

# Human Rights Defenders Alert - India

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8<sup>th</sup> January 2015

## Shri A. K. Parashar

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Dear Sir,

**Sub: HRD Alert - India - Urgent Appeal for Action – Tamilnadu : RTI Activist Siva Ilango, State President of Satta Panchayat Iyakkam arrested and remanded to judicial custody – arrested and then subsequently remanded to judicial custody – on a police complaint by the Tamilnadu state Information Commission – Violation of the right of an HRD - Regarding**

Greetings from Human Rights Defenders Alert - India!

HRD Alert - India is a Forum of Human Rights Defenders for Human Rights Defenders. It endeavours to initiate actions on behalf of Human Rights Defenders under threat or with security concerns.

We are now writing to express our grave concern over the arrest and subsequent remand to judicial custody of a veteran RTI activist and HRD in Chennai, Tamilnadu yesterday.

### Source of Information on the Incident:

- Media Sources in the Hindu, the Deccan Chronicle and Times of India of 8<sup>th</sup> January 2014
- Telephonic information received from the office of Satta Panchayat personally by Henri Tiphagne at about 7.45 AM on 8th January 2015

**About the Human Rights Defender under attack:**

Mr. Siva Ilango is the President of Satta Panchayat, an organization that works using the Right to Information Act in the Tamilnadu state of India and takes up issues of corruption and the rights of people.

**The Perpetrators:**

1. The Chief Information Commissioner, Mr. K S Sripathi and Commissioner Mr. S F Akbar of the TN SIC for preferring a false criminal complaint when they have so many motives against Mr. Siva Ilango and his organization for the democratic protests that they have been undertaking.
2. The Police of Teynampet Police station, the Assistant Commissioner of Police, the Deputy Commissioner of Police, the Joint Commissioner of Police and the Commissioner of Police for not adhering to the provisions of the Criminal Procedure Code in relation to Sec 41 A, B & C .
3. The Jurisdictional Judicial Magistrate at Saidapet who ordered judicial remand of the accused in this case totally contrary to the directions of the Supreme Court of India in ARNESH KUMAR Vs STATE OF BIHAR & ANR. CRIMINAL APPEAL NO. 1277 OF 2014. SPECIAL LEAVE PETITION (CRL.) No.9127 of 2013)

**Date and time of Incident:**

7<sup>th</sup> January 2015 11 AM

**Place of Incident:**

Tamilnadu State Information Commission, Chennai

**Incident:**

Mr. Siva Ilango has been engaged in the extensive use of RTIs in Tamilnadu as well as popularising the RTI and monitoring the effective functioning of the State Information Commission in Tamilnadu.

Mr Siva Ilango had filed an RTI application to the appropriate authorities on 22<sup>nd</sup> February 2014 asking them details of the State's total media advertising expenditure from 1991 to 2014. Since the required information had not been provided to him, he had appealed to the SIC and the SIC had posted the hearing of the appeal on the 7<sup>th</sup>

of January 2015. Mr. Siva Ilango came to the compound of the SIC at the appointed time in his car and entered the compound to park the same. There has always been an issue of the parking of private vehicles of people who come to the SIC within the SIC compound which is large enough and has space for such parking. There is also no space outside the compound for such vehicles to be parked. The security police of the SIC have in the past also punctured the tyres of the vehicle of Mr. Siva Ilango and they have always asked the police to show under what provisions of law parking inside the compound is prohibited when it is not so with the other State Human Rights Institutions in Chennai. Accordingly yesterday also the vehicle was parked inside and it was also punctured by the police.

Mr. Siva Ilango went to the SIC 'court hall' and seated in his seat till his case was called out. This was a second appeal after TN SIC rejected his RTI application and first appeal. Chief Information Commissioner Mr. K S Sripathi and Commissioner Mr. S F Akbar were in the two member bench refused to accede to the request. They heard the PIO in this case and then are said to have dismissed the appeal without hearing the Appellant who had expressed his desire of being heard. The Appellant, Mr. Siva Ilango had also wanted to argue the second appeal being seated on his seat which was objected to by the Bench. Mr. Siva Ilango cited that even before the Central Information Commission Appellants were permitted to sit and argue since this was not a court and asked the provision of law which demanded that the Appellant should stand up and argue. He continued his peaceful sit-in protest at the State Information Commission court hall, protesting Chief Information Commissioner K.S. Sripathi's insistence to 'stand' during the hearing.

According to Mr Ganesh, the SPI Secretary who had accompanied Mr. Siva Ilango, Mr. Sripathi refused to hear Mr Elango unless he stood up. "The commissioner asked the public information officer whether the information sought by the petitioner was provided or not. He dismissed the case immediately after the PIO replied in the affirmative," he told this Petitioner. Protesting this, he said, Mr Elango insisted that he be heard and again asked the commissioner to produce the order that a petitioner should remain standing during the hearing. However, he said when Mr Sripathi asked them to leave, Mr Elango refused to and staged a sit-in.

Following his protest, Mr Sripathi then adjourned the hearings in the hall and then moved to another room and the lights in the hall were also switched off. The

Teynampet Police were summoned and a complaint preferred to them by the SIC as a result of which the Assistant Commissioner of Police, Mr. Siva Baskar came and arrested the RTI activist in Crime No 39/2015 of the E-3 Teynampet Police Station, Chennai under Sec 294, 353 and 506 (1) of the IPC.

Mr. Siva Ilango was then remanded to judicial custody after being produced before a Judicial Magistrate court at Saidapet. It is further quite surprising that the Judicial Magistrate has mechanically remanded the said 'accused' RTI activists and HRD , Mr. Siva Ilango contrary to the recent Judgement of the Hon'ble Supreme Court of India that there cannot be any further mechanical remanding of any accused persons in all criminal cases where the sentences are below 7 years. Thus the Judicial Magistrate in this case has also further committed a human rights violation by ordering the remand of an accused in a case where he should not have done so and is thereby also liable to be proceeded against in this regard.

The organization Satta Panchayat has also in the past conducted several democratic protests in the past for raising public attention to the improper functioning of the SIC in the State of Tamilnadu and there have been several preventive arrests of Mr. Siva Ilango and other members of Satta Panchayat by the Teynampet police as was informed to this Petitioner by the Assistant Commissioner of Police, Mr. Siva Baskar.

Most public information officers (PIOs) in state government departments refuse or delayed providing information to RTI applicants and Satta Panchayat strongly feels that the TN SIC has failed to implement the RTI Act even eight years after its enactment. RTI applicants from other districts are disappointed , they state, because of this attitude of the commission and Satta Panchayat has expressed their feelings publicly in the past that an inactive commission was a waste of tax payer's money. They have in the past also demanded the removal of chief information commissioner K S Sripathi and commissioners P Thamilselvan and S F Akbar and blew conches to awake the sleeping commission which has done nothing for the RTI Act in the state. A comparison with websites of information commissions in Karnataka, Andhra Pradesh, Kerala and other states shows that TNSIC has disclosed very little information, while its counterparts have provided comprehensive data on annual reports, awareness programmes and action taken against PIOs. The number of RTI appeals disposed of by the Tamil Nadu State Information Commission (TNSIC) has

plunged by more than 50%. Statistics from the commission's website ([www.tnsic.gov.in](http://www.tnsic.gov.in)) show that the number of appeals the commission attended to decreased from 19,889 in 2013 to 8,121 till November 2014. The commission receives an average of 60,000 RTI applications every year. Though RTI Act permits each state 10 commissioners and a chief of the panel, TNSIC has only four commissioners, Christopher Nelson, P Thamilselvan, B Neelambikai, S F Akbar and chief commissioner K S Sripathi. The Supreme Court had asked governments to identify candidates for the post of information commissioner, with expertise in fields mentioned in the RTI Act, which includes law, science and technology, social service, management, journalism, mass media, and administration and governance. Most appointments in TNSIC have been political, activists say.

The government has tabled in the assembly only RTI annual reports till 2008. The commission's annual reports should declare the number of RTI applications received by public information officers (PIOs) of government departments, cases disposed of and fines imposed on PIOs by the commission for violations under the RTI Act.

The Paris Principles are also not followed in all matters relating to the SICs in the country when they are actually State Human Rights Institutions [SHRIs] also and need to adhere by the Paris Principles.

### **Appeal:**

We, therefore urge you to immediately take necessary steps to ensure that the Hon'ble Commission

- Orders an immediate, thorough, transparent, effective and impartial investigation into the above-mentioned events that led to the arrest and remand of the RTI activist. ;
- Uphold the rights of RTI activists who are also human rights defenders to associate, assembly, peacefully protest, criticise and free expression – all of which were denied in this case in this case to the Human Rights Defender;
- Since this is a clear case where there has been a clear motive between the HRD, Satta Panchayat and the Tamilnadu State Information Commission, to take up all pending the issues where the TN SIC is not

following the provisions of the RTI act and ensure that effective steps are undertaken to undertake Lok Adalats to dispose of pending matters in the TN SIC in all the districts of the state and then to ensure that the State Government is also made to make the necessary appointments to the TN SIC following the provisions of the RTI and the Paris Principles.

- To also ensure that all annual reports of the TN SIC are made ready and produced before the Tamilnadu State Legislature
- Along with government officials guarantee in all circumstances due compensation to the individual HRD in this case, Mr. Siva Ilango for the incarceration that he had to face in judicial custody and give an undertaking to the NHRC of India in writing immediately and urgently that this has been duly carried out ;
- To ensure that the Judicial Magistrate Saidapet is proceeded against by the Madras High Court for not having followed the directions of the Supreme Court of India as regards judicial remand of persons in such cases and further get the Madras High Court to immediately issue a circular to all Judicial Magistrates in the state to ensure that the right to life of all people in Tamilnadu are not violated by the Judicial Magistrates ordering the remand of such accused in such cases where the maximum sentence is less than 7 years.
- Enquire whether the complete provisions of arrest as mandated by Sections 41 A,B,C and D of the amended Criminal Procedure Code are being followed within the jurisdiction of the Chennai Commissionerate and hold the Commissioner of Police, Chennai responsible for all the non-compliance with these provisions by paying a compensation personally of a sum that may be determined for all the violations that have occurred since these provisions were brought into force on 1.11.2010 and to order that this compensation is paid individually by the Commissioner of Police, Chennai since he is alone in overall responsibility and for him to make the payment to the Tamilnadu State Legal Services Authority ;
- That in this specific case the concerned jurisdictional Deputy Commissioner of Police ,Mr. Saravanan IPS, the Assistant Commissioner of Police, Mr. Siva

Baskar and the Inspector of Police Teynampet Police station are made to all individually and collectively pay a compensation to the concerned HRD, Mr. Siva Ilango for not following provisions of Sec 41 A & 41 C of the Cr.P.C.

- That the NHRC is made to undertake a special training sessions for all Chairpersons and Members of all the State Human Rights Institutions in Tamilnadu such as the SHRC, the SCW, the Sic, the SCM and the SCPCR with the full assistance and cooperation of competent civil society organizations in the state such as People's' Watch and the HRDA and report that this has been carried out to the NHRC within a specific time frame.
- That the State Judicial Academy is made to undertake a special training on the rights of human rights defenders to all members of the judiciary and to ensure that all judicial officers are made to adhere strictly the law of arrest and judicial remand as directed by the Criminal Procedure Code and the judgements of the Hon'ble SC.
- Along with local district officials puts an end to all acts of harassment against all RTI Activists and all human rights defenders in general to ensure that in all circumstances they carry out their activities without any hindrances;
- Conform with the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, especially:
  - Article 1, which states that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels"
  - Article 12.2, which provides that ""the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration";

- More generally, ensure in all circumstances the respect for human rights and fundamental freedoms in accordance with in accordance with the Universal Declaration of Human Rights and with international human rights instruments ratified by India is strictly adhered to in the state of Tamilnadu. .

Looking forward to your immediate action in this regard,

Yours sincerely,

Sd/-

***(Henri Tiphagne)***

Honorary National Working Secretary