

## IP Hotline

January 20, 2011

### INFRINGEMENT OF STATE'S COPYRIGHT NOT A VALID GROUND FOR WITHHOLDING INFORMATION: DELHI HIGH COURT

*Delhi High Court rejects Delhi Metro Railway Corporation's plea to protect their designs from disclosure under the Right to Information Act on the ground of Copyright infringement.*

#### INTRODUCTION:

Section 9 of the Right to Information Act, 2005 ("RTI Act") specifically provides for an exemption from disclosure, where such disclosure would involve an infringement of the copyright of any person, other than the State. In the case of Delhi Metro Rail Corporation Limited ("DMRC") –Vs- Sudhir Vohra ("Respondent")<sup>1</sup>, the court held that the DMRC being an instrumentality of the State cannot claim an exemption of disclosure of information under the RTI Act on the ground that such disclosure would violate their copyright.

#### RTI Act:

This Act was enacted with the objective of setting out a practical regime to enable citizens to secure access to information under the control of public authorities.

#### FACTS:

The Respondent, an architect, made an application under the RTI Act before the Central Public Information Officer ("CPIO") of DMRC seeking all the structural drawings and other design related information of the Metro Pillar No. 67 ("information"), which collapsed on July 12, 2009 killing seven people. The CPIO of DMRC declined to disclose the information on the ground that it was the intellectual property of DMRC and maintained that such disclosure was exempted under Sec. 8 (1) (d) of the RTI Act, which protects disclosure of confidential information.<sup>2</sup> The Respondent appealed before the Appellate Authority of DMRC, which concurred with the CPIO. Respondent filed the next Appeal before the Central Information Commission ("CIC").

Before the CIC, DMRC relied on the following exclusions under the RTI Act, to prevent disclosure of the information sought:

- (i) That disclosure of information would prejudicially affect the sovereignty and integrity of India, security, strategic, scientific or economic interests of the State (Section 8(1)(a) of RTI Act);
- (ii) The design of the said pillar is the intellectual property of DMRC and therefore disclosure of information would affect the competitive position of third party (Section 8(1)(d) of RTI Act).

To further support its stand DMRC placed before the CIC a letter of the Commissioner of Police stating that since criminal investigations were pending in relation to the collapse of the aforementioned pillar, the disclosure of the information may hamper the investigation and therefore the information should not be disclosed under Section 8 (1) (h) of the RTI Act.

CIC rejected DMRC's claim of exemption from disclosure of information as follows:

- (i) **Re Section 8 (1)(d):** CIC referred to Section 9 of the RTI Act<sup>3</sup> and held that since the DMRC was State within the meaning of Article 12 of the Constitution of India as well as Section 9 of the RTI Act, it cannot deny information under Section 8 (1)(d) of the RTI Act. (In our view this was not an appropriate interpretation of the provisions);
- (ii) **Re Section 8 (1) (a) :** CIC held that disclosure of the information pertaining to the particular pillar could not be held to prejudicially affect the sovereignty and integrity of India or its security and strategic interests; and
- (iii) **Re Section 8 (1) (h) of the RTI Act:** It was noted by CIC that the Head of Crime Branch of Delhi Police had informed the CIC that the police investigations were not likely to be adversely affected by the disclosure of the information sought. In view thereof, this exemption was not considered by the court.

Hence, a writ petition was filed by DMRC before the Delhi High Court challenging the order of the CIC ("impugned order").

#### CONTENTIONS:

Before the Delhi High Court, DMRC more or less raised the same contentions it has raised before the CIC.

The Respondent countered the contentions and also produced a letters addressed by DMRC to him and to Delhi Development & Transportation Development Corporation Limited. In the said letters DMRC had admitted that there was deficiency in the design of the said pillar which had collapsed and therefore contended that disclosure of a

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defective design can hardly impact the security, strategic, scientific or economic interests of the State.

#### JUDGMENT OF THE COURT:

The Delhi High Court held that DMRC's claim for exemption of information under Sec.8 (1) (d) of RTI Act is based on incorrect reading of the provision. It held that the disclosure of information relating to intellectual property is sought to be exempted under Sec. 8 (1) (d) of RTI Act if such disclosure "would harm the competitive position of a **third party**" and in the present case the disclosure of information cannot possibly harm the competitive position of any **third party**. The Delhi Court that this was not even the case of DMRC and therefore held that Sec. 8 (1) (d) of RTI Act is not applicable in the case.

DMRC sought to give an interpretation to Sec. 9 of the RTI Act by contending that there is a discretion under Section 9 RTI Act to reject the request for information where such a request for providing access would involve an infringement of copyright.

The Delhi High Court rejected DMRC's contention in relation to Section 9 of RTI Act and observed that the words "**other than the State**" at the end of Section 9 of RTI Act reflect the legislative intent that the exemption from disclosure of information is available only if the disclosure involves infringement of the copyright of a person, other than the State. There can be no discretion to refuse if the copyright is subsisting in the State.

The Court thus held that DMRC cannot refuse information sought even if it might involve infringement of its copyright in the design. It was added that the DMRC can protect its copyright on the design under copyright law by taking an independent action, if the use of the information sought was made in any manner to violate the copyright in the design.

#### ANALYSIS:

In the present case, Delhi High Court observed that Section 9 of the RTI Act specifically excludes the instrumentalities of the State from its purview. The copyright can vest in the government in the following circumstances:

- Where a work has been made under the direction or control of the government, the government is deemed to be the first owner of the copyright;
- Copyright in works created by government employees shall also be deemed to be owned by the government (unless the terms of employment specify otherwise).

Apart from government owned works, the government is also the holder / repository of information, the copyright of which vests with private individuals or non-government entities. For e.g: any patent application submitted to a patent office would be information which is held by the government; however the copyright which may vest in the drawings/ designs which are part of the patent application vest with the applicant. Here it may be plausible to argue that a disclosure of the patent application may result in the infringement of copyright.

Under the RTI Act, there is a provision whereby the applicant is entitled to receive copies of the document submitted with the government. As such, any document submitted in writing with the government is a literary work under the Copyright Act and therefore is entitled to copyright protection. If a strict interpretation of Section 9 of the RTI Act is adopted then it would basically mean that any written information submitted to the government by any non-state person cannot be disclosed as it would be entitled to copyright protection. In our view such an interpretation would be against the very essence and spirit of the RTI Act. Further, the information officer, does not have the expertise and infrastructure to determine whether the party claiming existence of copyright indeed owns the copyright in a given work.

To counter Section 9 of the RTI Act, one may rely on Section 52 of the Copyright Act. It provides that any reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with law is not deemed to be infringement. Section 52 covers only literary, dramatic and musical works and does not cover artistic work (e.g. design drawings etc.). The wording "*in accordance with law*" may be interpreted to mean that certified copies of material provided by the information officer under the RTI Act are not deemed to be an infringement. The expression "in accordance with law" would include all the provisions of the RTI Act and it may be argued that Section 9 provides an exception from disclosure on the ground of possible infringement.

In our view, the RTI Act and Copyright Act have to be given a harmonious interpretation whereby the information officer, while providing copies of sought information should clarify to the applicant that the information is provided for limited purpose and the same should not be utilized in any manner which would amount to an infringement of copyright.

**- Debargha Basu, Rakhi Jindal & Gowree Gokhale**

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1 W.P (C) No. 3036/2010 & CM APPL 6064/2010

2 Sec. 8 (1) (d) of RTI Act states that there is no obligation to disclose to any (Indian) citizen, "*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.*"

3 Sec. 9 of RTI Act states as under :

*"Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State."*

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