortion without active participation of BMC officials headed by Respondent no. 1. So can it be said that just because there are few black sheep in BMC all the officers of BMC are corrupt and extortionist. Such statement by Respondent no.1 demeans the status of the office of the Hon. Municipal Commissioner of M.C.G.M.
    7. There are various laws under the Indian Penal Code to appropriately address extortion and blackmail and the Respondent No 1 here is attempting brand certain persons as extortionists without following due process of law.
    8. All a complainant can do is obtain information under RTI regarding violations and irregularities and complain against the same which is well within his constitutional rights and if there are no violations and/or irregularities then no action can be taken despite large volume of complaints received.
       1. **Grounds:**
25. By the impugned Notifications / Circulars, the Respondents have imposed restrictions on citizens’ constitutional right, granted under Article 14, 19 and 21 in respect To Right to Information Act.
26. It is a well-settled principle of constitutional law that the law that can deprive a citizen of his constitutional right under Article 14,19and 21must be one that is passed by either the Parliament of Union of India or the Legislature of a state of India which falls strictly under the gambit of Article 19 (2) being reasonable restriction and the above curb on RTI activism can in no manner be deemed to be a reasonable restriction
27. Respondents have no power or authority under any law to deprive the citizens of their Right to obtain information under RTI and in pursuance to the same Complain to the authority to take action regarding violations/ irregularities discovered and target them unnecessarily with a view to undermine and intimidate them.
28. Law making power of the Union and of the states of the Union rests only with the Parliament and the legislatures of the respective states. The executive wing of the Respondent No. 1 has no power to make any law. same holds true for Respondent No. 2.
29. The impugned statements and notifications / circulars have hurt the trust of the citizens,that is the foundation of the relationship between Authority and Citizen. If RTI users/ social and Civic Activists are targeted for filing complaints, the state will lose the confidence of the citizens and the country will tread down the path of becoming a banana republic.
30. In the absence of any authority from either the Constitution or the Act (or from any other law), the impugned statements and notifications / circulars are ultra vires of the Constitution and are fit to be declared null and void as far as making a list of “Professional Complaints” in order to “crackdown” on them.
31. Without prejudice the rights and contentions of the Petitioners that the action of Respondent no. 1 is illegal, void and bad in law, if at all there is any case of extortion and blackmailing, such offences cannot be committed by any person on his own and without active participation of the officers of Respondents No. 2. Hence to make a general statement against all RTI users / social activist and to issue any circular to that effect is unwarranted action and shows the Respondent no. 1 in very poor light thereby demeaning the esteemed post of the Respondent no. 1.
32. It is hence imperative that the Respondents are duly reprimanded for their extra-constitutional, ultra-vires and arbitrary statements against RTI Users and actions which can demoralise the alert citizens and social and civic activists.
33. Respondents, by their extra-constitutional and illegal actions, have also done great damage to the credibility to the MCGM and its officers at large.
    * 1. The Petitioner declares that he has availed all statutory and other remedies; and that there are none available other than approaching this Honourable Court.
      2. The cause of action first arose on 2nd January 2018 when the Respondent No. 1 published the Notification and gave interviews regarding the same to various Media Houses. No delay has been made in filing the petition.
      3. Petitioner has also issued a notice dated 08.01.2018toRespondent No. 1 through his advocate however has not received any response to the same till date.
      4. The Petitioners have not filed any other petition in this Hon’ble Court in any other courts in India including the Supreme Court on the basis of the cause of action pleaded in the present petition.
      5. The Petitioner resides in Mumbai and the Respondents have their offices in Mumbai, therefore, this Hon’ble Court has jurisdiction to try, entertain and dispose of the present petition.
      6. Shri Kamalakar Shenoy, the Petitioner who is fully conversant with the facts of the present Petition, has declared and verified the present Petition.
      7. The impugned statements and circular of the Respondent No.1 have been made and issued in January 2018. Thus, the present Petition does not suffer from any delay or laches.
      8. The Petitioners have paid court fees of Rs.\_\_\_\_\_\_\_\_\_\_/-.
      9. The Petitioners will rely upon documents, a list whereof is attached hereto.
      10. **Reliefs prayed for:**

In views of the facts and circumstances mentioned above and the grounds urged, the Petitioner humbly prays for the following relief(s):-

* 1. That the Hon’ble court be pleased to issue appropriate writ, order or direction in the nature of mandamus or any other appropriate writ or direction declaring the impugned statements and notifications / circulars as illegal and ultra vires of the Constitution of India.
  2. That the Hon’ble court be pleased to issue appropriate writ, order or direction in the nature of mandamus or any other appropriate writ or direction quashing the impugned notifications / circulars and declaring the same to be ab initio null and void;
  3. That the Hon’ble court be pleased to issue appropriate writ, order or direction in the nature of mandamus or any other appropriate writ or direction to the Respondents directing them to cease and desist in future from issuing statement and interviews to press, notifications / circulars which they are not authorized by law to do; and which demean the genuine activities of any alert citizens and activists.
  4. That the Hon’ble Court be pleased to direct the Central Bureau of Investigation to Investigate into the actions of Respondent No.1 and Respondent No.2 that have protected the serial offenders and violators being various owners and operators of various commercial establishments in the purview of Respondent No.2 who are operating their establishments in contravention to law and have thereby cause loss of lives and public property.
  5. That the Hon’ble Court be pleased to direct the office of the Respondent No.1 to publish responses to all RTI queries raised on the official website of the Respondent No.2 for the perusal of the public at large.
  6. Any other remedy or relief which the Honourable Court may deem fit.

Interim Order prayed for:

* 1. That pending the hearing and final disposal of this Petition the Respondent No.1 bring on record before this Hon’ble Court a copy of the impugned circular issued by the Respondent No.1 to 7 DMCs of Respondent No.2.
  2. The Petitioner most humbly prays that operation of the impugned notifications / circulars be stayed till the Petition is disposed of by the Honourable Court and the Respondents be ordered to restore status quo as it existed prior to the impugned notifications / circulars.

PETITION DRAWN BY US

Aditya Bhatt

Advocate for the Petitioner Petitioner

**VERIFICATION**

I, Kamalakar Shenoy the Petitioner abovenamed residing at 2/7, Kishore Kunj CHS, OPP. Kalverts Co., Shanti path Marg,Mazgaon, Mumbai-400010do solemnly declare that what is stated in paragraph \_\_ to \_\_ in the above Petition is true to the best of my knowledge, and as per the available records of the Petitioner and what is stated in the remaining paragraphs is based on the information and belief and I believe the same to be true.

Solemnly declared at Bombay )

On this \_\_ day of January 2018 )

DEPONENT

Identified by me

Aditya Bhatt Before Me

Advocate for the Petitioner

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVILJURISDICTION

PUBLIC INTEREST LITIGATION NO \_\_\_ OF 2018

Kamalakar Shenoy…Petitioner

Vs

Ajoy Mehta &Ors. …Respondents

**PUBLIC INTEREST LITIGATION**

Dated this 20th day of January 2018

ADV. ADITYA BHATT

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MUMBAI 400 052

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