

IN THE HIGH COURT OF BOMBAY

[CIVIL ORIGINAL JURISDICTION]

Writ Petition (Civil) No. OF 2020

(Under Article 226 of the Constitution of India)

With I.A. NO. OF 2020

Permission to appear and argue as petitioner-in-person

IN THE MATTER OF:

1. SAKET S GOKHALE

...PETITIONER-IN-PERSON

VERSUS

1. THE UNION OF INDIA

Through Secretary,

Ministry of Information And Broadcasting,

Govt. of India, Shastri Bhawan,

Dr. Rajendra Prasad Road,

New Delhi - 110001

....RESPONDENT

AND IN THE MATTER OF:

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

To,

The Hon'ble Chief Justice of Hon'ble High Court of Bombay
and His other companion Justices of the
Hon'ble High Court of Bombay

The humble Petition of the Petitioner above named:

MOST RESPECTFULLY SHOWETH:

1. By way of the present Writ Petition under Article 226 of the Constitution of India the Petitioner seeks the issuance of a writ of certiorari or any other appropriate writ to order the Respondent to remove the personal data of the petitioner from its website for being in violation of the fundamental right to privacy guaranteed under Article 21 of the Constitution of India and to award compensation for the immense distress, agony, and personal risk faced by the petitioner due to the violation of his fundamental rights by the respondent.
- 2.

ANNEXURE P-1.

3. That the Petitioner has not been involved in any other civil or criminal or revenue litigation which could have a legal nexus with the issues involved in the present petition.
4. The Petitioner has no other efficacious remedy except to approach this Hon'ble Court by way of present writ petition. All annexures attached to the writ petition are true copies of the respective originals.

5. The Petitioners have not filed any other petition either before this Hon'ble Court or any other High Court for seeking same or similar relief.
6. That before dilating on the grievances of the Petitioners, the Petitioner craves of this Hon'ble Court to place on record the brief factual concepts which are essential for the just adjudication of the present case.

(a) The petitioner filed a Right to Information (RTI) application with the Ministry of Youth and Sports Affairs, Govt. of India, on 27/10/2019 with the registration number

A true copy of the RTI application is annexed herewith and marked as **ANNEXURE P-2**

(b) The Ministry of Youth and Sports Affairs transferred the RTI application of the petitioner on 22/11/2019 to the Respondent since the subject of the RTI pertained to the latter with the new registration number . A true copy of the RTI transfer intimation is annexed herewith and marked as **-ANNEXURE P-3**

(c) On 26/11/2019, the Petitioner's RTI application was uploaded to the website of the Respondent with his contact details and address publicly displayed. A true copy of the link of the website of the Respondent and its content is annexed herewith and marked as **-ANNEXURE P-4**

(d) The website link of the Respondent containing his telephone and address details started appearing on internet search engines like Google thus making this personal and private information of the Petitioner freely available on the internet. A true copy screenshot of the search engine results is annexed herewith and marked as **-ANNEXURE P-5**

(e) On 22/07/2020, the Petitioner filed a Letter Writ Petition with the Hon'ble Allahabad High Court praying that a stay be granted on the inauguration function of the Ram Janmabhoomi where over 200

people were expected to attend keeping in mind the health concerns related to the Covid-19 pandemic with large gatherings. The letter petition of the Petitioner was converted by the Hon'ble Allahabad High Court into Public Interest Litigation (PIL) No. 733 of 2020 in the matter of Saket Gokhale v/s Shri Ram Janmabhoomi Tirtha Kshetra & Anr. and dismissed on 23/07/2020. A true copy of the Petitioner's Letter Petition and the order of the Hon'ble Allahabad High Court is annexed herewith and marked as **-ANNEXURE P-6**.

(f) On 23/07/2020, the Petitioner also found some revelatory information which alleged a link between the Bharatiya Janata Party and the Maharashtra Chief Electoral Officer pertaining to conflict of interest and posted that on his Twitter social media account. On the same day, the Election Commission of India sought a report from the Maharashtra Chief Electoral Officer pertaining to these allegations. A true copy of the tweets of the Petitioner and the tweet by the Spokesperson, Election Commission of India are annexed herewith and marked as **-ANNEXURE P-7**

(g) On 24/07/2020, the Petitioner started getting several phone calls and messages threatening, harrasing, abusing, and intimidating him. Since the calls and messages continued for a week, it is impossible to keep a track of the actual number though the petitioner estimates that there were over 20,000 calls and messages over a period of a week. A true copy of the screenshots of some of these calls and messages are annexed herewith and marked as **-ANNEXURE P-8**

(h) on 24/07/2020, the Petitioner's residence was attacked by a mob of 12-15 people chanting slogans and asking the petitioner and his mother to come downstairs and face them. The petitioner immediately informed the local police and the Hon. Home Minister of Maharashtra, and subsequently, an FIR was registered in this matter at Kashimira Police Station, Thane Rural Police and the Petitioner was provided police protection. A true copy of the Petitioner's FIR lodged with the police in this matter is annexed herewith and marked as **-ANNEXURE P-9**

(i) In W.P. 33290(W) of 2013 in the matter of Avishek Goenka

v.s The Union of India, the Hon'ble High Court of Kolkata ordered on 20/11/2013 that it would be the responsibility of any public authority under the RTI Act, 2005 to hide the personal details of RTI applicants from their website so that the public at large would not know of these details. Based on this, on 08/01/2014, the Ministry of Personnel, Public Grievances, & Pensions, Department of Personnel and Training circulated the Hon'ble High Court of Kolkata order to all Ministries of the Govt of India vide circular number 1/31/2013-IR for compliance. A true copy of the order of the Hon'ble High Court of Kolkata along with the circular issued by the Ministry of Personnel, Public Grievances, & Pensions, Department of Personnel and Training is annexed herewith and marked as **-ANNEXURE P10**

7. The petitioner hereby undertakes that his contact information and address were not available anywhere in public until they were uploaded by the Respondent on their website.
8. The action of the Respondent in violating the fundamental right to privacy of the Petitioner guaranteed under Article 21 of the Constitution of India has put the life, liberty, and safety of the Petitioner and his family in great jeopardy. The action of the Respondent, in violation of orders of the Hon'ble High Court of Kolkata and the subsequent laid-down procedure by the Govt. of India, has also caused great mental agony and trauma to the Petitioner and his family.
9. That the Petitioner is filing the present Writ Petition before this Hon'ble Court under Article 226 of the Constitution of India on the following amongst other grounds taken in the alternative and without prejudice to one another:

GROUNDS

- A. The Hon'ble Supreme Court in its order in Justice K. S. Puttaswamy v. Union of India WP (C) 494/2012 ruled that the right to privacy is part of the fundamental right to life and liberty guaranteed under the Constitution of India.

In this judgment of the Hon'ble Supreme Court of India, Hon. Chandrachud, J observed that:

“The right to privacy imposes on the State a duty to protect the privacy of an individual, corresponding to the liability that is to be incurred by the state for intruding the right to life and personal liberty. The right to life and liberty are inalienable to human existence – not bounties granted by the state, nor creations of the Constitution. No civilized state can contemplate an encroachment upon them without the authority of law. ADM Jabalpur vs, S.S. Shukla is overruled to the extent that it held that the aforesaid rights may be surrendered in an emergency.”

“Privacy recognises the ability of individuals to control vital aspects of their lives and safeguards the autonomy exercised by them in decisions of personal intimacies, matters of home and marriage, the sanctity of family life and sexual orientation, all of which are at the core of privacy.”

Similarly, Hon. Chelameshwar, J. observed that

“Among basic rights conferred on individuals by the Constitution as a shield against excesses by the State, some rights are at the core of human existence. Thus, they are granted the status of fundamental, inalienable rights essential to enjoy liberty. Liberty is the freedom of an individual to do what he pleases and the exercise of that freedom would be meaningless in the absence of privacy.”

In the same judgment, Hon. Bobde, J. Observed that

“The right to be let alone, to seclude oneself from intrusions of any manner, is essential to privacy. Every individual is entitled to a state of repose. Liberty and privacy are integrally connected in a way that privacy is often the basic condition necessary to exercise personal liberty”

- B. It is, therefore, clear that the right to privacy of an individual cannot be trampled upon by the state without due process of law or when greater public interest is involved. In the current circumstances of this petition, leaking the Petitioner’s contact information and address

and violating his privacy was neither done with due process of law nor was there any greater public interest involved.

- C. In the case of Avishek Goenka vs. Union of India (W.P. 33290 (W) of 2013), the petitioner had approached the Hon'ble High Court of Kolkata praying that any authority under the Right to Information Act, 2005 should not insist on the detailed address of the applicant in RTI applications and that he apprehends that disclosure of such information would be a threat to the RTI applicant by vested interests. In his petition, the petitioner Avishek Goenka had also stated that there had been "unnatural deaths" reported of RTI activists which makes it pertinent that their information be concealed.

In its judgment, the Hon'ble High Court of Kolkata observed:

"We have considered the relevant provisions of the statute. Section 6(2) of the Right to Information Act, 2005 would clearly provide, an applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

Looking to the said provision, we find logic in the submission of the petitioner. When the legislature thought it fit, the applicant need not disclose any personal detail, the authority should not insist upon his detailed whereabouts particularly when post box number is provided for that would establish contact with him and the authority.

In case, the authority would find any difficulty with the post box number, they may insist upon personal details. However, in such case, it would be the solemn duty of the authority to hide such information and particularly from their website so that people at large would not know of the details."

As stated in the judgment of the Hon'ble High Court of Kolkata above, it is clear that hiding the personal information and address of an RTI applicant is the solemn duty of the public authority involved which in the present petition is the Respondent i.e. Ministry of Information & Broadcasting

The Hon'ble High Court of Kolkata while disposing the petition also made the following order:

“We thus dispose of this writ petition by making the observations as above. The Secretary, Ministry of Personnel should circulate the copy of this order to all concerned so that the authority can take appropriate measure to hide information with regard to personal details of the activist to avoid any harassment by the persons having vested interest.”

- D. Accordingly, in compliance with the orders of the Hon'ble High Court of Kolkata in the case of *Avishek Goenka vs. Union of India*, the Department of Personnel & Training under the Ministry of Personnel, Public Grievances, & Pensions, Govt. of India circulated the judgment of the Hon'ble High Court to all Ministries and other public authorities under the ambit of the RTI Act on 08/01/2014 vide Office Memorandum number 1/31/2013-IR.
- E. The petitioner, therefore, humbly submits that the actions of the Respondent in revealing his personal phone number and address are not only in violation of the orders of the Hon'ble High Court of Kolkata but also in non-compliance with the clear directions issued in this regard to all Ministries by the Govt. of India.
- F. With regards to the issue of the State paying compensation to the victim on violation of his fundamental rights under Article 21, the Hon'ble Supreme Court of India in the case of *Rudul Sah vs. State of Bihar & Anr*, (1983) AIR 1086, observed that:

“In these circumstances, the refusal of this Court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders to release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violaters in the payment

of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.”

- G. Similarly in the cases of Sebastian M. Hongray vs Union Of India & Ors, (1984) AIR 1026; Bhim Singh, Mla vs State Of J & K And Ors., AIR 1986 SC 494; Saheli, A Women's Resources vs Commissioner Of Police, Delhi, 1990 AIR 513; and State Of Maharashtra And Ors. vs Ravikant S. Patil, (1991) ACJ 888, the Hon'ble Supreme Court has upheld the responsibility of the State to provide compensation to the victim if the latter's fundamental rights have been violated.
9. That the Petitioner craves leave and liberty to add, alter, amend, or substitute any of the afore urged grounds, if so advised at a later stage
10. That the Petitioner has not filed any other or similar Petition before any other Court or before this Hon'ble Court
11. The Petitioner has no other equally efficacious and alternative remedy, and therefore, are approaching this Hon'ble Court by filing the present Writ Petition
12. This Hon'ble Court has the jurisdiction to entertain the present Writ Petition and to grant the reliefs are prayed for

PRAYER

In the circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Issue an appropriate writ, order, or direction ordering the Respondent to remove the personal data of the petitioner from its website for being in violation of the fundamental right to privacy guaranteed under Article 21 of the Constitution of India
- (b) Issue an appropriate writ, order, or direction ordering the Respondent to pay a compensation of Rupees Fifty Lakh Only for the mental trauma, agony, and the threat to life and liberty suffered by the Petitioner due to the violation of his fundamental rights under Article 21 of the Constitution of India by the Respondent
- (c) Pass such other and further order/orders as are deemed fit and proper in the facts and circumstances of the case

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

MUMBAI:

DATED: **03/08/2020**

Saket S Gokhale

PETITIONER-IN PERSON