भारत सरकार
खान मंत्रालय

विषय – सूचना का अधिकार अधिनियम, 2005 के तहत श्री. रावी कुमार पोत्दार, इंदौर से प्रासाद अपील के संबंध में।

श्री. रावी कुमार पोत्दार, इंदौर से प्रासाद मूल अपील दिनांक 01.02.2013 को इस पत्र के साथ उचित कार्यवाही हेतु भेजा जा रहा है।

आपसे अनुरोध है कि उक्त अपील/पत्र का निस्तारण दिनांक 15.3.2013 से पूर्व किया जाए और प्रतिलिपि सूचनार्थ पी.आई. सैल को भी भेजी जाए।

राजेश शाह (Rajesh Shah)
ए.सी.पी.आई.ओ./ACPIO

श्री. एस.पी. इंडियान, उप सचिव/अपीलीय अधिकारी, खान मंत्रालय, नई दिल्ली।
पी.आई. सैल यू.ओ. क्रमांक 2012/00452-पी.आई. दिनांक 15.02.2013।
प्रति,
Sh.S.B.Dove,  
Appellate Authority and Deputy Secretary,  
Room No. 314-D, Wing. Ministry of Mines,  
Shastri Bhawan, New Delhi

प्रथम अपील

प्रकरण के तथ्य-

अपीलाधीन ने भारत सरकार के मिनिस्ट्री ऑफ माइन्स विभाग के सीपीआईओ की सूचना के अधिकार अधिनियम के तहत एक आवेदन पत्र दिनांक-03/02/2012 को प्रेषित कर आवेदन पत्र में उल्लिखित दस्तावेजों की प्रमाणित प्रतिलिपि की मांग की (एनेक्वर-01)। सीपीआईओ ने जानबूझकर सूचना देने की रीति में बाधा उत्पन्न करने की नियत से चाही गईं जानकारी असमर्थ नामांकन प्रदान नहीं कर रहा। आवेदन पत्र का जल्द दिनांक- 3/4 01-02-2013 को प्रदान किया (एनेक्वर-02) और उसके पैरा-2 में उल्लिखित आधार पर दस्तावेजों की प्रमाणित प्रतिलिपि को देने से इंकार किया जिस कारण प्रथम अपील करना भाग हुआ।

अपील के आधार-

०१. क्योंकि, सीपीआईओ ने अपीलाधीन का आवेदन पत्र दिनांक-03/02/2012 का निराकरण करने समय इस बात का उल्लेख किया कि दिनांक-02-03-2009 की बातकी का फिस्टबुकेट में हो चुका है इसके कारण अब स्टोरेज इ-डाटा के पास होने चाही गईं जानकारी/दस्तावेजों की प्रमाणित प्रतिलिपि देना संभव नहीं बताया जबकि अपीलाधीन ने जो जानकारी मांगी है वह जानकारी मिनिस्ट्री ऑफ माइन्स के पास उपलब्ध है सीपीआईओ जानबूझकर सूचना देने की रीति में बाधा उत्पन्न कर दस्तावेजों की प्रमाणित प्रतिलिपि प्रदान नहीं कर रहे हैं।

०२. क्योंकि, चाही गईं जानकारी लार्ज पब्लिक इन्टरनेस्ट में इन्दौर के जिला न्यायालय में प्रकरण क्रमांक-08/2007 राज कुमार पौल्डर की प्रति अर्जित मोहन शरण एवं अन्य में आपराधिक प्रकरण को प्रमाणित करने के लिये आवश्यक है तथा जो जानकारी चाही गईं है वह सीपीआईओ के पास मौजूद है चाही गईं जानकारी भार्टापार से संबंधित होने से सूचना के अधिकार अधिनियम की धारा-8 (२) के तहत आती है इस कारण इसे देने से इंकार नहीं किया है सकता है। यदि यह जानकारी प्रदान नहीं की जाती है तो आवेदक जिन्हें इन्दौर की जिला अदालत में पोज्यार्ड प्रकरण लगा देगा उसमें सीपीआईओ और अपीलाधीन अधिकारी को दस्तावेज सहित साफ स्पष्ट हेतु बुलाया जाएगा जिससे न्यायालय की प्रक्रिया लंबक से होगी साफ होगी। सीपीआईओ और अपीलाधीन अधिकारी को न्यायालय में साफ कर देने हेतु आदेश किये जाने से उनका व लोकचन की अपवाद होगा।

आशी...२....
03. क्योंकि, माननीय केंद्रीय सूचना आयोग, नई दिल्ली के माननीय तीन सूचना आयुक्तों को पीठ ने इसी बिन्दु को प्रकरण क्रमांक-सीआईसी/एटी/ए/2007/000389 में निर्धारित किया जा चुका है। (एनेक्चर-01) इस मामले में भी सीपीआईओ और अपीलिय प्राधिकारी ने इसी आधार पर सूचना देते से ईंकार किया था लेकिन केंद्रीय सूचना आयोग ने उनको इस दलील को नहीं मानकर दंशागत देते के आदेश पारित किये थे।

प्रार्थना या चाहीं गई राहत–

09. आवेदन पत्र दिनांक-03/12/2012 में उल्लेखित चाहीं गई समस्त दस्तावेजों की प्रमाणित प्रतिलिपि अविलंब प्रदान किये जाने के निर्देश पारित करे।

02. केंद्रीय सूचना आयोग नई दिल्ली को सीपीआईओ के द्वारा असंभवनापूर्वक सूचना नहीं दिये जाने की सूचना प्रेषित कर उनके विरुद्ध आरटीआईएक्ट की धारा-20(1) व (2) सूचना के अधिकार अधिनियम,2005 की धारा-17 (2) के अनुसार) के तहत पेनल्टी दिये जाने की अनुमति की जाए।

03. अपीलाथी को आरटीआईएक्ट की धारा-17(6) के तहत दस्तावेजों की प्रमाणित प्रतिलिपि निशुल्क प्रदान किये जाने के आदेश पारित हों।

04. अपीलाथी को आरटीआईएक्ट की धारा-19 (ख) के अनुसार योग्य कंपनसेशन दिये जाने के आदेश पारित हों।

05. अन्य कोई भी सहायता जो अपीलिय अधिकारी उचित समझे वह भी अपीलाथी को दिलवाई जाए।

संलग्न

01. सूचना के अधिकार का आवेदन पत्र दिनांक-03/12/2012 को छायाप्रति। (एनेक्चर-01)
02. सीपीआईओ का निर्णय दिनांक-3/4-01-2013 (एनेक्चर-02)
02. केंद्रीय सूचना आयोग, नई दिल्ली के प्रकरण क्रमांक-सीआईसी/एटी/ए/2007/000389 का निर्णय की छायाप्रति। (एनेक्चर-03)
In 2001 the Government of India divested 51 per cent of its equity and management control in favour of Sterlite Industries (I) Ltd. नवं 1999 में बालको के केपटिव पावर प्लांट को आर्न बीमा ऑरियेंटल इंडिया कम्पनी लिमिटेड—कोरवा शाखा कार्यालय जिसका पॉलिसी नम्बर—१५२००/११/२०००/०००३६ था एवं बीमाविधि दिनांक—१९/०३/१९९९ से २८/०३/२००० करवाया था। दिनांक—२२/०५/२००२ को एक ट्रांसफरमर्स कॉलेंग हो गया जिसके कोल्म का भूगतान रुपये—17346258/- ऑरियेंटल इंडिया कम्पनी के चेक नम्बर—549184 दिनांक—22/05/2002 को मेसर्स—बाल्को केपटिव पावर प्लांट (M/S B.C.P.P.) को वित्तीय गया। आवेदन इस संबंध में निम्नलिखित दस्तावेज़ों की प्रमाणित प्रतिलिपि चाहता है—

01. भारत सरकार के संबंधी विभाग द्वारा स्टरलाइट (आई) लिमिटेड के साथ किये मेमोरेंडूम ऑफ अफडरस्टेडील (एमटीआरसे) /डीलींग/एड्जेंट की प्रमाणित प्रतिलिपि।

02. ऑरियेंटल इंडिया कंपनी लिमिटेड—कोरवा शाखा कार्यालय द्वारा मेसर्स—बाल्को केपटिव पावर प्लांट (Cheque favouring M/S B.C.P.P.) को कल्ले का भुगतान रुपये—17346258/- चेक नम्बर—549184 दिनांक—22/05/2002 को मेसर्स—बाल्को केपटिव पावर प्लांट (M/S B.C.P.P.) को किया के संबंध में निम्न जानकारी—

03. उक्त धनराशि रुपये—17346258/- की धनराशि को Sterlite Industries (I) Ltd. को दिये जाने संबंधी समस्त समस्त पत्र व्यवहार व धनराशि दिये जाने के संबंध में बनाई गई नोटसीट की प्रमाणित प्रतिलिपि।

04. यहू इस धनराशि को Sterlite Industries (I) Ltd. को नहीं प्रदान की गई तो यह धनराशि जारी सरकार के कोने से विभाग/कार्यालय/अन्य विभाग को सीपी गई की जानकारी व इस संबंध में किये गये संबंध पत्र व्यवहार एवं इस संबंध में बनाई गई नोटसीट की प्रमाणित प्रतिलिपि।

संगम—01—रुपये—10/- का पोस्टल आर्डर ऊर्जा—१९ ई ४४४६८४।

आवेदन

राजकुमार पौड़ार

पत्र व्यवहार का पता—राज कुमार पौड़ार

प्राधान संपादक, सेंसर टाइम्स,

२/७५, सुपर विहार, भमोरी उम्बे, नृंदानगर, इंदिरा—२५, २००२.
No.25(3)2012/Met-1  
Government of India  
Ministry of Mines  

New Delhi, 3.1.2013

To,

Shri Ravi Kumar Poddar,  
Chief Editor,  
Sensor Times,  
72/74 Suyash Vihar,  
Samori Dubey,  
Nandanagar,  
INDORE - 452011.

Subject: Request for information under RTI Act, 2005- regarding BALCO.

Sir,  

I am directed to refer to your application dated 3.12.2012 (received in this Ministry on 11.12.2012) under the RTI Act, 2005.

2. With regard to the information sought by you, it is stated that consequent upon disinvestment of BALCO on 2nd March, 2001 by transfer of 51% shares held by the Government of India in favour of a Strategic Partner (SP) namely Sterlite Industries (India) Ltd., the operational and management control of the Company, vests with the SP. The Deptt. Of Personnel and Training, the nodal authority for RTI Act has clarified after consultation with Deptt. Of Legal Affairs that the RTI Act is not applicable to BALCO, now a disinvested Company. Matters concerning day to day affairs of the Company akin to those, on which information has been sought by you, are decided by the SP, holding management control of BALCO. The Government is not in a position to transfer the application to the Company in view of the fact that the RTI Act is not applicable to it as on date.

3. In view of above, information sought by you may be treated as NIL as the required information is not held by the CPIO/Administrative Section of BALCO (Metal-I Section) of the Ministry of Mines.

4. You are further informed that in case you are not satisfied with the reply of this Ministry, you may file an appeal before the Appellate Authority (Sh. S.B. Doval, Appellate Authority & Deputy Secretary, Room No. 314-D Wing, Ministry of Mines, Shastri Bhavan, New Delhi) within a period of 30 days from the date of receipt of this letter.

Yours faithfully,

(Manoj Kumar)  
CPIO & Section Officer

No. CIC/AT/A/2007/00389
CENTRAL INFORMATION COMMISSION
Block IV, 5th Floor, Old JNU Campus
New Delhi-110 067

(Under Section 19 of the Right to Information Act, 2005)

Appellant: Shri Laxmi Chauhan,
Secretary, Sarthak,
Abhinandan Complex,
Power House Road,
Korba, Chhattisgarh.

Public Authority:
Respondents

(i) Shri Ashok Kumar Mehta,
Director & CPIO,
Ministry of Mines,
New Delhi.
(ii) Shri V.K. Thakral,
Joint Secretary & Appellate Authority,
Ministry of Mines,
New Delhi.

Date of Hearing: 28.08.2007

Date of Decision: 27.12.2007

Facts:
The appellant Shri Laxmi Chauhan of Korba, Chhattisgarh submitted an application under the Right to Information Act, 2005 before the Central Public Information Officer, Ministry of Mines, Government of India on 30th of October 2006 seeking the following: --

1) Copy of the certificate issued by the chartered accountant showing gross block of all fixed assets (without depreciation) of the Bharat Aluminium Company Limited (BALCO) concerning financial year ending on 31st of March 2005.
(iii) If the Central Government ever decides to sell out its 49% equity in the BALCO—will such sale include the valuation of 540 MW captive power plant and the smelter project?

2. The Ministry did not provide the requested information but instead directed the appellant to seek the relevant information directly from BALCO, vide its letter dated 14th November 2006.

3. Dissatisfied with the response of the Ministry directing the appellant to seek information directly from the Company, the appellant submitted an application before the first Appellate Authority of the Ministry of Mines on 15th December, 2006, requesting the authority to provide the information requested by her.

4. The Joint Secretary and the First Appellate Authority considered the appeal petition submitted by the applicant, and confirmed the decision of the CPIO or the Ministry of Mines, and also observed that the applicant has been rightly directed to approach the Company directly, concluding that no further directions were needed insofar as the appeal petition was concerned.

5. The appellant thereafter approached this Commission and submitted an application under section 19 of the Right to Information Act. In her appeal petition, the appellant has submitted as follows:
   (c) The Right to Information Act, 2005 came into force w.e.f. October 12, 2005 and it applies to:
      (a) All Government Departments;
      (b) All Public Sector Undertakings where the Government is in shareholding;
      (c) All Institutions, NGOs who are financed or to whom
8. The Ministry also submitted that the issue as regards the applicability of the RTI Act to an undertaking which has been disinvested by the Government and as a result thereof, government's shareholding has been reduced to a minority shareholding, was referred to the Department of Personnel and Training, by the Ministry of Mines. It was understood that the Department of Personnel and Training was consulting Department of Legal Affairs in this regard. The Ministry therefore submitted that after the clarification was received from the DOPT, this Ministry would be in a position to take further action regarding applicability of RTI Act to the company.

9. The CPIO also submitted an explanation vide his letter dated 14.6.2007 to the Show Cause Notice issued under Section 20(1) of the Right to Information Act, 2005 wherein he submitted as under:-

(i) BALCO was disinvested on 2.3.2001 along with transfer of management control to the strategic partner.

(ii) The Government questioned the Management of the Company regarding applicability of the Act to BALCO and that BALCO has submitted their opinion that RTI Act is not applicable to them consequent upon its disinvestments by the Government in the year 2001.

(iii) The management and control of BALCO is no longer vested with the Government and BALCO is not a public authority as defined under RTI Act, 2005. The CPIO also attached copies of the e-mails received from BALCO along with his explanation.

(iv) That the Ministry of Mines requested the Department of Personnel & Training, the Nodal Ministry for RTI Act as to whether the RTI Act was applicable to BALCO or not. DOPT
A PIL has been filed in the Apex Court against the Management of BALCO and Sterlite Industries (India) Ltd., which has recently taken over the management of BALCO and that, therefore, the information is needed for presenting the appellant's viewpoint before the Hon'ble Apex Court.

6. On receipt of the 2nd appeal petition, the Commission directed the Under-Secretary and the Central Public Information Officer, Ministry of Mines to explain the reasons for not furnishing reply and show cause as to why a penalty under section 20 of the Right to Information Act, 2005 be not imposed on him. The Commission issued another notice to the appellant asking him to appear on June 26, 2007 at 4:30 p.m. and to present his case at the time of hearing. The appellant was given a choice either to remain present in person or through a duly authorized representative. The appellant was also given the choice not to remain present for the hearing in which case an intimation to that effect should be given to the Commission so that matter could be decided on the basis of the available records. The CPIO and the Appellate Authority of the Ministry were directed to submit comments in respect of the appeal petition within two weeks from the date of issue of the notice, endorsed to the appellant so as to enable him to submit a rejoinder, should he wish.

7. The comments from the Ministry in pursuance of the notice as aforesaid were received vide their letter dated 30th May 2007, received by the Commission on 4th June, 2007. In their letter, the Ministry submitted that BALCO, an erstwhile Public Sector Undertaking under the administrative control of Ministry of Mines was disinvested on 2nd March, 2001, when 51% of the total share holding of the company held by the Government of India along with the management control had been transferred by way of sale to the strategic partners i.e. Sterlite
consulting the Department of Legal Affairs, the application of the appellant could not be transferred to BALCO and the Ministry was also not in a position to advise/direct the company to accept the transfer of the application under the RTI Act.

10. The matter was heard on 25th of June 2007 by the Single Bench of this Commission. The hearing was attended by (i) Shri Abhay Kumar Singh, Director, and (ii) Ms. Neeta Gupta, Under Secretary and CPIO in the Ministry of Mines. Appellant was also present at the time of hearing.

11. After hearing the parties present, the Single Bench observed that this appeal has thrown up basic issues regarding information disclosure obligation of disinvested PSUs. These were identified as follows:

(i) What norms are to be followed regarding determining if a disinvested PSU is a public authority?

(ii) If it is found that such a unit is a public authority, will it be required to set up the RTI regime as per provisions of the Act and follow its other guidelines regarding voluntary disclosures and so on?

(iii) In case it is determined that such disinvested PSU is not a public authority, could information pertaining to the unit be demanded through the Government Department which signed the strategic partnership agreement and thereby had access to information held by the Company?

(iv) In case of either (ii) or (iii), how shall penalty and compensation provision be invoked and enforced?
13. Accordingly, the matter was listed to be heard by a Full Bench consisting of Shri Wajahat Habibullah, Chief Information Commissioner; Shri A.N. Tiwari, Information Commissioner and Prof. M.M. Ansari, Information Commissioner. Notices were accordingly issued to:

(i) Shri V.K. Thakral, Joint Secretary & Appellate Authority, Ministry of Mines;
(ii) Shri Saurabh Chandra, Joint Secretary & Appellate Authority, Department of Disinvestment;
(iii) Shri Ravi Raja Gupta, Associate Vice-President (Legal) & Company Secretary, BALCO, Chattisgarh;
(iv) Shri Lakshmi Chouhan, Appellant, Secretary, Sarthak, Chattisgarh;

and they were called upon to appear before the Commission either personally or through an authorized representative to present their case.

14. The matter was heard on 28.8.2007 by a full Bench consisting of Shri Wajahat Habibullah, Chief Information Commissioner; Shri A.N. Tiwari, Information Commissioner and Prof. M.M. Ansari, Information Commissioner.

The following were present at the hearing:

(i) Shri Abhay Kumar Singh, Director, Ministry of Mines.
(ii) Shri Amit Choubey, Section Officer, Ministry of Mines.
(iii) Ms. Minakshi Chowdhry, Joint Secretary, Department of Disinvestment
(iv) Shri P.C. Sen– Authorized Representative, BALCO

15. The appellant Shri Laxmi Chauhan although informed of the date of hearing has opted not to be present, nor was any authorised representative present from the side of the appellant to present the case at the time of hearing.

16. It was submitted on behalf of the Ministry of Mines that the matter as to
Government has no control over the company and cannot issue directions, which was possible when it held majority shares. In the circumstances, the BALCO cannot be treated as a "public authority" under the Right to Information Act.

17. As regards applicability of the Right to Information Act, the BALCO representative submitted that the management of the company has already submitted the opinion that the Right to Information Act is not applicable to them consequent upon disinvestment of the same in the year 2001 and since the ownership and control of the company is no longer vested with the Government, BALCO is not a "public authority" as defined in the Right to Information Act.

18. The Ministry also referred to the Office Memorandum No. 10/24/2006-IR dated 28.06.2007 issued by the Department of Personnel & Training, relevant portion whereof reads as under:-

"That the issue whether the BALCO falls within the definition of Public Authority under the Right to Information Act, 2005, has been examined, considered in consultation with the Department of Legal Affairs. It is noted that the Government holds 49% of the shares in the BALCO. After disinvestments, the Government has no final control over the Company and cannot issue any direction, which was possible when it held majority shares. In the circumstances, the BALCO cannot be treated as a 'public authority' under the Right to Information Act, 2005."

19. The Ministry also submitted in reference to their letter dated 23.7.2007 that BALCO cannot be treated as "Public Authority" under the Right to Information Act, 2005.

**ISSUES FOR DETERMINATION**

A. Whether BALCO is a Public Authority under the Right to Information
signed the strategic partnership contract and thereby had access to information held by the company?

DECISION AND REASONS

20. Section 2(h) of the Right to Information Act, 2005 defines the 'public authority' as under:

- 'public authority' means any authority or body or institution of self-government established or constituted –
  (a) by or under the Constitution;
  (b) by any other law made by Parliament;
  (c) by any other law made by State Legislature;
  (d) by notification issued or order made by the appropriate Government,
and includes any –
  (i) body owned, controlled or substantially financed;
  (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government."

21. The issue as to whether a disinvested Government entity can still be regarded as a "public authority" within the meaning of Section 2(h) of the Right to Information Act, 2005 was considered by the Full Bench of this Commission in Sarbajit Roy Vs. Delhi Electricity Regulatory Authority (CIC/WB/A/06/00011). In this case, the three DISCOMs were held to be public authorities even though 51% of the total shareholding of the 3 DISCOMs was admittedly in the hands of the private parties. In this case, however, the decision of the Commission rested on a few factors, notably the following:

(i) All the three DISCOMs were constituted by the Government of NCT of Delhi and after their constitution, 51% of the equity shares in the three DISCOMs were offered to private parties through a
(ii) Subsequently, the name of the entity was changed but the Commission held that it does not mean that a new entity altogether different from its predecessor company came into existence.

(iv) Under the Shareholders’ agreement, Government of NCT of Delhi through its holding company continue to have significant control.

(v) At the time of constitution and incorporation of the three DISCOMs substantial financing (both equity and debt) came from the Government of NCT of Delhi.

22. In CIC/WB/A/2007/0017 dated 31.5.2005, IFCI was also held to be a public authority within the meaning of Section 2(h) of the Right to Information Act, 2005 but in this case, too, the IFCI was established by an Act of Parliament with a view to achieving greater operational flexibility and access to capital market. Although subsequently IFCI was transferred to and vested in a new company called IFCI Limited with effect from 1st July, 1993, it is for this reason that the Commission did not agree with the view of the Banking Division of the Ministry of Finance and held IFCI as a public authority within the meaning of Section 2(h) of the Right to Information Act, 2005.

23. In IC/MA/C/07/00023 and 00093, the Commission held Indraprastha Gas Limited (IGL) as a public authority within the meaning of Section 2(h) of the Right to Information Act, 2005. In this case, the finding of the Commission was based on several factors such as —

(i) IGL is a company promoted by GAIL and EPCL, both of whom are
(iii) IGL is controlled by the Promoters which are Government of India Undertakings, as most of the Directors are nominees of the GAIL/BPCL/Government of NCT of Delhi and the post of Chairman and the Managing Director of IGL is always held by the Chairman BPCL or GAIL. The post is, in fact, shared by two of them on rotational basis.

24. In the present case, however, it is agreed that BALCO was not created by a Statute. It was not established either by an order or a notification issued by the Government. As such, it cannot be treated as a ‘public authority’ within the meaning of Section 2(a),(b),(c) or (d) of the Right to Information Act. It must be pointed out that the definition of Section 2(h) of the Right to Information Act is an inclusive definition which per se widens the meaning of the terms used therein and accordingly ‘public authority’ would include an organization which is owned, controlled or substantially financed by the Government. BALCO at the time of its inception was a Government company. It was therefore ‘owned’ by Government. It was also ‘controlled’ by the Government. But after disinvestment, the ownership of the company stands divided among its shareholders. The majority shareholding has gone to a private party under the Agreement executed between the Government and the private party. With the transfer of the majority shares, the control of the company has passed from Government to the private party. As such, after disinvestment, the company cannot be treated either as a Government company or under the ownership or control of the Government.

25. A question remains as to whether BALCO can be stated to be
company was a public authority so long as ownership of all shares was with government, but Government investment to the extent of 51% has been sold away to a private party under an agreement already executed. Insofar as other funding and financing is concerned, there are no records before us that would establish substantial financing to the company coming from Government sources.

26. In this context, it will be pertinent to mention that initially the Supreme Court's view was that an entity which is a non-statutory body and is one incorporated under the Companies Act and there was neither a statutory nor a public duty imposed on it by statute, will not be subject to the writ jurisdiction of the High Court or the Supreme Court. This means that a company not exercising a statutory or a public duty will not be included within the definition of the word "Other Authorities" appearing in Article 12. (Paraga Tools Corporation Vs. Shri C.A. Manual – 1969 (1) SCC 585).

27. Subsequently, after the State started actively participating in business and economic activities, the meaning of the word "Other Authorities" was expanded by the Supreme Court, so as to include bodies other than the statutory bodies. The first case on the point was Rajasthan State Electricity Board Vs. Mohan Lal (AIR 1967 SC 1857). This development of law by judicial interpretation culminated into a judgment of the seven-judge Bench in the case of Pradeep Kumar Biswas – 2002 (5) SCC 111.

28. The socio economic policies of the Government of India have since changed and this change has been duly recognized by the Supreme Court in Zee Telefilms Limited Vs. Union of India (2005)4 SCC 649 and BALCO
the time. It is noticed earlier in this judgment that in Article 12 the term "other authorities" was introduced at the time of framing of the Constitution with a limited objective of granting judicial review of actions of such authorities which are created under the Statute and which discharge State functions. However, because of the need of the day this Court in \textit{Rajasthan State Electricity Board Electricity Board} (supra) and \textit{Sukhdev Singh} (supra) noticing the socio-economic policy of the country thought it fit to expand the definition of the term "other authorities" to include bodies other than statutory bodies. This development of law by judicial interpretation culminated in the judgment of the 7-Judge Bench in the case of \textit{Pradeep Kumar Biswas} (supra). It is to be noted that in the meantime the socio-economic policy of the Government of India has changed [See \textit{BALCO Employees' Union (Regd.) v. Union of India and Ors.}] and the State is today distancing itself from commercial activities and concentrating on governance rather than on business. Therefore, the situation prevailing at the time of \textit{Sukhdev Singh} (supra) is not in existence at least for the time being, hence, there seems to be no need to further expand the scope of "other authorities" in Article 12 by judicial interpretation at least for the time being. It should also be borne in mind that as noticed above, in a democracy there is a dividing line between a State enterprise and a non-State enterprise, which is distinct and the judiciary should not be an instrument to erase the said "dividing line unless, of course, the circumstances of the day require it to do so.

29. Another important case is the case of Maruti Udyog Ltd. (P.B. Ghayalod \textit{vs. Maruti Udyog Ltd}) decided by the Delhi High Court. In this case the Maruti Udyog has been held to be not an instrumentality of the State within the meaning of Article 12 of the Constitution because there was no all pervasive Government control of the company even though at the relevant point of time total Government holding in the Maruti Udyog was to the extent of 60%. The following observations of the Delhi High Court in the said case are reproduced below:
30. It will be pertinent to mention that BALCO Employees Union have also gone to the Supreme Court and by order dated 10.12.2001, the Hon’ble Supreme Court has refused to interfere mentioning it clearly that in sphere of economic policies or reforms, court is not the proper forum. The court has held that every matter of public curiosity is not a matter of public interest.

31. After disinvestments BALCO is no more a Public Company as its management is in private hands. Although the definition of the words “Public Authority” in the Right to Information Act, 2005 is much wider than the definition of the word “State” under Article 12 of the Constitution of India, but the moot question is whether equity participation alone of the Government in a company without any control whatsoever is enough to enable an entity to qualify as a Public Authority within the meaning of Section 2(h) of the Right to Information Act, 2005. The Commission has carefully considered the whole issue and is of the view that insofar as the request for information in this case is concerned, it is not necessary to determine and say a final word as to whether BALCO is a “Public Authority” or not under the Act.

32. Issue B that now comes for consideration is as to whether the information concerning BALCO can be accessed through the Ministry. In this context, it is pertinent to reproduce Section 2(f) of the Right to Information Act, which defines “information” as follows:

"Information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private
33. From the above, it is very clear that information concerning a private entity, if it can be accessed under any law by a public authority, the same information must be made available to an applicant seeking information under the Right to Information Act. At the time of hearing, it was submitted before us that there is no such law that authorizes or entitles the Ministry of Mines and for that matter the Government of India to access information concerning the BALCO. Since there is no such law that empowers the Government to get information from the company, an applicant cannot seek information concerning the company from the Government of India.

34. The issue however does not end here. In this context, it will be quite relevant to refer to the application submitted by the applicant in this case. The appellant did not ask for any information from the Bharat Aluminium Company Ltd. (BALCO). He has submitted an application under the Right to Information Act to the Ministry of Mines. The information sought by the appellant Shri Laxmi Chauhan is not about BALCO per se, but about the Government interest in BALCO.

35. The appellant is seeking a copy of the certificate issued by a chartered accountant certifying the gross block of all fixed assets (without depreciation) of Bharat Aluminium Company Ltd. concerning financial year ending 31st March 2005. The information must be available in the annual report of the company, which under law is to be submitted to shareholders. Being a shareholder of the company, with representation on its Board of management, the information sought must be available with the Ministry of Mines, and what is available with the Ministry cannot be denied to an applicant under the Right to
not seeking information about the Plant or about the Smelter Project. The applicant is seeking only the amount actually invested by the Government of India. This is information that the Ministry as public authority cannot deny to an applicant under the Right to Information Act. The argument that the information is not available with the Ministry is untenable. If the Ministry has made any investment, it should be so stated. If no investment has been made, then also a reply to that effect must be given to an information seeker under the Right to Information Act.

37. Insofar as the third point is concerned, the applicant Shri Chauhan is not seeking information. He is, on the other hand, making an inquiry and wants to know an answer to a hypothetical situation as to whether the valuation of the captive power plant and the smelter project will be included and taken into account if ever the Ministry of Mines decides to sell 49% of its remaining equity shareholding. The Government may have this information in the concluded Agreement. It may also not have that information. Under the Right to Information Act, a public authority is required to provide information held by it in material form, not provide answers to hypothetical situations. An answer in response to such hypothetical situations does not come within the definition of the word ‘information’ under Section 2(f) of the Right to Information Act. But the concerned Public Authorities, i.e. Ministry of Mines must determine as to whether they have this information in material form or not. If they have the information, they should provide it as is mandated by the definition of right to information u/s 2(1). If they do not have it, they should so inform the applicant that the required information is not available.
intentional or deliberate. At the time when the RTI application was submitted before the Ministry, the Ministry seems to have been under the impression that BALCO remained a public authority, and, as such, the applicant should seek information from BALCO u/s 6(3). Later, they have reconsidered the issue and decided that BALCO has ceased to be a Public Authority after disinvestments. The Ministry, therefore, has not had an opportunity to consider the matter and determine whether the information requested is already available with them. Now, since this is very clear that the requested information relates exclusively to the Ministry of Mines, the Ministry is directed to respond to the RTI request submitted to them within 15 days from the date of receipt of this Decision Notice. It is further clarified for the sake of convenience to all stakeholders that the Ministry shall provide the information available with them and, if they do not hold the information, appellant must be so informed. This disposes of Issue B

39. The appeal petition is disposed of with the above directions.

Announced on this the 27th day of December 2007. Notice of this decision be given free of cost to the parties.

(Prof. M.M. Ansari)  
Information Commissioner

(A.N. Tiwari)  
Information Commissioner

(Wajahat Habibullah)  
Chief Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the
No.25(3)2012/Met-I
Government of India
Ministry of Mines

To,

Shri Ravi Kumar Poddar,
Chief Editor,
Sensor Times,
72/74 Suyash Vihar,
Samoni Dubey,
Nandanagar,
INDORE - 452011.

Subject: Request for information under RTI Act, 2005- regarding BALCO.

Sir,

I am directed to refer to your application dated 3.12.2012 (received in this Ministry on 11.12.2012) under the RTI Act, 2005.

2. With regard to the information sought by you, it is stated that consequent upon disinvestment of BALCO on 2nd March, 2001 by transfer of 51% shares held by the Government of India in favour of a Strategic Partner (SP) namely Sterlite Industries (India) Ltd., the operational and management control of the Company, vests with the SP. The Deptt. Of Personnel and Training, the nodal authority for RTI-Act has clarified after consultation with Deptt. Of Legal Affairs that the RTI Act is not applicable to BALCO, now a disinvested Company. Matters concerning day to day affairs of the Company akin to those, on which information has been sought by you, are decided by the SP, holding management control of BALCO. The Government is not in a position to transfer the application to the Company in view of the fact that the RTI Act is not applicable to it as on date.

3. In view of above, information sought by you may be treated as NIL as the required information is not held by the CPIO /Administrative Section of BALCO (Metal-I Section) of the Ministry of Mines.

4. You are further informed that in case you are not satisfied with the reply of this Ministry, you may file an appeal before the Appellate Authority (Sh. S.B. Doval, Appellate Authority & Deputy Secretary, Room No. 314-D Wing, Ministry of Mines, Shastri Bhavan, New Delhi) within a period of 30 days from the date of receipt of this letter.

Yours faithfully,

(Manoj Kumar)
CPIO & Section Officer

Government of India
Ministry of Mines

F.No.25 (31/2012-Met-I) New Delhi, 15th March, 2013

<table>
<thead>
<tr>
<th>Appellant</th>
<th>Shri Ravi Kumar Poddar</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPIO</td>
<td>Mr. Manoj Kumar</td>
</tr>
<tr>
<td>Grounds for appeal</td>
<td>Information not provided.</td>
</tr>
<tr>
<td>Date of Receipt of Appeal</td>
<td>15.2.2013</td>
</tr>
<tr>
<td>Date of order</td>
<td>15.3.2013</td>
</tr>
</tbody>
</table>

ORDER

Shri Ravi Kumar Poddar (hereinafter referred to as the ‘Appellant’), has filed the abovementioned appeal, aggrieved due to the above-referred grounds.

2. On going through the case file, it was observed that the Appellant had sought information vide his application dated 3.12.2012 (received in this Ministry on 11.12.2012) and the information sought could not be provided, since the same was not held by the CPIO /Administrative Section of BALCO (Metal-I Section) of the Ministry of Mines.

3. In this regard it is intimated that the genesis behind holding that RTI Act, 2005 is not applicable to BALCO is in view of the clarification given by the Department of Personnel and Training, the nodal Department of RTI Act, in consultation with Department of Legal Affairs in June, 2007. A copy of DoPT’s OM No.10/24/2006-IR dated 28.6.2007 in this regard is enclosed for reference.

4. Further, it is pertinent to mention here that as stated by BALCO (Third party) the agreements signed between the Govt. and BALCO for disinvestment of the Company, are vital commercial documents and have the necessary confidentiality covenants. Putting confidential and price sensitive details with regard to such a transaction in public domain could and would be detrimental to the commercial interest of BALCO. The information sought by the Appellant is of the post disinvestment period, therefore not held by the CPIO. Further, as per DoPT’s Communication No.1/18/2011-IR dated 16th September, 2011 (copy enclosed) ‘only such information can be supplied under the Act which already exists and is held by the public authority or held under the control of public authority. The Public Information Officer is not supposed to create information; or to interpret information; or to solve the problems raised by the applicant; or to furnish replies to hypothetical questions’.
5. As the information sought by the applicant is not available with the Ministry of Mines and considering the fact that an application under the RTI Act can only be transferred to another Public Authority for eliciting information in terms of Section 6 (3) of the Act (and not a disinvested Private Company like BALCO), the reply furnished by the CPIO is in order.

6. With the above observations, the Appeal stands disposed off. The Appellant if so chooses, can file a second appeal with the Central Information Commission, August Kranti Bhavan, Bhikaji Cama Place, New Delhi -110066 within a period of 90 days from the date of receipt of this Order.

(S.B. DOVAL)
Appellate Authority & Deputy Secretary
R. No. 314-D Wing,
Shastri Bhawan, New Delhi.

Encl: As above.

Copy to:

1. Shri Ravi Kumar Poddar, Chief Editor, Sensor Times, 72/74 Suyash Vihar, Samori Bubey, Nandanagar, INDORE - 452011.