

अधपत्रा COUNTERFOIL

इसे फाड़कर प्रेषक अपने पास रख ले।
To be detached and kept
by the Sender.

पोस्टल आर्डर

₹ 10

POSTAL ORDER

किससे अदा करना
To whom payable

किस डाकघर में
At what Office

क्या इसे क्रॉस किया है
Whether crossed

भेजने की तारीख
Date sent

32F 161184

Date: 24/02/2016

No. RTI/GoI/PowerMin/2016/1

From,
Venkatesh Nayak
#55A, 3rd Floor
Siddharth Chambers-1
Kalu Sarai
New Delhi- 110 016

To,
The Central Public Information Officer
Ministry of Power
Government of India
2nd Floor, Shram Shakti Bhawan
New Delhi- 110 001

Dear sir,

Sub: Submission of request for information under *The Right to Information Act, 2005*

I would like to obtain the following information from your public authority, under the RTI Act:

- 1) A clear copy of all correspondence received from the Government of Jammu and Kashmir regarding the buy back of hydro power projects situated in that State, till date;
- 2) A clear copy of all replies sent to the Government of Jammu and Kashmir in relation to the correspondence referred to at para #1 above, till date;
- 3) A clear copy of all documents relating to the feasibility of the proposal of buy back of the projects mentioned at para #1 above, including reports of any expert committee available on record; and
- 4) A clear copy of all file notings held as on date relating to the queries described at paras #1-3 above.

I am a citizen of India. I have enclosed an IPO (bearing #32F 161184) for Rs. 10/- towards payment of the prescribed application fee. I would like to receive the information by post at my address mentioned above. If any or all of the information specified above is available in electronic form, kindly provide copies as requested above in a CD. If any information specified above is not available in electronic form, kindly provide photocopies of the same. Kindly inform me of any additional fee payable for obtaining the information specified above.

Thanking you,
Yours sincerely,

S.S. Venkatesh Nayak
Venkatesh Nayak

भारतीय डाक

SP HAUZ KHAS 110016

ED9229801011

Counter No:5, OP-Code:SCX

To:CPIC, MIN OF POWER

NEW DELHI, PIN:110001

From:VENKATESH NAYAK, DELHI

Wt:10grams

Amt:17.00, 24/02/2016, 19:16

Taxes:Rs.2.00<<Track on www.indiapost.gov

MOST IMMEDIATE
RTI MATTER

No. 12/5/2016-NHPC(Desk)
Govt. of India
Ministry of Power

Shram Shakti Bhavan, Rafi Marg,
New Delhi, Dated 4th March, 2016.

Chief Engineer & PIO,
NHPC Ltd,
NHPC Office Complex,
Sector-33, Faridabad (Haryana).

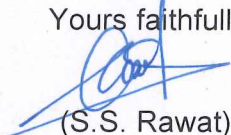
Sub: Transfer of RTI Application in respect of Sh. Venkatesh Nayak,
55A, 3rd Floor, Kalu Sarai, Delhi-110016.

Sir,

I am directed to forward herewith a copy of application in respect of Sh. Venkatesh Nayak, 55A, 3rd Floor, Kalu Sarai, Delhi-110016, received in this Ministry vide registration no. POWER/R/2016/00087 dated 26.2.2016. The applicant has sought information on buy back of hydro power projects situated in Jammu & Kashmir. As the information sought pertains to NHPC Ltd., the application is being transferred to NHPC Ltd. in terms of section 6(3) (ii) of the RTI Act, 2005 for providing information directly to the applicant under intimation to this Ministry.

Encl: A/a.

Yours faithfully,


(S.S. Rawat)

Under Secretary to the Govt. of India.

✓ CT: Sh. Venkatesh Nayak, 55A, 3rd Floor, Kalu Sarai, Delhi-110016 (Speed Post). As far as NHPC(Desk) is concerned a copy of your RTI application received in this Ministry vide registration no. POWER/R/2016/00087 dated 26.2.2016 is being transferred to NHPC Ltd. under section 6(3) (ii) of the RTI Act, 2005 with request to provide the information directly to the applicant. You are requested to contact CE & PIO, NHPC Ltd., NHPC Office Complex, Sector-33, Faridabad (Haryana) in this regard.



सूचना का
अधिकार

एनएचपीसी लिमिटेड
(भारत सरकार का उद्यम)
NHPC Limited
(A Govt. of India Enterprise)

NH/RTI/186/2016/ 2812-18

TEL. 0129-2277429 & 2256044

Date: 17/03/2016

✓ Sh. Venkatesh Nayak,
#55A, 3rd Floor,
Kalu Sarai, Delhi-110016.

पंजीकृत / REGISTERED

Sub:-Information under the RTI Act, 2005.(App.No. 186)


Sir,
Please refer your application dated 24/02/2016 received in this office through Sh. S.S. Rawat, Under Secretary to the Govt. of India, MOP, New Delhi on dated 07/03/2016 for information under RTI Act, 2005.

We are pleased to furnish you the requisite information/document as received from the deemed PIO as per section 5(5) of the RTI Act. 2005 as Annexure I.

An appeal can be made under Section 19 of RTI Act. 2005 within 30 days of receipt of this letter. The Appellate Authority for this purpose is Sh. A. B. Agrawal, Executive Director (HR), NHPC Office Complex, Sector-33, Faridabad (Haryana).

Thanking you,

Yours faithfully,


(Deepak Saigal)
Chief Engineer (C) & CPIO

Encl: (1 page)

Copy to: Sh.S.S.Rawat (Under Secretary to the Govt. of India), Ministry of Power, Shram Shakti Bhavan, Rafi Marg, New Delhi-110001 w.r.t. your letter No.12/5/2016-NHPC (Desk) dated 04/03/2016.



Regd. Office
CABLE :

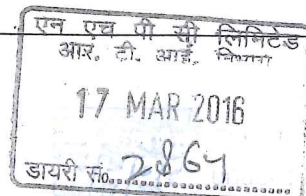
: NHPC OFFICE COMPLEX, SECTOR-33, FAIDABAD-121003(HARYANA)
"HYDROCORP"TELEX:343-311 NHPC INFAX:2277941

एनएचपीसी लिमिटेड

(भारत सरकार का उधम)

अनुलग्नक - 'क'
ANNEXURE - 'I'

अंतः कार्यालय ज्ञापन	
प्रेषक : योजना विभाग	प्रापक: मुख्य अभियंता (सिविल) एवं केन्द्रीय लोक सूचना अधिकारी
सं.: एनएच/पीडी/आरटीआई/ 703	दिनांक: 16.03.2016
विषय: सूचना अधिकार अधिनियम 2005 के अंतर्गत सूचना उपलब्ध कराने हेतु आवेदन:- आवेदन संख्या एनएच/ आरटीआई/186/2016/2722 दिनांक: 08.03.2016	
<p>RTI section vide IOM dated 08.03.2016, has forwarded the RTI application of Sh. Venkatesh Nayak, which was transferred by MOP to NHPC vide letter dated 04.03.2016, to Planning the Division for reply.</p> <p>In this context, it is intimated that the issue raised in the application (i.e. buyback of NHPC Projects in J&K by State Government), is between the parties MOP/NHPC & GoJ&K, which is not yet resolved. Any disclosure of information, at this stage, will affect the commercial interest of NHPC.</p> <p>The disclosure of such information is exempted under section 8(d) of the Right to Information Act 2005.</p> <p>प्रतिलिपि : मुख्य अभियंता -II, पी एम, एस जी को उनके अंतः ज्ञापन संख्या पीएमएसजी/सीई-II/आरटीआई/2016/207-08/दिनांक 10.03.2016 के सन्दर्भ में सूचनार्थ</p> <p style="text-align: right;">मुख्य अभियंता (योजना)-IV</p> <p>महाप्रबंधक (योजना) 42</p> <p>कार्यपालक निदेशक (योजना) 16/3/16</p>	



Document is being released
RTI Act. Page No. 1

Before the Designated First Appellate Authority
and Executive Director (HR), NHPC Ltd.,
NHPC Office Complex, Sector-33, Faridabad, Haryana – 121 003

Appeal submitted under Section 19(1) of the Right to Information Act, 2005

In the matter of

Venkatesh Nayak vs CPIO, NHPC Ltd.

Date of submission: 25/04/2016

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S.S. Venkatesh Nayak

Before the Designated First Appellate Authority

and Executive Director (HR), NHPC Ltd.,

NHPC Office Complex, Sector-33, Faridabad, Haryana – 121 003

Appeal submitted under Section 19(1) of the Right to Information Act, 2005

Date: 25/04/2016

- 1) Name and address of the appellant :** Venkatesh Nayak
#55A, 3rd Floor
Siddharth Chambers-1
Kalu Sarai
New Delhi- 110 016
- 2) Name and address of the Central Public Information Officer (CPIO) to whom the RTI application was sent :** The Central Public Information Officer
Ministry of Power
Government of India
2nd Floor, Shram Shakti Bhawan
New Delhi – 110 001
- 3) Name and address of the Officer who gave initial reply to the RTI Application :** Shri S. S. Rawat
Under Secretary to the Govt. of India
Ministry of Power
Government of India
Shram Shakti Bhawan, Rafi Marg
New Delhi – 110 001
- 4) Name and address of the CPIO who gave a final reply to the RTI Application :** Shri Deepak Saigal
CPIO & Chief Engineer (C)
NHPC Ltd.
NHPC Office Complex
Sector 33, Faridabad
Haryana – 121 003
- 5) Particulars of the RTI application-**
- a) No. and date of submission of the RTI application :** No. RTI/GoI/PowerMin/2016/1 dated 24/02/2016
- b) Date of payment of additional fee (if any) :** Not applicable.
- 6) Particulars of the order(s) including number, if any against which the appeal is preferred :** Communication of No. NH/RTI/186/2016/2817-18 dated 17/03/2016

S.S. Venkatesh Nayak

7) Brief facts leading to the appeal :

7.1) On 10/02/2016 this Appellant despatched by Speed Post, a request for information to the CPIO mentioned at para #2 above along with the prescribed application fee, stating as follows (**Annexe 1**):

"I would like to obtain the following information from your public authority, under the RTI Act:

- 1) A clear copy of all correspondence received from the Government of Jammu and Kashmir regarding the buy back of hydro power projects situated in that State, till date;
- 2) A clear copy of all replies sent to the Government of Jammu and Kashmir in relation to the correspondence referred to at para #1 above, till date;
- 3) A clear copy of all documents relating to the feasibility of the proposal of buy back of the projects mentioned at para #1 above, including reports of any expert committee available on record; and
- 4) A clear copy of all file notings held as on date relating to the queries described at paras #1-3 above.

I am a citizen of India. I have enclosed an IPO (bearing #32F 161184) for Rs. 10/- towards payment of the prescribed application fee. I would like to receive the information by post at my address mentioned above. If any or all of the information specified above is available in electronic form, kindly provide copies as requested above in a CD. If any information specified above is not available in electronic form, kindly provide photocopies of the same. Kindly inform me of any additional fee payable for obtaining the information specified above."

7.2) On 07/03/2016 this Appellant received a reply from the Officer mentioned at para #3 above, stating as follows (**Annexe 2**):

"I am directed to forward herewith a copy of application in respect of Sh. Venkatesh Nayak, 55A, Kalu Sarai, Delhi – 110 016, received in this Ministry vide registration no. POWER/R/2016/00087 dated 26.02.2016. The applicant has sought information on buy back of hydro power projects situated in Jammu and Kashmir. As the information sought pertains to NHPC Ltd., the application is being transferred to NHPC Ltd. in terms of section 6(3)(ii) of the RTI Act, 2005 for providing information directly to the applicant under intimation to this Ministry."

7.3) Subsequently on 26/03/2016, this Appellant received a reply from the CPIO mentioned at para #4 above stating as follows (**Annexe 3**):

"Please refer your application dated 24/02/2016 received in this office through Sh. S. S. Rawat, Under Secretary to the Govt. of India, MOP, New Delhi on dated 07/03/2016 for information under RTI Act, 2005."

S.S. Venkatesh Nayak

We are pleased to furnish you the requisite information/document as received from the deemed PIO as per section 5(5) of the RTI Act, 2005 as Annexure I."

7.4) The Annexure I attached to the reply of the CPIO mentioned at para #4 above, stated as follows (**Annexe 4**):

"RTI section vide IOM dated 08.03.2016 has forwarded the RTI application of Sh. Venkatesh Nayak, which was transferred by MOP to NHPC vide letter dated 04.03.2016, to Planning Division for reply.

In this context it is intimated that the issue raised in the application (i.e. buyback of NHPC Projects in J&K by State Government) is between the parties MOP/NHPC & GoJ&K, which is not yet resolved. Any disclosure of information at this stage, will affect the commercial interest of NHPC.

The disclosure of such information is exempted under section 8(d) of the Right to Information Act, 2005."

7.5) This Appellant is aggrieved by the CPIO's reply to the instant RTI application for reasons explained below.

8) Prayers or relief sought :

This Appellant prays that this First Appellate Authority be pleased to:

- 1) admit this appeal and inquire into the matters raised herein;**
- 2) direct the CPIO to disclose all information specified in the instant RTI application free of charge as is this Appellant's right under Section 7(6) of the RTI Act; and**
- 3) issue an official memorandum to the CPIO to discharge his statutory responsibilities under the RTI Act with greater care and diligence in future.**

9) Grounds for the prayer or relief :

9.1) According to Section 19(1) of the RTI Act an RTI applicant who is aggrieved by a decision of the CPIO may prefer an appeal to the designated First Appellate Authority of that public authority within 30 days of receipt of the CPIO's decision. This Appellant received the decision of the CPIO specified at para #4 above, rejecting the instant RTI application on 26/03/2016. This first appeal is being submitted by this Appellant on the 30th day of the receipt of the said CPIO's decision which is within the time limit stipulated in Section 19(1) of the RTI Act. This Appellant is aggrieved by the decision of the said CPIO for the following reasons:

S.S. Venkatesh Nayak

9.1.1) The CPIO referred to at para #4 above has merely forwarded an opinion furnished by an officer of this Respondent Public Authority without arriving at his own decision as is required to be done under Section 7(1) of the RTI Act. This reply of the said CPIO deserves to be set aside on both technical and substantive grounds. First, the CPIO does not appear to have adequately understood the nature of his duties under Section 7(1) of the RTI Act. Section 7(1) of the RTI Act requires a CPIO to either furnish the requested information upon receipt of the prescribed additional fee or reject the request for reasons specified in Sections 8 or 9 of the RTI Act. Nothing in the RTI Act permits the designated CPIO of a public authority to delegate the responsibility of making a decision under Section 7(1) of the RTI Act to any other officer by invoking the provisions of the Act. Section 5(4) read with Section 5(5) has been placed in the scheme of the RTI Act only for the purpose of seeking from and providing assistance by other officers in a public authority to a designated CPIO in order to deal with an RTI application. It is not open for the CPIO to invoke these provisions to delegate the responsibility of making a decision on the RTI application to any other officer of the public authority, howsoever senior he/she may be. Nothing in the RTI Act permits the CPIO to delegate his/her responsibilities to any other officer.

There is clear case law on this subject. In the matter of ***J P Agrawal vs Union of India & Ors.***, [2011 VII AD (Del.) 625], the Hon'ble Delhi High Court was pleased to explain the ambit of Sections 5(4) and 5(5) vis-à-vis the statutory responsibilities of the CPIO in the following terms:

"7. Section 4 of the Act obliges every public authority to publish inter alia the particulars of facilities available to citizens for obtaining information and the names, designations and other particulars of the PIOs. Section 5 requires the public authorities to designate PIO to provide information to persons requesting for information under the Act. Such PIOs, under Section 5(2) of the Act are to receive applications for information and under Section 5(3) of the Act are to deal with request from persons seeking information and render reasonable assistance to the information seekers. The Act having required the PIOs to "deal with" the request for information and to "render reasonable assistance" to the information seekers, cannot be said to have intended the PIOs to be merely Post Offices as the Petitioner would contend. The expression "deal with", in *Karen Lambert v. London Borough of Southwark* (2003) EWHC 2121 (Admin) was held to include everything right from receipt of the application till the issue of decision thereon. Under Section 6(1) and 7(1) of the RTI Act, it is the PIO to whom the application is submitted and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information, the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO. As has been noticed above, penalty has been imposed on the Petitioner not for the reason of delay which the Petitioner is attributing to Respondent No. 4 but for the reason of the Petitioner having acted merely as a Post Office, pushing the application for information

S. S. Venkatesh Nayak

received, to the Respondent No. 4 and forwarding the reply received from the Respondent No. 4 to the information seeker, without himself "dealing" with the application and/or "rendering any assistance" to the information seeker. The CIC has found that the information furnished by the Respondent No. 4 and/or his department and/or his administrative unit was not what was sought and that the Petitioner as PIO, without applying his mind merely forwarded the same to the information seeker. Again, as aforesaid the Petitioner has not been able to urge any ground on this aspect. The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates. The PIO has to apply his own mind independently and take the appropriate decision and cannot blindly approve / forward what his subordinates have done." [emphasis supplied]

Given the aforementioned crystal clear opinion of the Hon'ble Delhi High Court that a CPIO cannot abdicate his statutory responsibility for making a decision on an RTI application by depending upon the assistance of other officers under Sections 5(4) and 5(5), the reply and action of the CPIO mentioned at para #4 above becomes bad in law. The said CPIO has merely conveyed an opinion of a colleague in the Respondent Public Authority who is not authorised to make any decision in relation to a request for information submitted under the RTI Act. The said CPIO has not applied his mind to ascertain the correctness of the opinion furnished by the said colleague as is required to be done under the provisions of the RTI Act before communicating it to this Appellant. Therefore the reply of the CPIO referred to at para #4 above deserves to be set aside as being bad in law. ***Hence the submission of this appeal before this Hon'ble First Appellate Authority.***

9.1.2) Further, the opinion furnished by the 'deemed PIO' of the Respondent Public Authority clearly indicates his lack of familiarity with the provisions of the RTI Act. In his opinion furnished to the CPIO mentioned at para #4 above, the 'deemed PIO' has claimed that the disclosure of the information sought in the instant RTI application would affect the commercial interest of the Respondent Public Authority. So he has reasoned that Section 8(d) of the RTI Act is applicable to the information sought. These arguments clearly indicate lack of adequate awareness about the provisions of the RTI Act on the part of the 'deemed PIO'. First, none of the exemptions listed in Section 8(1) of the RTI Act exempt the disclosure of information on the grounds that such disclosure would affect the commercial interest of a public authority. Second, there is no provision in the RTI Act numbered Section 8(d) either. These lacunae in the opinion of the 'deemed PIO' clearly indicate his lack of familiarity with the form and the substance of the RTI Act. The CPIO mentioned at para #4 above has misplaced his reliance on the competence of his colleague to deal with the instant RTI application. Hence the reply of the CPIO mentioned at para #4 deserves to be set aside. ***Hence the submission of this appeal before this Hon'ble First Appellate Authority.***

9.1.3) Further, presumably, the 'deemed PIO' had in a convoluted way intended to opine that Section 8(1)(d) of the RTI Act is applicable to the information sought in the instant RTI application. However, this reasoning is mistaken for two more reasons. First, the exemption

S. S. Venkatesh Nayak

from disclosure in Section 8(1)(d) is available only to information that is in the nature of commercial confidence. Merely stating that the disclosing the information would affect the 'commercial interest' of the Respondent Public Authority is not adequate to meet the test of the exemption provided in Section 8(1)(d). Second, Section 8(1)(d) of the RTI Act exempts the disclosure of information that is in the nature of 'commercial confidence' or intellectual property rights where disclosure may harm the competitive position of a "third party". A public authority receiving and disclosing an RTI application cannot claim this exemption for itself. A public authority cannot be both the second party, namely, the recipient of an RTI application and also a third party in a single case. This would lead to absurdity in the interpretation of the law. The 'deemed CPIO' has not applied his mind to these complex legal issues. Similarly, the CPIO mentioned at para #4 above has also not applied his mind to the opinion furnished by the 'deemed CPIO' and instead simply endorsed the opinion without any kind of justification. Therefore the reply of the CPIO is bad in law and deserves to be set aside. **Hence the submission of this appeal before this Hon'ble First Appellate Authority.**

9.1.4) Further, while purportedly trying to reject the instant RTI application, the CPIO referred to at para # 4 above, has not acted in accordance with the requirements of Section 7(8) of the RTI Act. Section 7(8) of the RTI Act requires a CPIO to give detailed and cogent reasons for rejecting access to information. A mere mention of an exemption listed in Section 8(1) of the RTI Act is not adequate for the purpose of that Section. In the matter of *Balmukand Rai v Life Insurance Corporation of India* (Decision No.204/IC(A)/2006, decision dated 25/08/2006) the Hon'ble Central Information Commission has held that the CPIO had erred in not issuing a speaking order while rejecting the RTI application. The Hon'ble Commission noted:

"A mere mention of the provisions of 8(1)(d) of the Act for denying the information is not enough."

Further, in the matter of *Lajinder Singh v Archaeological Survey of India*, (F.No.PBA/06/504, decision dated 24/05/2007) the Hon'ble Central Information Commission has held that the PIO performs a quasi-judicial role and has to pass a speaking order while denying access to information.

Further, in the matter of *Ranjit Singh Saini v State Bank of India* (Appeal No.1927 ICPB/2008, decision dated 05/05/2008) the Hon'ble Information Commission has held as follows:

"Whenever the CPIO and AA provided the reply to the appellant they should give a speaking order so that the appellant will be able to understand why this information has not been given to him."

Further, in the matter of *S P Goyal v Income Tax Officer XII(2)(1), Mumbai* (Appeal No. CIC/AT/A/2008/00688, decision dated 15/01/2009) the Hon'ble Information Commission has held that the PIO is required to issue a speaking order while denying access to the information requested by an applicant.

S.S. Venkatesh Nayak

Further, in the matter of *Kusum Singh v Bharat electronics Ltd.* (Appeal No.CIC/WB/A/2008/01435-SM, decision dated 15/04/2009) the Hon'ble Central Information Commission has held as follows:

"We note that the CPIO was not right in denying a number of information by merely referring to the provisions of Section 8 of the Right to Information (RTI) Act. If any information is to be denied, the CPIO has to record a speaking order and explain/clarify why a particular piece of information should not be disclosed under any provision of that Section."

The full text of these decisions is not being annexed to this first appeal in order to save paper. All these orders are available on the website of the Hon'ble CIC at www.cic.gov.in. According to the Hon'ble Central Information Commission and reiterated by the Hon'ble Supreme Court of India, the established position in law on this matter is that a CPIO is duty bound to give detailed reasoning in the form of a speaking order while denying an information request instead of mechanically invoking an exemption under one or more provisions the RTI Act. The CPIO has erred in not discharging his duty with due diligence by issuing a well reasoned order. This Appellant is aggrieved by the unreasonable action of the said CPIO which deserves to be set aside. **Hence the submission of this appeal before this Hon'ble First Appellate Authority.**

9.1.5) Further, the cavalier manner in which the CPIO referred to at para #4 above has dealt with the instant RTI application indicates a lack of due application of mind to the contents of the RTI application in the light of the express provisions of the Act as interpreted by the Courts. This Hon'ble First Appellate Authority (FAA) has an obligation to ensure that the CPIOs under his charge discharge their obligations under the RTI Act faithfully. Where such officers are found lacking, it is this Appellant's firm belief that the FAA may issue an official memorandum to such officers requiring them to process all RTI applications more diligently and within the specified time limits in future. Further, should this Hon'ble First Appellate Authority decide to disclose the information sought in the instant RTI application it would clearly qualify for being disclosed free of charge under Section 7(6) of the RTI Act as such decision would have been taken after the stipulated period of 30 days. **Hence the submission of this appeal before this Hon'ble First Appellate Authority.**

10) I hereby verify that the aforementioned facts are true to the best of my knowledge. I also declare that I have authenticated the Annexes to this appeal.

Signature of the Appellant:

S-S. Venkatesh Nayak
(Venkatesh Nayak) 25/4/16

SP HAUZ KHAS <110016>
ED768862983IN
Counter No:4,OP-Code:SCX
To:F A A,NHPC LTD
AMAR NAGAR, PIN:121003
From:VINKATERH NAYAK , DELHI
Wt:60grams,
Amt:29.00 ,26/04/2016 ,14:18
Taxes:Rs.4.00<<Track on www.indiapost.gov.in>>

भारतीय डाक
India Post

NHPC LIMITED

(NHPC OFFICE COMPLEX SECTOR-33 FARIDABAD-121003)

**BEFORE THE APPELLATE AUTHORITY
UNDER THE RTI ACT, 2005.**

No: NH/ED(HR)/AA/25/2016 /437-39

Dated: 23/05/2016

Appellant : Sh. Venkatesh Nayak, Kalu Sarai, New Delhi
Respondents : PIO, NHPC and Deemed PIO, NHPC.

ORDER

Vide application dated 24/02/2016 filed under RTI Act, 2005 by Sh. Venkatesh Nayak filed under RTI Act, received in the office of CPIO, NHPC on 07/03/2016 through Under Secretary, Ministry of Power, Govt. of India vide their letter No. 12/5/2016-NHPC(Desk) dated 04/03/2016. Vide aforesaid application, Sh. Venkatesh Nayak sought the following information:-

1. A clear copy of all correspondence received from the Government of Jammu and Kashmir regarding the buy back of hydro power projects situated in that State, till date.
2. A clear copy of all replies sent to the Government of Jammu and Kashmir in relation to the correspondence referred to at para #1 above, till date.
3. A clear copy of all documents relating to feasibility of the proposal of buy back of the projects mentioned at para # 1 above, including reports of any experts committee available on record; and
4. A clear copy of all file notings held as on date relating to the queries described at para # 1-3 above".

Aggrieved by the reply of CPIO vide letter no. NH/RTI/186/2016/2817-18 dated 17/03/2016 the applicant has preferred the present appeal dated 25/04/2016 received in this office on 28/04/2016 on the ground that "Appellant is aggrieved by the decision of the said CPIO" by mentioning the reasons. He also cited the various decisions of Hon'ble Delhi High Court & Hon'ble Central Information Commission in support of his appeal.

I have carefully examined the appeal viz-a-viz correspondence made between the CPIO, the deemed PIO and the appellant and it has been observed there is no denial in providing the information as per the Act. The reply as supplied by Planning Division, Corporate Office being deemed PIO as per section 5(5) of the RTI Act vide their IOM no. NH/PD/RTI/703 dated 16/03/2016, has been furnished to the applicant by CPIO, NHPC vide letter no. NH/RTI/186/2016/2817-18 dated 17/03/2016. It has also been observed that the


Anand Kumar Agrawal
23/05/2016

deemed PIO resorted the exemption under section 8(1)(d) of RTI Act being information related to commercial confidence, which was however inadvertently typed as 8(d) instead of 8(1)(d) of the RTI Act 2005. The appeal was forwarded to Planning division, Corporate Office with the request to review the information/reply provided against his application and offer their comments on the appeal, vide IOM no. NH/RTI/Appeal/25/2016/224 dated 29/04/2016. Responding to the same, deemed PIO i.e. Planning Division replied vide their IOM no. NH/PD/RTI/1105 dated 10/05/2016 that "NHPC is a Central Public Sector Undertaking (CPSU), it is a listed company in the stock market. The information sought by the applicant is sensitive and directly related to the business of the company. Also, the issue is between the parties MOP/NHPC & GoJ&K. The disclosure, shall lead to unwarranted speculations and confusion among the shareholders and shall affect the commercial confidence of NHPC. The disclosure of such information affecting the commercial confidence is exempted in terms of section 8(1)(d) of RTI Act, which says that:-

Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information".

I agree with deemed PIO and a copy of reply received from deemed PIO is enclosed as Annexure- 'A'. (02 pages).

The Appeal is accordingly disposed of.


(A.B. Agrawal)
Executive Director (HR) and
Appellate Authority

Copy to:

1. Sh. Venkatesh Nayak, 55A, 3rd Floor, Sidharth Chamber-1, Kalu Sarai, New Delhi-110016
2. The Executive Director (Planning), NHPC Limited, Corporate Office, Sector 33, Faridabad
3. The PIO, NHPC Limited, Corporate Office, Sector 33, Faridabad

एनएचपीसी लिमिटेड

(भारत सरकार का उधम)

अंतः कार्यालय ज्ञापन

प्रेषक : योजना विभाग

प्रापक: मुख्य अभियंता (सिविल) एवं
केन्द्रीय लोक सूचना अधिकारी

सं.: एनएच/पीडी/आरटीआई/ 1105

दिनांक: 10.05.2016

विषय: Appeal for Information under the RTI Act, 2005:- अपील संख्या: एनएच/
आरटीआई/अपील/25/2016/224 दिनांक: 29.04.2016

कृपया लोक सूचना अधिकारी के अंतः ज्ञापन संख्या एनएच/
आरटीआई/अपील/25/2016/224 दिनांक: 29.04.2016, जो श्री वेंकटेश नायक की अपील से
संबंधित है, का अवलोकन करें।

इस विषय में योजना विभाग जैने अपनी पूर्व प्रदत्त सूचना का मूल्यांकन किया है और
आवेदक की अपील पर योजना विभाग की टिप्पणी संलग्न है।

संलग्न : यथोपरि।



This document is being released
under the RTI act. Page No..01



एनएचपीसी निगम मुख्यालय

निगम योजना विभाग

अंतर कार्यालय ज्ञापन

प्रेषक:- मुख्य अभियंता-II(योजना)

प्राप्तक:- मुख्य अभियंता-IV(योजना)

संख्या:- एनएच/पीडी/General/ 1101

दिनांक:-10.05.2016

Sub:-Appeal for information under the RTI Act 2005

Ref:-1 NH/RTI/Appeal/25/2016/224 dated 29.04.2016

Vide IOM mentioned under reference, RTI Section has forwarded the an Appeal of Sh. Venkatesh Nayak, on the reply furnished by the Planning Division vide IOM dated 16.03.2016, and requested Planning Division to review the information / Reply provided against his application and offer the comments on the appeal, for early disposal by the Appellate Authority.

In this connection, the comments on the points pertaining to this Division are furnished hereunder:-

NHPC is a Central Public Sector Undertaking (CPSU), it is a listed company in the stock market.

The information sought by the applicant is sensitive and directly relating to the business of the company. Also, the issue is between the parties MOP/NHPC & GoJ&K.

The disclosure, shall lead to unwarranted speculations and confusion among the shareholders and shall affect the commercial confidence of NHPC.

The disclosure of such information affecting the commercial confidence is exempted in terms of section 8(1)(d) of RTI Act, which says that,

"Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information".

एम. चन्द्रशेखर

एम. चन्द्रशेखर

प्रबंधक (सिविल)

मुख्य अभियंता - II (योजना)



This document is being released under the RTI act. Page No. 2

Before the Central Information Commission

2nd Floor, 'B' Wing, August Kranti Bhawan, Bhikaiji Cama Place, New Delhi- 110 066

Appeal submitted under Section 19(3) of *The Right to Information Act, 2005*

In the matter of

Venkatesh Nayak vs NHPC Ltd.

Date of submission: 19/07/2016

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SP HAUZ KHAS <110016>
ED1208250381N
Counter No:1, OP-Code:KY1
To:THE REG CT COMM,
R K PURAM (MAIN), PIN:110066
From:VENKATESH, ND
Wt:160grams,
Amt:29.00, 19/07/2016, 13:19
Taxes:Rs.4.00<<Track on www.indiapost.gov.in>>



1

SP HAUZ KHAS <110016>
ED1208250441N
Counter No:1, OP-Code:KY1
To:THE CPIO,
AMAR NAGAR, PIN:121003
From:VENKATESH, ND
Wt:160grams,
Amt:29.00, 19/07/2016, 13:18
Taxes:Rs.4.00<<Track on www.indiapost.gov.in>>



Before the Central Information Commission

2nd Floor, 'B' Wing, August Kranti Bhawan, Bhikaiji Cama Place, New Delhi- 110 066

Appeal submitted under Section 19(3) of *The Right to Information Act, 2005*

Date: 19/07/2016

- | | | |
|--|---|--|
| 1) Name and address of the Appellant | : | Venkatesh Nayak
#55A, 3 rd Floor
Siddharth Chambers-1
Kalu Sarai
New Delhi-110016 |
| 2) Name and address of the Public Information Officer to whom the Application was addressed | : | The Central Public Information Officer
Ministry of Power
Government of India
2 nd Floor, Shram Shakti Bhawan
New Delhi- 110 001 |
| 3) Name and address of the Public Information Officer who gave final reply to the Application | : | Shri S. S. Rawat
CPIO & Chief Engineer (C)
NHPC Ltd.
NHPC Office Complex
Sector 33, Faridabad
Haryana – 121 003 |
| 4) Name and address of the First Appellate Authority to whom the first appeal was submitted | : | The First Appellate Authority
& Executive Director (HR)
NHPC Ltd.
NHPC Office Complex
Sector 33, Faridabad
Haryana – 121 003 |
| 5) Name and address of the First Appellate Authority who decided the first appeal | : | Shri A. B. Agrawal
FAA & Executive Director (HR)
NHPC Ltd.
NHPC Office Complex
Sector 33, Faridabad
Haryana – 121 003 |
| 6) Particulars of the RTI application | : | |
| a) No. & date of submission of the RTI application | : | No. RTI/GoI/PowerMin/2016/1 dated 24/02/2016 |
| b) Date of payment of additional fee (if any) | : | Not applicable |

7) Particulars of the order(s) including number, if any against which the appeal is preferred

1) Decision issued by the CPIO, NHPC of No. NH/RTI/186/2016/2817-18 dated 17/03/2016

2) Decision issued by the FAA, NHPC of No. NH/ED(HR)/AA/25/2016/437-39 dated 23/05/2016

8) Brief facts leading to the appeal :

8.1) On 24/02/2016 this Appellant despatched by Speed Post a request for information to the CPIO mentioned at para #2 above, along with the prescribed application fee, stating as follows (**Annexe 1**):

"I would like to obtain the following information from your public authority, under the RTI Act:

- 1) A clear copy of all correspondence received from the Government of Jammu and Kashmir regarding the buy back of hydro power projects situated in that State, till date;
- 2) A clear copy of all replies sent to the Government of Jammu and Kashmir in relation to the correspondence referred to at para #1 above, till date;
- 3) A clear copy of all documents relating to the feasibility of the proposal of buy back of the projects mentioned at para #1 above, including reports of any expert committee available on record; and
- 4) A clear copy of all file notings held as on date relating to the queries described at paras #1-3 above."

8.2) On 07/03/2015, this Appellant received a copy of a communication dated 04/03/2016 from the Ministry of Power addressed to the CPIO, NHPC stating as follows (**Annexe 2**):

"I am directed to forward herewith a copy of application in respect of Sh. Venkatesh Nayak, 55A, Kalu Sarai, Delhi – 110 016, received in this Ministry vide registration no. POWER/R/2016/00087 dated 26.02.2016. The applicant has sought information on buy back of hydro power projects situated in Jammu and Kashmir. As the information sought pertains to NHPC Ltd., the application is being transferred to NHPC Ltd. in terms of section 6(3)(ii) of the RTI Act, 2005 for providing information directly to the applicant under intimation to this Ministry."

This action of the Ministry of Power, Government of India, transferring the instant RTI application to the Respondent Public Authority is not under challenge in this 2nd appeal. **Therefore, the Union Ministry of Power is not specified as a Respondent in this matter.**

8.3) Subsequently on 26/03/2016, this Appellant received a reply of number and date captioned at para # 7.1 above, from the CPIO mentioned at para #3 above stating as follows (**Annexe 3**):

"Please refer your application dated 24/02/2016 received in this office through Sh. S. S. Rawat, Under Secretary to the Govt. of India, MOP, New Delhi on dated 07/03/2016 for information under RTI Act, 2005.

We are pleased to furnish you the requisite information/document as received from the deemed PIO as per section 5(5) of the RTI Act, 2005 as Annexure I."

8.4) The Annexure I attached to the reply of the CPIO mentioned at para #3 above, stated as follows (**Annexe 4**):

"RTI section vide IOM dated 08.03.2016 has forwarded the RTI application of Sh. Venkatesh Nayak, which was transferred by MOP to NHPC vide letter dated 04.03.2016, to Planning Division for reply.

In this context it is intimated that the issue raised in the application (i.e. buyback of NHPC Projects in J&K by State Government) is between the parties MOP/NHPC & GoJ&K, which is not yet resolved. Any disclosure of information at this stage, will affect the commercial interest of NHPC.

The disclosure of such information is exempted under section 8(d) of the Right to Information Act, 2005."

8.5) Subsequently, this Appellant submitted a first appeal to the designated First Appellate Authority of the Respondent Public Authority via Speed Post on 25/04/2016 with the following prayers supported by detailed grounds (**Annexe 5**):

"This Appellant prays that this First Appellate Authority be pleased to:

- 1) admit this appeal and inquire into the matters raised herein;
- 2) direct the CPIO to disclose all information specified in the instant RTI application free of charge as is this Appellant's right under Section 7(6) of the RTI Act; and
- 3) issue an official memorandum to the CPIO to discharge his statutory responsibilities under the RTI Act with greater care and diligence in future.

8.6) In support of his appeal, this Appellant placed the following grounds for the consideration of the First Appellate Authority of the Respondent Public Authority mentioned at para #5 above:

"9) Grounds for the prayer or relief :

9.1) According to Section 19(1) of the RTI Act an RTI applicant who is aggrieved by a decision of the CPIO may prefer an appeal to the designated First Appellate Authority of that public authority within 30 days of receipt of the CPIO's decision. This Appellant received the decision of the CPIO specified at para #4 above, rejecting the instant RTI application on 26/03/2016. This first appeal is being submitted by this Appellant on the 30th day of the receipt of the said CPIO's decision which is within the time limit stipulated in Section 19(1) of the RTI Act. This Appellant is aggrieved by the decision of the said CPIO for the following reasons:

9.1.1) The CPIO referred to at para #4 above has merely forwarded an opinion furnished by an officer of this Respondent Public Authority without arriving at his own decision as is required to be done under Section 7(1) of the RTI Act. This reply of the said CPIO deserves to be set aside on both technical and substantive grounds. First, the CPIO does not appear to have adequately understood the nature of his duties under Section 7(1) of the RTI Act. Section 7(1) of the RTI Act requires a CPIO to either furnish the requested information upon receipt of the prescribed additional fee or reject the request for reasons specified in Sections 8 or 9 of the RTI Act. Nothing in the RTI Act permits the designated CPIO of a public authority to delegate the responsibility of making a decision under Section 7(1) of the RTI Act to any other officer by invoking any of the provisions of the Act. Section 5(4) read with Section 5(5) has been placed in the scheme of the RTI Act only for the purpose of seeking from and providing assistance by other officers in a public authority to a designated CPIO in order to deal with an RTI application. It is not open for the CPIO to invoke these provisions to delegate the responsibility of making a decision on the RTI application to any other officer of the public authority, howsoever senior he/she may be. Nothing in the RTI Act permits the CPIO to delegate his/her responsibilities to any other officer.

There is clear case law on this subject. In the matter of ***J P Agrawal vs Union of India & Ors., [2011 VII AD (Del.) 625]***, the Hon'ble Delhi High Court was pleased to explain the ambit of Sections 5(4) and 5(5) vis-à-vis the statutory responsibilities of the CPIO in the following terms:

"7. Section 4 of the Act obliges every public authority to publish inter alia the particulars of facilities available to citizens for obtaining information and the names, designations and other particulars of the PIOs. Section 5 requires the public authorities to designate PIO to provide information to persons requesting for information under the Act. Such PIOs, under Section 5(2) of the Act are to receive applications for information and under Section 5(3) of the Act are to deal with request from persons seeking information and render reasonable assistance to the information seekers. The Act having required the PIOs to "deal with" the request for information and to "render reasonable assistance" to the information seekers, cannot be said to have intended the PIOs to be merely Post Offices as the Petitioner would contend. The expression "deal with", in *Karen Lambert v. London Borough of Southwark* (2003) EWHC 2121 (Admin) was held to include everything right from receipt of the application till the issue of decision thereon. Under

Section 6(1) and 7(1) of the RTI Act, it is the PIO to whom the application is submitted and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information, the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO. As has been noticed above, penalty has been imposed on the Petitioner not for the reason of delay which the Petitioner is attributing to Respondent No. 4 but for the reason of the Petitioner having acted merely as a Post Office, pushing the application for information received, to the Respondent No. 4 and forwarding the reply received from the Respondent No. 4 to the information seeker, without himself "dealing" with the application and/or "rendering any assistance" to the information seeker. The CIC has found that the information furnished by the Respondent No. 4 and/or his department and/or his administrative unit was not what was sought and that the Petitioner as PIO, without applying his mind merely forwarded the same to the information seeker. Again, as aforesaid the Petitioner has not been able to urge any ground on this aspect. The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates. The PIO has to apply his own mind independently and take the appropriate decision and cannot blindly approve / forward what his subordinates have done." [emphasis supplied]

Given the aforementioned crystal clear opinion of the Hon'ble Delhi High Court that a CPIO cannot abdicate his statutory responsibility for making a decision on an RTI application by depending upon the assistance of other officers under Sections 5(4) and 5(5), the reply and action of the CPIO mentioned at para #4 above becomes bad in law. The said CPIO has merely conveyed an opinion of a colleague in the Respondent Public Authority who is not authorised to make any decision in relation to a request for information submitted under the RTI Act. The said CPIO has not applied his mind to ascertain the correctness of the opinion furnished by the said colleague as is required to be done under the provisions of the RTI Act before communicating it to this Appellant. Therefore the reply of the CPIO referred to at para #4 above deserves to be set aside as being bad in law. ***Hence the submission of this appeal before this Hon'ble First Appellate Authority.***

9.1.2) Further, the opinion furnished by the 'deemed PIO' of the Respondent Public Authority clearly indicates his lack of familiarity with the provisions of the RTI Act. In his opinion furnished to the CPIO mentioned at para #4 above, the 'deemed PIO' has claimed that the disclosure of the information sought in the instant RTI application would affect the commercial interest of the Respondent Public

Authority. So he has reasoned that Section 8(d) of the RTI Act is applicable to the information sought. These arguments clearly indicate lack of adequate awareness about the provisions of the RTI Act on the part of the 'deemed PIO'. First, none of the exemptions listed in Section 8(1) of the RTI Act exempt the disclosure of information on the grounds that such disclosure would affect the commercial interest of a public authority. Second, there is no provision in the RTI Act numbered Section 8(d) either. These lacunae in the opinion of the 'deemed PIO' clearly indicate his lack of familiarity with the form and the substance of the RTI Act. The CPIO mentioned at para #4 above has misplaced his reliance on the competence of his colleague to deal with the instant RTI application. Hence the reply of the CPIO mentioned at para #4 deserves to be set aside. ***Hence the submission of this appeal before this Hon'ble First Appellate Authority.***

9.1.3) Further, presumably, the 'deemed PIO' had in a convoluted way intended to opine that Section 8(1)(d) of the RTI Act is applicable to the information sought in the instant RTI application. However, this reasoning is mistaken for two more reasons. First, the exemption from disclosure in Section 8(1)(d) is available only to information that is in the nature of commercial confidence. Merely stating that the disclosing the information would affect the 'commercial interest' of the Respondent Public Authority is not adequate to meet the test of the exemption provided in Section 8(1)(d). Second, Section 8(1)(d) of the RTI Act exempts the disclosure of information that is in the nature of 'commercial confidence' or intellectual property rights where disclosure may harm the competitive position of a "third party". A public authority receiving and disclosing an RTI application cannot claim this exemption for itself. A public authority cannot be both the second party, namely, the recipient of an RTI application and also a third party in a single case. This would lead to absurdity in the interpretation of the law. The 'deemed CPIO' has not applied his mind to these complex legal issues. Similarly, the CPIO mentioned at para #4 above has also not applied his mind to the opinion furnished by the 'deemed CPIO' and instead simply endorsed the opinion without any kind of justification. Therefore the reply of the CPIO is bad in law and deserves to be set aside. ***Hence the submission of this appeal before this Hon'ble First Appellate Authority.***

9.1.4) Further, while purportedly trying to reject the instant RTI application, the CPIO referred to at para # 4 above, has not acted in accordance with the requirements of Section 7(8) of the RTI Act. Section 7(8) of the RTI Act requires a CPIO to give detailed and cogent reasons for rejecting access to information. A mere mention of an exemption listed in Section 8(1) of the RTI Act is not adequate for the purpose of that Section. In the matter of *Balmukand Rai v Life Insurance Corporation of India* (Decision No.204/IC(A)/2006, decision dated 25/08/2006) the Hon'ble Central Information Commission has held that the CPIO had erred in not issuing a speaking order while rejecting the RTI application. The Hon'ble Commission noted:

"A mere mention of the provisions of 8(1)(d) of the Act for denying the information is not enough."

Further, in the matter of *Lajinder Singh v Archaeological Survey of India*, (F.No.PBA/06/504, decision dated 24/05/2007) the Hon'ble Central Information Commission has held that the PIO performs a quasi-judicial role and has to pass a speaking order while denying access to information.

Further, in the matter of *Ranjit Singh Saini v State Bank of India* (Appeal No.1927 ICPB/2008, decision dated 05/05/2008) the Hon'ble Information Commission has held as follows:

"Whenever the CPIO and AA provided the reply to the appellant they should give a speaking order so that the appellant will be able to understand why this information has not been given to him."

Further, in the matter of *S P Goyal v Income Tax Officer XII(2)(1), Mumbai* (Appeal No. CIC/AT/A/2008/00688, decision dated 15/01/2009) the Hon'ble Information Commission has held that the PIO is required to issue a speaking order while denying access to the information requested by an applicant.

Further, in the matter of *Kusum Singh v Bharat electronics Ltd.* (Appeal No.CIC/WB/A/2008/01435-SM, decision dated 15/04/2009) the Hon'ble Central Information Commission has held as follows:

"We note that the CPIO was not right in denying a number of information by merely referring to the provisions of Section 8 of the Right to Information (RTI) Act. If any information is to be denied, the CPIO has to record a speaking order and explain/clarify why a particular piece of information should not be disclosed under any provision of that Section."

The full text of these decisions is not being annexed to this first appeal in order to save paper. All these orders are available on the website of the Hon'ble CIC at www.cic.gov.in. According to the Hon'ble Central Information Commission and reiterated by the Hon'ble Supreme Court of India, the established position in law on this matter is that a CPIO is duty bound to give detailed reasoning in the form of a speaking order while denying an information request instead of mechanically invoking an exemption under one or more provisions the RTI Act. The CPIO has erred in not discharging his duty with due diligence by issuing a well reasoned order. This Appellant is aggrieved by the unreasonable action of the said CPIO which deserves to be set aside. ***Hence the submission of this appeal before this Hon'ble First Appellate Authority.***

9.1.5) Further, the cavalier manner in which the CPIO referred to at para #4 above has dealt with the instant RTI application indicates a lack of due application of mind to the contents of the RTI application in the light of the express provisions of the Act as interpreted by the Courts. This Hon'ble First Appellate Authority (FAA) has an obligation to ensure that the CPIOs under his charge discharge their obligations under the RTI Act faithfully. Where such officers are found lacking, it is this Appellant's firm belief that the FAA may issue an official memorandum to such officers requiring them to process all RTI applications more diligently and within

the specified time limits in future. Further, should this Hon'ble First Appellate Authority decide to disclose the information sought in the instant RTI application it would clearly qualify for being disclosed free of charge under Section 7(6) of the RTI Act as such decision would have been taken after the stipulated period of 30 days. ***Hence the submission of this appeal before this Hon'ble First Appellate Authority."***

8.7) Subsequently, on 27/05/2016, this Appellant received a decision from the First Appellate Authority (FAA) of the Respondent Public Authority, of number and date captioned at para #7.2 (**Annexe 6**). After reciting the queries contained in the instant RTI application and making a cursory reference to the grounds for the first appeal and the case law cited therein, the FAA stated as follows:

"I have carefully examined the appeal viz-a-viz correspondence made between the CPIO, the deemed PIO and the appellant and it has been observed there is no denial in providing information as per the Act. The reply as supplied by the Planning Division, Corporate Office being deemed PIO as per Section 5(5) of the RTI Act vide their IOM no. NH/PD/RTI/703 dated 16/03/2016, has been furnished to the applicant by CPIO, NHPC vide letter no. NH/RTI/186/2016/2817-17 dated 17/03/2016. It has also been observed that the deemed PIO resorted the exemption under Section 8(1)(d) of RTI Act being information related to commercial confidence, which was however inadvertently typed as Section 8(d) instead of Section 8(1)(d) of the RTI Act, 2005. The appeal forwarded to Planning Division, Corporate Office with the request to review the information/reply provided against his application and offer comments on the appeal, vide IOM no. NH/RTI/Appeal/25/2016/224 dated 29/04/2016. Responding to the same, deemed PIO i.e, Planning Division replied vide their IOM no. NH/PD/RTI/1105 dated 10/05/2016 that "NHPC is a Central Public Sector Undertaking (CPSU), it is a listed company in the stock market. The information sought by the applicant is sensitive and directly related to the business of the company. Also, the issue is between the parties MoP/NHPC & GoJK. The disclosure shall lead to unwarranted speculations and confusion among the shareholders and shall affect the commercial confidence of NHPC. The disclosure of such information affecting the commercial confidence is exempted in terms of section 8(1)(d) of RTI Act, which says that:-

Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information".

I agree with the deemed PIO and a copy of reply received from deemed PIO is enclosed as Annexure- 'A' (02 pages).

The Appeal is accordingly disposed of."

8.8) The FAA has upheld the decision of the CPIO thereby denying access to information to this Appellant.

9) Prayers or relief sought :

This Appellant humbly prays that this Hon'ble Commission be pleased to:

- 1) admit this second appeal against the Respondent Public Authority for reasons explained below at para #10 and hold an inquiry into the matters raised herein;**
- 2) set aside the decisions of the CPIO and the FAA of number and date captioned at para #7 above and direct the CPIO of the Respondent Public Authority to disclose all the information sought in the instant RTI application, free of charge, as is this Appellant's right under Section 7(6) of the RTI Act;**
- 3) that this Appellant be provided an opportunity to attend any hearing scheduled in relation to this second appeal by this Hon'ble Commission;**
- 4) that this Appellant be provided sufficient advance notice of any and all hearings that this Hon'ble Commission may conduct in relation this second appeal so as to enable him to represent his case adequately; and**
- 5) direct the CPIO and FAA of the Respondent Public Authority to undergo training to better understand the provisions of the RTI Act at a reputable training institution.**

10) Grounds for the prayer or relief :

10.1) According to Section 19(3) of the RTI Act, any person who is aggrieved by the decision of an FAA may prefer an appeal to this Hon'ble Commission within 90 days of receipt of such decision. This Appellant received the decision of the FAA of the Respondent Public Authority of number and date captioned at para #7.2 above on 27/05/2016. This second appeal is being submitted to this Hon'ble Commission on the 53rd day of the date of receipt of the FAA's order which is well within the time limit specified in Section 19(3) of the RTI Act. This Appellant is aggrieved by the decision of the FAA of the Respondent Public Authority for the reasons specified below:

10.1.1) In his decision, the FAA of the Respondent Public Authority has clarified that the action of the CPIO mentioned at para #3 above, of invoking Section 8(d) of the RTI Act to deny access to information requested in the instant RTI application was an inadvertent typographical error. This Appellant concedes this point and is willing to accept that the said CPIO had intended to invoke Section 8(1)(d) of the RTI Act relating to commercial confidence to reject the information request. However, it is this Appellant's contention that neither the CPIO mentioned at para #3 above, nor the FAA of the Respondent Public Authority have bothered to understand the true scope and import of Section 8(1)(d) of the RTI Act, while invoking it in order to reject the request for information despite this Appellant explaining the issue at length in the first appeal. Section 8(1)(d) reads as follows:

“(1) Notwithstanding contained in this Act, there shall be no obligation to give any citizen--

XXXX

XXXX

XXXX

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;” [emphasis supplied]

The FAA has stated in his decision that he has “carefully examined” the first appeal submitted by this Appellant seeking review of the decision of the CPIO of the Respondent Public Authority. A “careful examination” of the language Section 8(1)(d) would reveal that the protection for information that is in the nature of commercial confidence is available only to a “third party” for the purpose of protecting its competitive position. **It is not available to a public authority which holds the information sought under the RTI Act.** The Respondent Public Authority has confirmed at both the RTI application stage and the first appeal stage that it holds the information sought in the instant RTI application. There is no dispute over the point of custody of the information available in material form with the Respondent Public Authority that forms the subject matter of the instant RTI application. It is this Appellant’s humble contention that the Respondent Public Authority being the 2nd party to the RTI application, namely, the custodian of the information sought (this Appellant as the RTI applicant being the 1st party who initiated this cause of action), cannot also claim to be a “third party” in its own case. The protection of Section 8(1)(d) is available only to a party that is not the recipient of the RTI application in the first instance.

Section 2(n) read with Section 11(1) of the RTI Act make it clear that while a third party may also be a public authority, it must be any public authority other than that which holds the information. The procedure for dealing with information relating to a third party provided for in Section 11 of the RTI Act makes it clear that the CPIO of the public authority must issue a notice to the third party to ascertain his/her/its views on whether or not to disclose the information sought under the Act is such information relates to or has been supplied by that third party and such third party has treated such information as being confidential. In the case of the instant RTI application the CPIO of the Respondent Public Authority would have to issue notice to the Respondent Public Authority itself and ascertain its views. **This interpretation of the provisions of the RTI Act only results in absurdity.** Therefore the decision of the CPIO of the Respondent Public Authority to invoke Section 8(1)(d) of the RTI Act to reject access to the requested information and the decisions of the FAA to uphold such rejection deserves to be set aside as being bad in law.

Further, authoritative pronouncements about the scope and ambit of Section 8(1)(d) of the RTI Act are available in the jurisprudence that has developed around the Act. In the matter of *Virender Singh Dabad vs The Executive Director Etc.*, WP(C) 2143/2011, order dated, 28/11/2011, the Delhi High Court was pleased to hold as follows:

“The reasoning adopted by the CIC in the impugned order is that the disclosure of the details of the persons to whom complimentary tickets were issued by the Air

India in 2006 would affect the commercial interest of Air India. This is also the submission of learned counsel for respondent no.2.

I do not agree with the finding of the CIC as also the submission of counsel for the respondent. Clause (d) of section 8(1) deals with information which is of commercial confidence or trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party. In this case, the information sought by the petitioner, namely, the names of the persons to whom complimentary tickets were issued in the year 2006 does not even pertain to a third party. It pertains to the public authority itself." [emphasis supplied]

Subsequently, this reasoning of the Single Bench of the Hon'ble Delhi High Court was upheld by a Division Bench of the same Court in the matter of *General Manager Finance, Air India Ltd. & Anr vs Virender Singh*, LPA No. 205/2012, judgement dated 16/7/2012. **The aforementioned case law makes it clear that the Respondent Public Authority cannot claim for itself the protection of Section 8(1)(d) which is available only to third parties.** Despite the FAA's claim of "careful examination" of the first appeal the manner of its disposal indicates lack of application of mind on his part. ***Hence the submission of this second appeal before this Hon'ble Commission.***

10.1.2) Further, the FAA has contended that disclosure of the information would create confusion amongst the shareholders of the Respondent Public Authority which is also a commercial enterprise. Information available on the official website of the Respondent Public Authority regarding their shareholding pattern as on 31/03/2016 indicates that an overwhelming majority of NHPC's shares are held by the President of India aka the Central Government. Details regarding shareholding pattern of NHPC, made <http://www.nhpcindia.com/shareholding-pattern.htm> available at this URL: may be summarised as follows:

- 1) The President of India/Central Government – 85.96%;
- 2) Individual shareholders – 6.22%;
- 3) Life Insurance Corporation of India (LIC) – 3.44%;
- 4) Foreign Portfolio Investors – 2.59%
- 5) Financial institutions and Banks – 0.89%
- 6) The remaining shares are said to be held by NBFCs registered with the Reserve Bank of India, one foreign national and one foreign corporate body. 4,739 Non-Resident Indians are amongst the individuals shareholders of NHPC.

To the best of this Appellant's knowledge, the identity of shareholders under category (5) above has not been made public. Nevertheless, adding up the shares owned by the Hon'ble President of India/Central Government and LIC which is a public sector enterprise under the Central Government, almost 90% of NHPC's shares are controlled by the Union Government or its instrumentalities. Technically, these public sector shareholders are custodians of the

NHPC's shares on behalf of the citizens of India. Residents of J&K who are very much citizens of India like this Appellant, have the right to know the details of the negotiations currently underway for the return of the hydel projects which are operating in their State.

Further, in response to an earlier RTI application submitted by this Appellant, the Respondent Public Authority furnished information under the RTI Act that it had generated 115,637 MUs of electricity from the hydel projects in J&K between 2001-2016 (March). Between 2001-2015, the Respondent Public Authority also claimed to have earned Rs. 194 billion from the sale of electricity generated in J&K. Of this amount, Rs. 41 billion was paid by GoJ&K for purchase of electricity from the Respondent Public Authority. According to the MoU signed between GoI and GoJ&K, 12% of the power generated from the hydel projects in J&K is to be supplied to that State free of charge. All these information are available at this URL in the public domain: <http://www.humanrightsinitiative.org/blog/rti-reveals-nhpc-earned-rs194-billion-from-hydel-projects-in-jk-between-20012015-while-mou-requires-working-out-a-method-for-transfer-of-projects-back-to-jk>. This Appellant has not enclosed the bulky documents furnished by the Respondent Public Authority in relation to a previous RTI intervention to prevent wastage of paper. If required, this Appellant is willing to submit copies of these documents for a perusal by this Hon'ble Commission at the time of hearing into this matter.

Surely, the residents of J&K being consumers of the power generated by these hydel projects have the right to know the details of the negotiations relating to those projects in J&K. According to a reply tabled by the Union Minister of State for Power in the Lok Sabha in August 2015, the Respondent Public Authority is not a loss making enterprise. This query and reply may be accessed at the following URL: <http://164.100.47.192/Loksabha/Questions/QResult15.aspx?qref=22123&lsno=16> The Respondent Public Authority is making its profits by exploiting the natural resources of the State and owes a duty of disclosure to the residents of J&K.

Further, according to another reply tabled by the Union Minister of State for Power in the Lok Sabha in March 2015, about 40% of the total electricity generated by the Respondent Public Authority, is contributed by the State of J&K. This query and reply may be accessed at the following URL: http://164.100.47.132/Annexure_New/lsq16/4/au1771.htm The data supplied by the Respondent Public Authority in response to an earlier RTI intervention of this Appellant indicates that it sells a major share of the electricity generated in J&K to the power utilities of Delhi, Rajasthan, Uttar Pradesh, Uttarakhand, Himachal Pradesh and Punjab. Surely, the citizens living in these States who are the consumers of power generated in J&K also have the right to know the details of the negotiations relating to the return of the projects to J&K as their interests are directly affected by these negotiations. Transparency will help clear up the confusion relating to these discussions across the country. Secrecy will only add the existing situation of confusion. **This Appellant is a resident of Delhi and is also a consumer of the electricity supplied by the power distribution companies which presumably purchase the power generated by the hydel projects run by the Respondent Public Authority in J&K. This Appellant's interest is directly affected by the negotiations being conducted between the Respondent Public Authority and the Government of India on the one hand and the Government of Jammu and Kashmir on the other.** Therefore the decisions of the CPIO and the FAA of the Respondent Public Authority to reject access to all information is entirely unjustified and against the public interest.

While the Respondent Public Authority has admitted that the negotiations are not complete, the Union Minister of State for Power had stated in the Lok Sabha in March 2015 that the Government had decided not to accept the recommendation of a Task Force for the return of the hydel projects to the State. The query and the reply of the said Minister may be found at this URL: <http://164.100.47.192/Loksabha/Questions/QResult15.aspx?qref=12733&lsno=16> **These conflicting statements are responsible for the creation of the confusion rather than the instant RTI intervention.** This Appellant firmly believes that disclosure of the information sought in the instant RTI application will not lead to any confusion, instead it will facilitate informed debate on the issues involved as is necessary in a democracy. Given the small number of shareholders other than those in or under the Central Government, the Respondent Public Authority can surely invest some of its profits in explaining the details of the ongoing negotiations to them in a manner that clears up all confusion. **The Respondent Public Authority cannot claim any greater duty towards its shareholders than what it owes to the people in J&K and other North Indian States who are consumers of the electricity that it generates in the hydel projects in J&K.** This Appellant believes that there is immense public interest in disclosure of the requested information in this case. The FAA has not paid attention to these matters and has instead proceeded to uphold the decision of the CPIO mentioned at para #3 above without due application of mind. This Appellant is aggrieved by this action of the FAA. ***Hence the submission of this second appeal before this Hon'ble Commission.***

10.1.3) Further, this Appellant would like to draw the attention of this Hon'ble Commission to the fact that the issue of return of the hydel projects in J&K has generated considerable debate in recent months. For example, the news items and opinion pieces available at the following URLs are illustrative of the nature of the debate in J&K over the issue of return of the hydel projects:

- 1) <http://www.kashmirlife.net/in-15-years-nhpc-earned-rs-194-billion-from-the-jk-hydel-power-projects-102939/>
- 2) <http://jknewsservice.com/nhpc-earns-rs-194-billion-from-the-hydel-projects-in-jammu-and-kashmir/>
- 3) <http://kashmirwatch.com/in-15-years-nhpc-earned-rs-194-billion-from-the-jk-hydel-power-projects/>
- 4) <http://onlykashmir.in/in-15-years-nhpc-earned-rs-194-billion-from-the-jk-hydel-power-projects/>
- 5) <http://www.kashmirawareness.org/Article/View/71703/loss-jammu-kashmir-194320000000-nhpc-deprived-money-years>
- 6) <http://www.greaterjammu.com/2016/20160422/state.html>

- 7) <http://indiatoday.intoday.in/story/bjp-pdp-alliance-faces-heat-as-nhpc-reveals-mammoth-earnings/1/648425.html>
- 8) <http://www.greaterkashmir.com/news/front-page/nhpc-earns-rs-19000-cr-from-kashmir-waters/215414.html>
- 9) <http://www.greaterkashmir.com/news/front-page/information-on-return-of-projects-denied/215422.html>
- 10) <http://www.risingkashmir.com/news/loss-to-jammu-kashmir-rs-194320000000/>
- 11) <http://www.earlytimes.in/newsdet.aspx?q=174433>
- 12) <http://kashmirreader.com/2016/04/nhpc-has-earned-rs-19431-cr-from-jk-power-projects-in-14-years/>
- 13) <http://www.dnaindia.com/locality/srinagar/jk-yet-receive-its-share-power-while-nhpc-earns-rs-194-billion-15-yrs-91362>
- 14) <https://kashmirobsver.net/2016/local-news/jk-power-projectsnhpc-earned-whopping-rs-19431-cr-15-years-5699>
- 15) <http://www.kashmirilife.net/rs-19k-cr-income-from-k-power-projects-half-truth-revealed-by-nhpc-kscds-103021/>
- 16) <http://www.greaterkashmir.com/news/front-page/kashmir-reacts-after-rs-194-billion-bombshell/215562.html>
- 17) <http://www.risingkashmir.in/news/nhpcs-earning-figure-half-truth-kscds/>
- 18) http://epaper.risingkashmir.com/PopUp.aspx?8ZkljZ_ppDowqY5fxKHWJuxA_ep_ep
- 19) <http://www.risingkashmir.in/article/national-hydroelectric-plunder-corporation/>
- 20) <http://epaper.greaterkashmir.com/epapermain.aspx?queried=9&eddate=04%2f26%2f2016>

This Appellant is not able to ascertain the extent of coverage of this issue in the local language media. However, suffice it to say that the issue of return of the hydel projects is being hotly debated in J&K. The disclosure of information sought in the instant RTI application would facilitate the conduct of a well-informed debate on the issue. So there is undoubtedly larger public interest in the disclosure of information under the RTI Act. The FAA has not applied his mind adequately to this matter. **Hence the submission of this second appeal before this Hon'ble Commission.**

10.1.4) Further, the FAA of the Respondent Public Authority has referred the issues raised in the first appeal to a deemed CPIO under Section 5(4). This Appellant firmly believes that this action of the CPIO is highly improper. In a catena of decisions this Hon'ble Commission has held as have several High Courts in their judgements and orders, that the FAA performs quasi-judicial functions and is required to apply his or her mind independently to the appeal at hand. While he or she may seek the submissions of the office that holds the information sought in the RTI application, he or she has to weigh the objections to disclosure against the arguments placed by the Appellant in favour of disclosure. These decisions and judgements are too numerous to be cited here. Suffice it to cite a paragraph from a recent judgement of the Hon'ble Supreme Court of India about the manner in which public authorities and their representatives make decisions under the RTI Act. In the batch matter of *Reserve Bank of India vs Jayantilal N. Mistry* [Transferred Case (Civil) No. 707 of 2012 & other related matters], judgement dated 16/12/2015, the Apex Court observed as follows:

"61. ... it had long since come to our attention that the Public Information Officers (PIO) under the guise of one of the exceptions given under Section 8 of RTI Act, have evaded the general public from getting their hands on the rightful information that they are entitled to.
[emphasis supplied]

Nothing in the order of the FAA of the Respondent Public Authority indicates that he has weighed the objections raised by the "deemed PIO" against the arguments submitted by this Appellant before arriving at his decision. The decision of the FAA appears to be one-sided without making any effort to weigh the pros and cons of disclosure. Therefore this Appellant firmly believes that the FAA's order deserves to be set aside on grounds of non-application of mind. ***Hence the submission of this second appeal before this Hon'ble Commission.***

10.1.5) Further, this Appellant had argued in his first appeal that the CPIO cannot abdicate his responsibility for making a decision on an RTI application to a deemed CPIO. This Appellant had also cited relevant case law in this regard, namely, the findings of the Hon'ble Delhi High Court in the matter of ***J P Agrawal vs Union of India & Ors., [2011 VII AD (Del.) 625]***. In that case the Hon'ble Delhi High Court was pleased to explain the ambit of Sections 5(4) and 5(5) vis-à-vis the statutory responsibilities of the designated CPIO in the following terms:

"7. Section 4 of the Act obliges every public authority to publish inter alia the particulars of facilities available to citizens for obtaining information and the names, designations and other particulars of the PIOs. Section 5 requires the public authorities to designate PIO to provide information to persons requesting for information under the Act. Such PIOs, under Section 5(2) of the Act are to receive applications for information and under Section 5(3) of the Act are to deal with request from persons seeking information and render reasonable assistance to the information seekers. The Act having required the PIOs to "deal with" the request for information and to "render reasonable assistance" to the information seekers, cannot be said to have intended the PIOs to be merely Post Offices as the Petitioner would contend. The expression "deal with", in *Karen Lambert v. London Borough of Southwark* (2003) EWHC 2121 (Admin) was held to include everything right from

receipt of the application till the issue of decision thereon. Under Section 6(1) and 7(1) of the RTI Act, it is the PIO to whom the application is submitted and it is he who is responsible for ensuring that the information as sought is provided to the applicant within the statutory requirements of the Act. Section 5(4) is simply to strengthen the authority of the PIO within the department; if the PIO finds a default by those from whom he has sought information, the PIO is expected to recommend a remedial action to be taken. The RTI Act makes the PIO the pivot for enforcing the implementation of the Act.

8. Even otherwise, the very requirement of designation of a PIO entails vesting the responsibility for providing information on the said PIO. As has been noticed above, penalty has been imposed on the Petitioner not for the reason of delay which the Petitioner is attributing to Respondent No. 4 but for the reason of the Petitioner having acted merely as a Post Office, pushing the application for information received, to the Respondent No. 4 and forwarding the reply received from the Respondent No. 4 to the information seeker, without himself "dealing" with the application and/or "rendering any assistance" to the information seeker. The CIC has found that the information furnished by the Respondent No. 4 and/or his department and/or his administrative unit was not what was sought and that the Petitioner as PIO, without applying his mind merely forwarded the same to the information seeker. Again, as aforesaid the Petitioner has not been able to urge any ground on this aspect. The PIO is expected to apply his / her mind, duly analyse the material before him / her and then either disclose the information sought or give grounds for non-disclosure. A responsible officer cannot escape his responsibility by saying that he depends on the work of his subordinates. The PIO has to apply his own mind independently and take the appropriate decision and cannot blindly approve / forward what his subordinates have done." [emphasis supplied]

The FAA of the Respondent Public Authority has not even bothered to examine the correctness of the action of the designated CPIO in the light of this jurisprudence cited in the first appeal. In his order, he has not made any reference to this pleading submitted by this Appellant. This inaction is also indicative of the lack of due application of mind by the said FAA to the facts of the case in the light of the crystal clear jurisprudence cited in the first appeal. Therefore this Appellant humbly pleads that the said FAA's order is bad in law and deserves to be set aside. ***Hence the submission of this second appeal before this Hon'ble Commission.***

10.1.6) Further, this Appellant firmly believes that the manner in which the said CPIO and FAA have arrived at their respective decisions indicates inadequate understanding about the spirit and the requirements of the RTI Act. This Appellant firmly believes that this lacunae can be cured by requiring the said CPIO and FAA to undergo training at a reputable training institution for the purpose of reasoned disposal of RTI applications and appeals. According to Section 19(8)(a)(v) of the RTI Act this Hon'ble Commission is empowered to direct the Respondent Public Authority to take steps to enhance trainings for its officials on the right to information. ***Hence the submission of this second appeal before this Hon'ble Commission.***

10.1.7) Further, Section 7(6) of the RTI Act entitles a citizen to obtain the information requested, free of charge if it is not supplied by the concerned public authority within the time limit specified in Section 7(1) of the Act. Should this Hon'ble Commission make a determination that this information is fit for disclosure, this Appellant believes that he has the right to obtain the requested information free of charge. ***Hence the submission of this second appeal before this Hon'ble Commission.***

10.1.8) Further, this Appellant prays that he be provided sufficient advance notice of any and all hearings that this Hon'ble Commission may hold while inquiring into this second appeal so as to enable him to participate in such proceedings in a well-prepared manner. ***Hence the submission of this second appeal before this Hon'ble Commission.***

11) I hereby verify that the aforementioned facts are true to the best of my knowledge. I also declare that I have authenticated the Annexures to this appeal. I also affirm that I have transmitted a copy of this appeal along with Annexures to the Respondent Public Authority.

Signature of the Appellant:

S.S. Venkatesh Nayak
(Venkatesh Nayak) 19/7/16

केंद्रीय सूचना आयोग

Most Urgent

Central Information Commission

दूसरा तल, अगस्त क्रांति भवन/ 2nd Floor, August Kranti Bhawan

भीकाजी कामा प्लेस/ Bhikaji Cama Place

नई दिल्ली-११००६६/ New Delhi-110066

File No. CIC/YA/A/2016/002327

Dated 15.09.2017

NOTICE OF HEARING

VENKATESH NAYAK 55A, 3RD FLOOR, SIDDHARTH CHAMBERS-1, KALU SARAI, NEW DELHI 110016	The CPIO NHPC LIMITED, NHPC COMPLEX, SECTOR - 33, FARIDABAD - 121 003, HARYANA
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The above mentioned appeal was listed for hearing on 15.09.2017 for which a notice dated 05.09.2017 was issued. Due to some administrative reason, **the hearing has been adjourned to 26.09.2017 at 12.45 a.m.** All other details mentioned in notice dated 05.09.2017 remain unchanged.

Given under the order of the Commission.



(S.S. Rohilla)

Designated Officer

E-mail: do.icsb-cic@gov.in

Phone No. 011-26105682

Before the Central Information Commission

2nd Floor, 'B' Wing, August Kranti Bhawan,
Bhikaiji Cama Place, New Delhi- 110 066

Appeal submitted under Section 19(3) of The Right to Information Act, 2005

In the matter of

Venkatesh Nayak

v

Central Public Information Officer, NHPC Ltd.

(Case No. CIC/YA/A/2016/002327)

Addendum to the Appeal

Date of submission: 15/09/2017

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Submitted to the CIC on
15/9/17 during the
hearing with CC to
NHPC on the spot.

Before the Central Information Commission

**2nd Floor, 'B' Wing, August Kranti Bhawan,
Bhikaiji Cama Place, New Delhi- 110 066**

Appeal submitted under Section 19(3) of *The Right to Information Act, 2005*

Date: 15/09/2017

1. I, Venkatesh Nayak, being the Appellant in the second appeal matter pending before the Hon'ble Central Information Commission (CIC) whose details are given below-

(a) Venkatesh Nayak vs Central Public Information Officer, NHPC, Ltd.

Case No. CIC/YA/A/2016/002327

wish to submit this addendum containing additional arguments to buttress the arguments drawn up in the appeal letter submitted to this Hon'ble Commission in favour of disclosure of the information sought in the instant RTI application of No. RTI/GoI/PowerMin/2016/1, dated 24/02/2016:

2. as the information sought in the instant RTI application of number and date captioned above directly relates to water resources, namely the rivers flowing through the State of Jammu and Kashmir across which the Respondent Public Authority has constructed or is maintaining and managing hydro-electric projects this Appellant believes that the instant case directly relates to the basic human right to water recognised in international human rights instruments. This addendum is being submitted to assist this Hon'ble Commission to adequately appreciate the international norms regarding the enjoyment of the basic human right to water;
3. India acceded to the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 10th April, 1979. The *Protection of Human Rights Act* (PoHRA), enacted by Parliament in 1993, recognises *inter alia*, all human rights listed in ICESCR as 'human rights' for the purpose of definition of that phrase. In other words, Section 2(d) defines "human rights" as follows:

""human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable in the Courts of India;"

Further, Section 2(f) defines of PoHRA 'International Covenants as follows:

""International Covenants" means the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th of December, 1966 and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify;"

4. the compliance of all States that are Parties to the ICESCR, by virtue of having ratified or acceded to it, is monitored by its Treaty Monitoring Body, namely, the Committee on Economic, Social and Cultural Rights (CESCR). In 2002, CESCR explained the meaning, scope and significance of the basic human right to water in General Comment #15 (**Annexe 1**). Relevant extracts from this General Comment are reproduced below:

"1. Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights..."

The legal bases of the right to water:

2. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.
3. Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living "including adequate food, clothing and housing". The use of the word "including" indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival...
4. The right to water has been recognized in a wide range of international documents, including treaties, declarations and other standards.¹ For instance, Article 14, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates that States parties shall ensure to women the right to "enjoy adequate living conditions, particularly in relation to [...] water supply". Article 24, paragraph 2, of the Convention on the Rights of the Child requires States parties to combat disease and malnutrition "through the

¹ See art. 14, para. 2 (h), Convention on the Elimination of All Forms of Discrimination Against Women; art. 24, para. 2 (c), Convention on the Rights of the Child; arts. 20, 26, 29 and 46 of the Geneva Convention relative to the Treatment of Prisoners of War, of 1949; arts. 85, 89 and 127 of the Geneva Convention relative to the Treatment of Civilian Persons in Time of War, of 1949; arts. 54 and 55 of Additional Protocol I thereto of 1977; arts. 5 and 14 Additional Protocol II of 1977; preamble, Mar Del Plata Action Plan of the United Nations Water Conference; see para. 18.47 of Agenda 21, *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1) (United Nations publication, Sales No. E.93.I.8), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II; Principle No. 3, The Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment (A/CONF.151/PC/112); Principle No. 2, Programme of Action, *Report of the United Nations International Conference on Population and Development, Cairo, 5-13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex; paras. 5 and 19, Recommendation (2001) 14 of the Committee of Ministers to Member States on the European Charter on Water Resources; resolution 2002/6 of the United Nations Sub-Commission on the Promotion and Protection of Human Rights on the promotion of the realization of the right to drinking water. See also the report on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation (E/CN.4/Sub.2/2002/10) submitted by the Special Rapporteur of the Sub-Commission on the right to drinking water supply and sanitation, Mr. El Hadji Guissé.

provision of adequate nutritious foods and clean drinking-water”...” [emphasis supplied]

The aforementioned paras from the General Comment of CESCR adequately demonstrate that the right to water is a very important basic human right;

5. in his decision on the first appeal submitted under Section 19(1) in the instant case the First Appellate Authority of the Respondent Public Authority has upheld the decision of the Central Public Information Officer to invoke Section 8(1)(d) of the RTI Act in order reject access to information on the grounds that disclosure will affect their competitive position. The source of power generated by the hydel projects managed and maintained by the Respondent Public Authorities is the waters of the rivers flowing through Jammu and Kashmir. This contention has been countered in the second appeal already. Additionally, this Appellant wishes to point out that by invoking Section 8(1)(d) of the RTI Act the Respondent Public Authority has sought to accord, water, the status of an economic good from which another economic good, namely, electricity, is generated, thereby claiming proprietary rights over the information sought in the instant RTI application about the transfer back of the hydel projects to the Government of Jammu and Kashmir. This contention is in contradiction of the General Comment #15 of CESCR. The relevant extract from this document is reproduced below:

“11.... Water should be treated as a social and cultural good, and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.”² [emphasis supplied];

6. further, the CESCR has explained that being a social and cultural good, the human right to water includes access to information about water-related issues in the following words:

1. “While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances:

(a) *Availability.* The water supply for each person must be sufficient and continuous for personal and domestic uses.³ These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.⁴ The quantity of water available for each person should correspond to

² For a definition of sustainability, see the *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 1992*, Declaration on Environment and Development, principles 1, 8, 9, 10, 12 and 15; and Agenda 21, in particular principles 5.3, 7.27, 7.28, 7.35, 7.39, 7.41, 18.3, 18.8, 18.35, 18.40, 18.48, 18.50, 18.59 and 18.68.

³ “Continuous” means that the regularity of the water supply is sufficient for personal and domestic uses.

⁴ In this context, “drinking” means water for consumption through beverages and foodstuffs. “Personal sanitation” means disposal of human excreta. Water is necessary for personal sanitation where water-based means are adopted. “Food preparation” includes food hygiene and preparation of food stuffs, whether water is incorporated into, or comes into contact with, food. “Personal and household hygiene” means personal cleanliness and hygiene of the household environment.

World Health Organization (WHO) guidelines.⁵ Some individuals and groups may also require additional water due to health, climate, and work conditions;

(b) *Quality*. The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological *hazards* that constitute a threat to a person's health.⁶ Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use.

(c) *Accessibility*. Water and water facilities and services have to be accessible to *everyone* without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

(i) *Physical accessibility*: water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace.⁷ All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and privacy requirements. Physical security should not be threatened during access to water facilities and services;

(ii) *Economic accessibility*: Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights;

(iii) *Non-discrimination*: Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; and

(iv) **Information accessibility: accessibility includes the right to seek, receive and impart information concerning water issues.**⁸
[emphasis supplied];

7. the present appeal directly relates to the right of the people of India in general and in particular, the residents of Delhi including this Appellant, as well as the residents of Jammu and Kashmir, to know the status and the contents of the ongoing negotiations between the Respondent Public Authority and the Government of Jammu and Kashmir about the transfer

⁵ See J. Bartram and G. Howard, "Domestic water quantity, service level and health: what should be the goal for water and health sectors", WHO, 2002. See also P.H. Gleick, (1996) "Basic water requirements for human activities: meeting basic needs", *Water International*, 21, pp. 83-92.

⁶ The Committee refers States parties to WHO, *Guidelines for drinking-water quality*, 2nd edition, vols. 1-3 (Geneva, 1993) that are "intended to be used as a basis for the development of national standards that, if properly implemented, will ensure the safety of drinking water supplies through the elimination of, or reduction to a minimum concentration, of constituents of water that are known to be hazardous to health."

⁷ See also General Comment No. 4 (1991), para. 8 (b), General Comment No. 13 (1999) para. 6 (a) and General Comment No. 14 (2000) paras. 8 (a) and (b). Household includes a permanent or semi-permanent dwelling, or a temporary halting site.

⁸ See para. 48 of this General Comment.

back of the hydel projects maintained and managed in that State by the Respondent Public Authority. This Appellant urges this Hon'ble Commission to take into consideration the position in international human rights law explicated above, about the people's right to access information about water-related issues. This Appellant firmly believes, the present second appeal matter is a fit case to recognise the people's basic human right to access information about water as a part and parcel of the fundamental right to information guaranteed under Article 19(1) (a) of the Constitution, for which the RTI Act provides a procedural framework. This Appellant prays that this Hon'ble Commission may issue appropriate orders and directions to the Respondent Public Authority to disclose all the information sought in the instant RTI application.

Signature of the Appellant:

S.S. Venkatesh Nayak
(Venkatesh Nayak) . 15/9/97



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SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL
RIGHTS

General Comment No. 15 (2002)

**The right to water (arts. 11 and 12 of the International Covenant
on Economic, Social and Cultural Rights)**

I. INTRODUCTION

1. Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights. The Committee has been confronted continually with the widespread denial of the right to water in developing as well as developed countries. Over one billion persons lack access to a basic water supply, while several billion do not have access to adequate sanitation, which is the primary cause of water contamination and diseases linked to water.¹ The

¹ In 2000, the World Health Organization estimated that 1.1 billion persons did not have access to an improved water supply (80 per cent of them rural dwellers) able to provide at least 20 litres of safe water per person a day; 2.4 billion persons were estimated to be without sanitation. (See WHO, *The Global Water Supply and Sanitation Assessment 2000*, Geneva, 2000, p.1.) Further, 2.3 billion persons each year suffer from diseases linked to water: see United Nations, Commission on Sustainable Development, *Comprehensive Assessment of the Freshwater Resources of the World*, New York, 1997, p. 39.

continuing contamination, depletion and unequal distribution of water is exacerbating existing poverty. States parties have to adopt effective measures to realize, without discrimination, the right to water, as set out in this general comment.

The legal bases of the right to water

2. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.

3. Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living “including adequate food, clothing and housing”. The use of the word “including” indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. Moreover, the Committee has previously recognized that water is a human right contained in article 11, paragraph 1, (see General Comment No. 6 (1995)).² The right to water is also inextricably related to the right to the highest attainable standard of health (art. 12, para. 1)³ and the rights to adequate housing and adequate food (art. 11, para. 1).⁴ The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.

4. The right to water has been recognized in a wide range of international documents, including treaties, declarations and other standards.⁵ For instance, Article

² See paras. 5 and 32 of the Committee’s General Comment No. 6 (1995) on the economic, social and cultural rights of older persons.

³ See General Comment No. 14 (2000) on the right to the highest attainable standard of health, paragraphs 11, 12 (a), (b) and (d), 15, 34, 36, 40, 43 and 51.

⁴ See para. 8 (b) of General Comment No. 4 (1991). See also the report by Commission on Human Rights’ Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari (E.CN.4/2002/59), submitted in accordance with Commission resolution 2001/28 of 20 April 2001. In relation to the right to adequate food, see the report by the Special Rapporteur of the Commission on the right to food, Mr. Jean Ziegler (E/CN.4/2002/58), submitted in accordance with Commission resolution 2001/25 of 20 April 2001.

⁵ See art. 14, para. 2 (h), Convention on the Elimination of All Forms of Discrimination Against Women; art. 24, para. 2 (c), Convention on the Rights of the Child; arts. 20, 26, 29 and 46 of the Geneva Convention relative to the Treatment of Prisoners of War, of 1949; arts. 85, 89 and 127 of the Geneva Convention relative to the Treatment of Civilian Persons in Time of War, of 1949; arts. 54 and 55 of Additional Protocol I thereto of 1977; arts. 5 and 14 Additional Protocol II of 1977; preamble, Mar Del

14, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates that States parties shall ensure to women the right to “enjoy adequate living conditions, particularly in relation to [...] water supply”. Article 24, paragraph 2, of the Convention on the Rights of the Child requires States parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking-water”.

5. The right to water has been consistently addressed by the Committee during its consideration of States parties’ reports, in accordance with its revised general guidelines regarding the form and content of reports to be submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, and its general comments.

6. Water is required for a range of different purposes, besides personal and domestic uses, to realize many of the Covenant rights. For instance, water is necessary to produce food (right to adequate food) and ensure environmental hygiene (right to health). Water is essential for securing livelihoods (right to gain a living by work) and enjoying certain cultural practices (right to take part in cultural life). Nevertheless, priority in the allocation of water must be given to the right to water for personal and domestic uses. Priority should also be given to the water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights.⁶

Water and Covenant rights

7. The Committee notes the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food (see General Comment

Plata Action Plan of the United Nations Water Conference; see para. 18.47 of Agenda 21, *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1) (United Nations publication, Sales No. E.93.I.8), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex II; Principle No. 3, The Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment (A/CONF.151/PC/112); Principle No. 2, Programme of Action, *Report of the United Nations International Conference on Population and Development, Cairo, 5-13 September 1994* (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex; paras. 5 and 19, Recommendation (2001) 14 of the Committee of Ministers to Member States on the European Charter on Water Resources; resolution 2002/6 of the United Nations Sub-Commission on the Promotion and Protection of Human Rights on the promotion of the realization of the right to drinking water. See also the report on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation (E/CN.4/Sub.2/2002/10) submitted by the Special Rapporteur of the Sub-Commission on the right to drinking water supply and sanitation, Mr. El Hadji Guissé.

⁶ See also World Summit on Sustainable Development, Plan of Implementation 2002, paragraph 25 (c).

No.12 (1999)).⁷ Attention should be given to ensuring that disadvantaged and marginalized farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology. Taking note of the duty in article 1, paragraph 2, of the Covenant, which provides that a people may not “be deprived of its means of subsistence”, States parties should ensure that there is adequate access to water for subsistence farming and for securing the livelihoods of indigenous peoples.⁸

8. Environmental hygiene, as an aspect of the right to health under article 12, paragraph 2 (b), of the Covenant, encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions.⁹ For example, States parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes. Likewise, States parties should monitor and combat situations where aquatic eco-systems serve as a habitat for vectors of diseases wherever they pose a risk to human living environments.¹⁰

9. With a view to assisting States parties' implementation of the Covenant and the fulfilment of their reporting obligations, this General Comment focuses in Part II on the normative content of the right to water in articles 11, paragraph 1, and 12, on States parties' obligations (Part III), on violations (Part IV) and on implementation at the national level (Part V), while the obligations of actors other than States parties are addressed in Part VI.

II. NORMATIVE CONTENT OF THE RIGHT TO WATER

10. The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.

⁷ This relates to both *availability* and to *accessibility* of the right to adequate food (see General Comment No. 12 (1999), paras. 12 and 13).

⁸ See also the Statement of Understanding accompanying the United Nations Convention on the Law of Non-Navigational Uses of Watercourses (A/51/869 of 11 April 1997), which declared that, in determining vital human needs in the event of conflicts over the use of watercourses “special attention is to be paid to providing sufficient water to sustain human life, including both drinking water and water required for production of food in order to prevent starvation”..

⁹ See also para. 15, General Comment No. 14.

¹⁰ According to the WHO definition, vector-borne diseases include diseases transmitted by insects (malaria, filariasis, dengue, Japanese encephalitis and yellow fever), diseases for which aquatic snails serve as intermediate hosts (schistosomiasis) and zoonoses with vertebrates as reservoir hosts.

11. The elements of the right to water must be *adequate* for human dignity, life and health, in accordance with articles 11, paragraph 1, and 12. The adequacy of water should not be interpreted narrowly, by mere reference to volumetric quantities and technologies. Water should be treated as a social and cultural good, and not primarily as an economic good. The manner of the realization of the right to water must also be sustainable, ensuring that the right can be realized for present and future generations.¹¹

12. While the adequacy of water required for the right to water may vary according to different conditions, the following factors apply in all circumstances:

(a) *Availability*. The water supply for each person must be sufficient and continuous for personal and domestic uses.¹² These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.¹³ The quantity of water available for each person should correspond to World Health Organization (WHO) guidelines.¹⁴ Some individuals and groups may also require additional water due to health, climate, and work conditions;

(b) *Quality*. The water required for each personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health.¹⁵ Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use.

¹¹ For a definition of sustainability, see the *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 1992*, Declaration on Environment and Development, principles 1, 8, 9, 10, 12 and 15; and Agenda 21, in particular principles 5.3, 7.27, 7.28, 7.35, 7.39, 7.41, 18.3, 18.8, 18.35, 18.40, 18.48, 18.50, 18.59 and 18.68.

¹² "Continuous" means that the regularity of the water supply is sufficient for personal and domestic uses.

¹³ In this context, "drinking" means water for consumption through beverages and foodstuffs. "Personal sanitation" means disposal of human excreta. Water is necessary for personal sanitation where water-based means are adopted. "Food preparation" includes food hygiene and preparation of food stuffs, whether water is incorporated into, or comes into contact with, food. "Personal and household hygiene" means personal cleanliness and hygiene of the household environment.

¹⁴ See J. Bartram and G. Howard, "Domestic water quantity, service level and health: what should be the goal for water and health sectors", WHO, 2002. See also P.H. Gleick, (1996) "Basic water requirements for human activities: meeting basic needs", *Water International*, 21, pp. 83-92.

¹⁵ The Committee refers States parties to WHO, *Guidelines for drinking-water quality*, 2nd edition, vols. 1-3 (Geneva, 1993) that are "intended to be used as a basis for the development of national standards that, if properly implemented, will ensure the safety of drinking water supplies through the elimination of, or reduction to a

(c) *Accessibility*. Water and water facilities and services have to be accessible to *everyone* without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

(i) *Physical accessibility*: water, and adequate water facilities and services, must be within safe physical reach for all sections of the population. Sufficient, safe and acceptable water must be accessible within, or in the immediate vicinity, of each household, educational institution and workplace.¹⁶ All water facilities and services must be of sufficient quality, culturally appropriate and sensitive to gender, life-cycle and privacy requirements. Physical security should not be threatened during access to water facilities and services;

(ii) *Economic accessibility*: Water, and water facilities and services, must be affordable for all. The direct and indirect costs and charges associated with securing water must be affordable, and must not compromise or threaten the realization of other Covenant rights;

(iii) *Non-discrimination*: Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds; and

(iv) *Information accessibility*: accessibility includes the right to seek, receive and impart information concerning water issues.¹⁷

Special topics of broad application

Non-discrimination and equality

13. The obligation of States parties to guarantee that the right to water is enjoyed without discrimination (art. 2, para. 2), and equally between men and women (art. 3), pervades all of the Covenant obligations. The Covenant thus proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water. The Committee recalls paragraph 12 of General Comment No. 3 (1990), which states that even in times of severe resource

minimum concentration, of constituents of water that are known to be hazardous to health.”

¹⁶ See also General Comment No. 4 (1991), para. 8 (b), General Comment No. 13 (1999) para. 6 (a) and General Comment No. 14 (2000) paras. 8 (a) and (b). Household includes a permanent or semi-permanent dwelling, or a temporary halting site.

¹⁷ See para. 48 of this General Comment.

constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.

14. States parties should take steps to remove de facto discrimination on prohibited grounds, where individuals and groups are deprived of the means or entitlements necessary for achieving the right to water. States parties should ensure that the allocation of water resources, and investments in water, facilitate access to water for all members of society. Inappropriate resource allocation can lead to discrimination that may not be overt. For example, investments should not disproportionately favour expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population, rather than investing in services and facilities that benefit a far larger part of the population.

15. With respect to the right to water, States parties have a special obligation to provide those who do not have sufficient means with the necessary water and water facilities and to prevent any discrimination on internationally prohibited grounds in the provision of water and water services.

16. Whereas the right to water applies to everyone, States parties should give special attention to those individuals and groups who have traditionally faced difficulties in exercising this right, including women, children, minority groups, indigenous peoples, refugees, asylum seekers, internally displaced persons, migrant workers, prisoners and detainees. In particular, States parties should take steps to ensure that:

(a) Women are not excluded from decision-making processes concerning water resources and entitlements. The disproportionate burden women bear in the collection of water should be alleviated;

(b) Children are not prevented from enjoying their human rights due to the lack of adequate water in educational institutions and households or through the burden of collecting water. Provision of adequate water to educational institutions currently without adequate drinking water should be addressed as a matter of urgency;

(c) Rural and deprived urban areas have access to properly maintained water facilities. Access to traditional water sources in rural areas should be protected from unlawful encroachment and pollution. Deprived urban areas, including informal human settlements, and homeless persons, should have access to properly maintained water facilities. No household should be denied the right to water on the grounds of their housing or land status;

(d) Indigenous peoples' access to water resources on their ancestral lands is protected from encroachment and unlawful pollution. States should provide resources for indigenous peoples to design, deliver and control their access to water;

(e) Nomadic and traveller communities have access to adequate water at traditional and designated halting sites;

(f) Refugees, asylum-seekers, internally displaced persons and returnees have access to adequate water whether they stay in camps or in urban and rural areas.

Refugees and asylum-seekers should be granted the right to water on the same conditions as granted to nationals;

(g) Prisoners and detainees are provided with sufficient and safe water for their daily individual requirements, taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners;¹⁸

(h) Groups facing difficulties with physical access to water, such as older persons, persons with disabilities, victims of natural disasters, persons living in disaster-prone areas, and those living in arid and semi-arid areas, or on small islands are provided with safe and sufficient water.

III. STATES PARTIES' OBLIGATIONS

General legal obligations

17. While the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States parties various obligations which are of immediate effect. States parties have immediate obligations in relation to the right to water, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2, para. 2) and the obligation to take steps (art. 2, para.1) towards the full realization of articles 11, paragraph 1, and 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to water.

18. States parties have a constant and continuing duty under the Covenant to move as expeditiously and effectively as possible towards the full realization of the right to water. Realization of the right should be feasible and practicable, since all States parties exercise control over a broad range of resources, including water, technology, financial resources and international assistance, as with all other rights in the Covenant.

19. There is a strong presumption that retrogressive measures taken in relation to the right to water are prohibited under the Covenant.¹⁹ If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources.

¹⁸ See arts. 20, 26, 29 and 46 of the third Geneva Convention of 12 August 1949; arts. 85, 89 and 127 of the fourth Geneva Convention of 12 August 1949; arts. 15 and 20, para. 2, United Nations Standard Minimum Rules for the Treatment of Prisoners, in *Human Rights: A Compilation of International Instruments* (United Nations publication, Sales No. E.88.XIV.1).

¹⁹ See General Comment No. 3 (1990), para. 9.

Specific legal obligations

20. The right to water, like any human right, imposes three types of obligations on States parties: obligations to *respect*, obligations to *protect* and obligations to *fulfil*.

(a) Obligations to respect

21. The obligation to *respect* requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, inter alia, refraining from engaging in any practice or activity that denies or limits equal access to adequate water; arbitrarily interfering with customary or traditional arrangements for water allocation; unlawfully diminishing or polluting water, for example through waste from State-owned facilities or through use and testing of weapons; and limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.

22. The Committee notes that during armed conflicts, emergency situations and natural disasters, the right to water embraces those obligations by which States parties are bound under international humanitarian law.²⁰ This includes protection of objects indispensable for survival of the civilian population, including drinking water installations and supplies and irrigation works, protection of the natural environment against widespread, long-term and severe damage and ensuring that civilians, internees and prisoners have access to adequate water.²¹

(b) Obligations to protect

23. The obligation to *protect* requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.

24. Where water services (such as piped water networks, water tankers, access to rivers and wells) are operated or controlled by third parties, States parties must prevent them from compromising equal, affordable, and physical access to sufficient, safe and acceptable water. To prevent such abuses an effective regulatory system must be established, in conformity with the Covenant and this General Comment, which

²⁰ For the interrelationship of human rights law and humanitarian law, the Committee notes the conclusions of the International Court of Justice in *Legality of the Threat or Use of Nuclear Weapons (Request by the General Assembly)*, ICJ Reports (1996) p. 226, para. 25.

²¹ See arts. 54 and 56, Additional Protocol I to the Geneva Conventions (1977), art. 54, Additional Protocol II (1977), arts. 20 and 46 of the third Geneva Convention of 12 August 1949, and common article 3 of the Geneva Conventions of 12 August 1949.

includes independent monitoring, genuine public participation and imposition of penalties for non-compliance.

(c) Obligations to fulfil

25. The obligation to *fulfil* can be disaggregated into the obligations to facilitate, promote and provide. The obligation to facilitate requires the State to take positive measures to assist individuals and communities to enjoy the right. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage. States parties are also obliged to fulfil (provide) the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal.

26. The obligation to fulfil requires States parties to adopt the necessary measures directed towards the full realization of the right to water. The obligation includes, inter alia, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national water strategy and plan of action to realize this right; ensuring that water is affordable for everyone; and facilitating improved and sustainable access to water, particularly in rural and deprived urban areas.

27. To ensure that water is affordable, States parties must adopt the necessary measures that may include, inter alia: (a) use of a range of appropriate low-cost techniques and technologies; (b) appropriate pricing policies such as free or low-cost water; and (c) income supplements. Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.

28. States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations.²² Such strategies and programmes may include: (a) reducing depletion of water resources through unsustainable extraction, diversion and damming; (b) reducing and eliminating contamination of watersheds and water-related eco-systems by substances such as radiation, harmful chemicals and human excreta; (c) monitoring water reserves; (d) ensuring that proposed developments do not interfere with access to adequate water; (e) assessing the impacts of actions that may impinge upon water availability and natural-ecosystems watersheds, such as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity;²³ (f)

²² See footnote 5 above, Agenda 21, chaps. 5, 7 and 18; and the World Summit on Sustainable Development, Plan of Implementation (2002), paras. 6 (a), (l) and (m), 7, 36 and 38.

²³ See the Convention on Biological Diversity, the Convention to Combat Desertification, the United Nations Framework Convention on Climate Change, and subsequent protocols.

increasing the efficient use of water by end-users; (g) reducing water wastage in its distribution; (h) response mechanisms for emergency situations; (i) and establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes.

29. Ensuring that everyone has access to adequate sanitation is not only fundamental for human dignity and privacy, but is one of the principal mechanisms for protecting the quality of drinking water supplies and resources.²⁴ In accordance with the rights to health and adequate housing (see General Comments No. 4 (1991) and 14 (2000)) States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.

International obligations

30. Article 2, paragraph 1, and articles 11, paragraph 1, and 23 of the Covenant require that States parties recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the right to water.

31. To comply with their international obligations in relation to the right to water, States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party's jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction.²⁵

32. States parties should refrain at all times from imposing embargoes or similar measures, that prevent the supply of water, as well as goods and services essential for securing the right to water.²⁶ Water should never be used as an instrument of political

²⁴ Article 14, para. 2, of the Convention on the Elimination of All Forms of Discrimination Against Women stipulates States parties shall ensure to women the right to "adequate living conditions, particularly in relation to [...] sanitation". Article 24, para. 2, of the Convention on the Rights of the Child requires States parties to "To ensure that all segments of society [...] have access to education and are supported in the use of basic knowledge of [...] the advantages of [...] hygiene and environmental sanitation."

²⁵ The Committee notes that the United Nations Convention on the Law of Non-Navigational Uses of Watercourses requires that social and human needs be taken into account in determining the equitable utilization of watercourses, that States parties take measures to prevent significant harm being caused, and, in the event of conflict, special regard must be given to the requirements of vital human needs: see arts. 5, 7 and 10 of the Convention.

²⁶ In General Comment No. 8 (1997), the Committee noted the disruptive effect of sanctions upon sanitation supplies and clean drinking water, and that sanctions regimes should provide for repairs to infrastructure essential to provide clean water.

and economic pressure. In this regard, the Committee recalls its position, stated in its General Comment No. 8 (1997), on the relationship between economic sanctions and respect for economic, social and cultural rights.

33. Steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries. Where States parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.

34. Depending on the availability of resources, States should facilitate realization of the right to water in other countries, for example through provision of water resources, financial and technical assistance, and provide the necessary aid when required. In disaster relief and emergency assistance, including assistance to refugees and displaced persons, priority should be given to Covenant rights, including the provision of adequate water. International assistance should be provided in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate. The economically developed States parties have a special responsibility and interest to assist the poorer developing States in this regard.

35. States parties should ensure that the right to water is given due attention in international agreements and, to that end, should consider the development of further legal instruments. With regard to the conclusion and implementation of other international and regional agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to water. Agreements concerning trade liberalization should not curtail or inhibit a country's capacity to ensure the full realization of the right to water.

36. States parties should ensure that their actions as members of international organizations take due account of the right to water. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.

Core obligations

37. In General Comment No. 3 (1990), the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant. In the Committee's view, at least a number of core obligations in relation to the right to water can be identified, which are of immediate effect:

(a) To ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease;

(b) To ensure the right of access to water and water facilities and services on a non-discriminatory basis, especially for disadvantaged or marginalized groups;

(c) To ensure physical access to water facilities or services that provide sufficient, safe and regular water; that have a sufficient number of water outlets to avoid prohibitive waiting times; and that are at a reasonable distance from the household;

(d) To ensure personal security is not threatened when having to physically access to water;

(e) To ensure equitable distribution of all available water facilities and services;

(f) To adopt and implement a national water strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include methods, such as right to water indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all disadvantaged or marginalized groups;

(g) To monitor the extent of the realization, or the non-realization, of the right to water;

(h) To adopt relatively low-cost targeted water programmes to protect vulnerable and marginalized groups;

(i) To take measures to prevent, treat and control diseases linked to water, in particular ensuring access to adequate sanitation;

38. For the avoidance of any doubt, the Committee wishes to emphasize that it is particularly incumbent on States parties, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical which enables developing countries to fulfil their core obligations indicated in paragraph 37 above.

IV. VIOLATIONS

39. When the normative content of the right to water (see Part II) is applied to the obligations of States parties (Part III), a process is set in motion, which facilitates identification of violations of the right to water. The following paragraphs provide illustrations of violations of the right to water.

40. To demonstrate compliance with their general and specific obligations, States parties must establish that they have taken the necessary and feasible steps towards the realization of the right to water. In accordance with international law, a failure to act in good faith to take such steps amounts to a violation of the right. It should be stressed that a State party cannot justify its non-compliance with the core obligations set out in paragraph 37 above, which are non-derogable.

41. In determining which actions or omissions amount to a violation of the right to water, it is important to distinguish the inability from the unwillingness of a State

party to comply with its obligations in relation to the right to water. This follows from articles 11, paragraph 1, and 12, which speak of the right to an adequate standard of living and the right to health, as well as from article 2, paragraph 1, of the Covenant, which obliges each State party to take the necessary steps to the maximum of its available resources. A State which is unwilling to use the maximum of its available resources for the realization of the right to water is in violation of its obligations under the Covenant. If resource constraints render it impossible for a State party to comply fully with its Covenant obligations, it has the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal in order to satisfy, as a matter of priority, the obligations outlined above.

42. Violations of the right to water can occur through *acts of commission*, the direct actions of States parties or other entities insufficiently regulated by States. Violations include, for example, the adoption of retrogressive measures incompatible with the core obligations (outlined in para. 37 above), the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to water, or the adoption of legislation or policies which are manifestly incompatible with pre-existing domestic or international legal obligations in relation to the right to water.

43. Violations through *acts of omission* include the failure to take appropriate steps towards the full realization of everyone's right to water, the failure to have a national policy on water, and the failure to enforce relevant laws.

44. While it is not possible to specify a complete list of violations in advance, a number of typical examples relating to the levels of obligations, emanating from the Committee's work, may be identified:

(a) Violations of the obligation to respect follow from the State party's interference with the right to water. This includes, inter alia: (i) arbitrary or unjustified disconnection or exclusion from water services or facilities; (ii) discriminatory or unaffordable increases in the price of water; and (iii) pollution and diminution of water resources affecting human health;

(b) Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to water by third parties.²⁷ This includes, inter alia: (i) failure to enact or enforce laws to prevent the contamination and inequitable extraction of water; (ii) failure to effectively regulate and control water services providers; (iv) failure to protect water distribution systems (e.g., piped networks and wells) from interference, damage and destruction; and

(c) Violations of the obligation to fulfil occur through the failure of States parties to take all necessary steps to ensure the realization of the right to water. Examples includes, inter alia: (i) failure to adopt or implement a national water policy designed to ensure the right to water for everyone; (ii) insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right to water by individuals or groups, particularly the vulnerable or marginalized; (iii) failure to monitor the realization of the right to water at the national level, for example

²⁷ See para. 23 for a definition of "third parties".

by identifying right-to-water indicators and benchmarks; (iv) failure to take measures to reduce the inequitable distribution of water facilities and services; (v) failure to adopt mechanisms for emergency relief; (vi) failure to ensure that the minimum essential level of the right is enjoyed by everyone (vii) failure of a State to take into account its international legal obligations regarding the right to water when entering into agreements with other States or with international organizations.

V. IMPLEMENTATION AT THE NATIONAL LEVEL

45. In accordance with article 2, paragraph 1, of the Covenant, States parties are required to utilize “all appropriate means, including particularly the adoption of legislative measures” in the implementation of their Covenant obligations. Every State party has a margin of discretion in assessing which measures are most suitable to meet its specific circumstances. The Covenant, however, clearly imposes a duty on each State party to take whatever steps are necessary to ensure that everyone enjoys the right to water, as soon as possible. Any national measures designed to realize the right to water should not interfere with the enjoyment of other human rights.

Legislation, strategies and policies

46. Existing legislation, strategies and policies should be reviewed to ensure that they are compatible with obligations arising from the right to water, and should be repealed, amended or changed if inconsistent with Covenant requirements.

47. The duty to take steps clearly imposes on States parties an obligation to adopt a national strategy or plan of action to realize the right to water. The strategy must: (a) be based upon human rights law and principles; (b) cover all aspects of the right to water and the corresponding obligations of States parties; (c) define clear objectives; (d) set targets or goals to be achieved and the time-frame for their achievement; (e) formulate adequate policies and corresponding benchmarks and indicators. The strategy should also establish institutional responsibility for the process; identify resources available to attain the objectives, targets and goals; allocate resources appropriately according to institutional responsibility; and establish accountability mechanisms to ensure the implementation of the strategy. When formulating and implementing their right to water national strategies, States parties should avail themselves of technical assistance and cooperation of the United Nations specialized agencies (see Part VI below).

48. The formulation and implementation of national water strategies and plans of action should respect, inter alia, the principles of non-discrimination and people's participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.

49. The national water strategy and plan of action should also be based on the principles of accountability, transparency and independence of the judiciary, since good governance is essential to the effective implementation of all human rights, including the realization of the right to water. In order to create a favourable climate

for the realization of the right, States parties should take appropriate steps to ensure that the private business sector and civil society are aware of, and consider the importance of, the right to water in pursuing their activities.

50. States parties may find it advantageous to adopt framework legislation to operationalize their right to water strategy. Such legislation should include: (a) targets or goals to be attained and the time-frame for their achievement; (b) the means by which the purpose could be achieved; (c) the intended collaboration with civil society, private sector and international organizations; (d) institutional responsibility for the process; (e) national mechanisms for its monitoring; and (f) remedies and recourse procedures.

51. Steps should be taken to ensure there is sufficient coordination between the national ministries, regional and local authorities in order to reconcile water-related policies. Where implementation of the right to water has been delegated to regional or local authorities, the State party still retains the responsibility to comply with its Covenant obligations, and therefore should ensure that these authorities have at their disposal sufficient resources to maintain and extend the necessary water services and facilities. The States parties must further ensure that such authorities do not deny access to services on a discriminatory basis.

52. States parties are obliged to monitor effectively the realization of the right to water. In monitoring progress towards the realization of the right to water, States parties should identify the factors and difficulties affecting implementation of their obligations.

Indicators and benchmarks

53. To assist the monitoring process, right to water indicators should be identified in the national water strategies or plans of action. The indicators should be designed to monitor, at the national and international levels, the State party's obligations under articles 11, paragraph 1, and 12. Indicators should address the different components of adequate water (such as sufficiency, safety and acceptability, affordability and physical accessibility), be disaggregated by the prohibited grounds of discrimination, and cover all persons residing in the State party's territorial jurisdiction or under their control. States parties may obtain guidance on appropriate indicators from the ongoing work of WHO, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Centre for Human Settlements (Habitat), the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF), the United Nations Environment Programme (UNEP), the United Nations Development Programme (UNDP) and the United Nations Commission on Human Rights.

54. Having identified appropriate right to water indicators, States parties are invited to set appropriate national benchmarks in relation to each indicator.²⁸ During

²⁸ See E. Riedel, "New bearings to the State reporting procedure: practical ways to operationalize economic, social and cultural rights – The example of the right to health", in S. von Schorlemer (ed.), *Praxishandbuch UNO*, 2002, pp. 345-358. The

the periodic reporting procedure, the Committee will engage in a process of “scoping” with the State party. Scoping involves the joint consideration by the State party and the Committee of the indicators and national benchmarks which will then provide the targets to be achieved during the next reporting period. In the following five years, the State party will use these national benchmarks to help monitor its implementation of the right to water. Thereafter, in the subsequent reporting process, the State party and the Committee will consider whether or not the benchmarks have been achieved, and the reasons for any difficulties that may have been encountered (see General Comment No.14 (2000), para. 58). Further, when setting benchmarks and preparing their reports, States parties should utilize the extensive information and advisory services of specialized agencies with regard to data collection and disaggregation.

Remedies and accountability

55. Any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels (see General Comment No. 9 (1998), para. 4, and Principle 10 of the Rio Declaration on Environment and Development).²⁹ The Committee notes that the right has been constitutionally entrenched by a number of States and has been subject to litigation before national courts. All victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, and similar institutions should be permitted to address violations of the right.

56. Before any action that interferes with an individual’s right to water is carried out by the State party, or by any other third party, the relevant authorities must ensure that such actions are performed in a manner warranted by law, compatible with the Covenant, and that comprises: (a) opportunity for genuine consultation with those affected; (b) timely and full disclosure of information on the proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for those affected; and (e) legal assistance for obtaining legal remedies (see also General Comments No. 4 (1991) and No. 7 (1997)). Where such action is based on a person’s failure to pay for water their capacity to pay must be taken into account. Under no circumstances shall an individual be deprived of the minimum essential level of water.

57. The incorporation in the domestic legal order of international instruments recognizing the right to water can significantly enhance the scope and effectiveness of

Committee notes, for example, the commitment in the 2002 World Summit on Sustainable Development Plan of Implementation to halve, by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water (as outlined in the Millennium Declaration) and the proportion of people who do not have access to basic sanitation.

²⁹ Principle 10 of the Rio Declaration on Environment and Development (*Report of the United Nations Conference on Environment and Development*, see footnote 5 above), states with respect to environmental issues that “effective access to judicial and administrative proceedings, including remedy and redress, shall be provided”.

remedial measures and should be encouraged in all cases. Incorporation enables courts to adjudicate violations of the right to water, or at least the core obligations, by direct reference to the Covenant.

58. Judges, adjudicators and members of the legal profession should be encouraged by States parties to pay greater attention to violations of the right to water in the exercise of their functions.

59. States parties should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting vulnerable or marginalized groups in the realization of their right to water.

VI. OBLIGATIONS OF ACTORS OTHER THAN STATES

60. United Nations agencies and other international organizations concerned with water, such as WHO, FAO, UNICEF, UNEP, UN-Habitat, ILO, UNDP, the International Fund for Agricultural Development (IFAD), as well as international organizations concerned with trade such as the World Trade Organization (WTO), should cooperate effectively with States parties, building on their respective expertise, in relation to the implementation of the right to water at the national level. The international financial institutions, notably the International Monetary Fund and the World Bank, should take into account the right to water in their lending policies, credit agreements, structural adjustment programmes and other development projects (see General Comment No. 2 (1990)), so that the enjoyment of the right to water is promoted. When examining the reports of States parties and their ability to meet the obligations to realize the right to water, the Committee will consider the effects of the assistance provided by all other actors. The incorporation of human rights law and principles in the programmes and policies by international organizations will greatly facilitate implementation of the right to water. The role of the International Federation of the Red Cross and Red Crescent Societies, International Committee of the Red Cross, the Office of the United Nations High Commissioner for Refugees (UNHCR), WHO and UNICEF, as well as non-governmental organizations and other associations, is of particular importance in relation to disaster relief and humanitarian assistance in times of emergencies. Priority in the provision of aid, distribution and management of water and water facilities should be given to the most vulnerable or marginalized groups of the population.