

(2013) 09 DEL CK 0311

In the Delhi High Court

Case No : Writ Petition (C) 5567 of 2013 and CM 12361 of 2013

Army Welfare Housing Organisation

APPELLANT

Vs

Adjutant Generals Branch and Others

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Right to Information Act, 2005 — Section 2(h)

Citation : (2013) 4 RCR(Civil) 428

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : A.K. Tewari, for the Appellant; Rajeev Mehra, ASG, Ms. Richa Kapoor, CGSC and Mr. Aditya Malhotra, for UOI, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The only issue involved in this writ petition is as to whether the Army Welfare Housing Organization is a "public authority" within the meaning of Section 2(h) of the Right to Information Act. The respondent no. 3 sought certain information from the petitioner. Some information was provided to him by the concerned PIO. Dissatisfied with the response, he preferred an appeal to the First Appellate Authority. The appeal having been dismissed, he preferred a second appeal before the Central Information Commission. Since the Commission had earlier taken a view that the petitioner was not a "Public Authority", a Special Bench of the Commission was constituted to hear the said appeal. The petitioner claimed before the Commission that it was a private body not amenable to the provisions of the Right to Information Act. It was also submitted by the petitioner that though certain loans were extended to the petitioner by the government it was not a body financed by the government. Disposing of the said appeal, the Commission, inter alia, held as under:

31. As noted herein, above, the AWHO has been shown as one of the Branches/ Offices of the AG's office in the Army's website. Even if the contention made on

behalf of the AWHO that the website is the creation of the Army and not that of the AWHO is accepted, the fact remains that during all these years, the AWHO has been treated as a wing of AG's office for all practical purposes. The constitution of the Board of Management of the AWHO, has been depicted in para 10 above. Out of 15 attendees of the Board of Management meeting held on 16.2.2012, three were Lieutenant Generals and seven were Major Generals. The rest of the attendees were also serving Army officers. In our opinion, the composition of the Board of Management of the AWHO reflects its true character. It is nothing but an extension of the AHQ. As noted above, the Adjutant General has always been the ex-officio Chairman of the AWHO ever since its inception. Various commands of the Army are represented on the Board of Management at very senior levels. All major decisions regarding the functioning of the AWHO are taken by the Board of Management which is under the pervasive control of the serving Army officers, with the AG as its Head.

32. In view of this, we come to the conclusion that AHQ controls the affairs of the AWHO through the Adjutant General for all intents and purposes. Execution of the policy by the employees of the AWHO, comprising of Army personnel and civilians, in our opinion, does not alter the essential character of the AWHO as an Army organization. Furthermore, regular deputation of Army officers to the AWHO on the terms and conditions determined by the MoD, also reinforces the impression that the AWHO is an Army Organization.

33. On the question of whether the AWHO can be said to be indirectly financed by the Central Government, some instances of grant of loan by the MoD to the AWHO have come on record. Even if loans cannot be construed as grants because loans are repayable by the borrower, these loans are reflective of the MoD's foundationally supportive role towards promoting and building the AWHO. In respect of the income tax exemption granted to the AWHO under the Income Tax Act, no firm figures have been put before us regarding the exemption availed of by the AWHO over the years but this fact has not been denied by the counsel of the AWHO either in the oral or written submissions. Exemption from Income Tax, surely bestows financial benefits on the AWHO.

34. To sum up, we hold that the AWHO is an extension of the Army by virtue of being under the pervasive control of the senior serving Army officers, including the AG. As the Army is a public authority u/s 2(h), we hold that the AWHO, by virtue of its being under the effective control of the Army, is also a public authority. We, therefore, hold that the AWHO is a public authority u/s. 2(h) of the RTI Act.

2. The Commission accordingly directed the Director General of the petitioner society to designate a CPIO as First Appellate Authority under RTI Act. Being aggrieved from the aforesaid decision, the petitioner is before this Court by way of this writ petition.

3. Section 2(h) of the Right to Information Act reads as under:

(2)(h) "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;

4. Admittedly, the petitioner is not covered under clauses (a), (b), (c) and (d) (ii) of the aforesaid sub section. The petitioner being a society registered under the Societies Registration Act, technically it is not a body owned by the Government. The question which then arises for consideration is as to whether the petitioner can be said to be a body "controlled or substantially financed by the government". There is no material on record to show that the activities of the petitioner society are substantially financed by the government. Mere taking some loan from the government does not lead to the conclusion that the activities of the petitioner are substantially financed by the government. The petitioner society has been taking loans from banks and financial institutions as well and the loans by the government have not been extended free of interest. In fact, there is no material which would show that the major finances of the petitioner society come from the coffers of the government. In these circumstances, it cannot be said that the petitioner is a body "substantially financed by the government".

5. As noted earlier, the petitioner is a society registered under the Societies Registration Act. The regulations of the petitioner society to the extent they are relevant read as under:

5. The AWHO would be managed by Board of Management (unless dissolved as hereinafter provided) with a common seal, and would sue and be sued in the name of its Director General. There will be no shareholders. All provisions of the Societies Registration Act (Act XXI of 1860) (Punjab Amendment Act, 1957) as extended to the Union Territory of Delhi will apply to this Organization. The AWHO consist of two wings viz:-

(a) Board of Management; and

(b) Executive.

Board of Management Constitution:

6. The Board of Management will consist of the following ex-officio members:

Provided that the Board of Management may nominate holders of such other appointments as it may decide to be the members of the Board of Management and may in a like manner decide to remove from its membership holders of certain other appointments provided further that the Board of Management may at its own discretion co-opt persons having special qualifications to be its members for specified periods.

Tenure of Members

8. Ex-officio members will hold their office as long as they hold the appointment by virtue of which they have become members. Co-opted members will hold office for the period for which they are appointed or till their resignation when submitted, is accepted by the Board of Management, they die, become of unsound mind or insolvent or are convicted by a Court in criminal proceedings involving moral turpitude.

Remuneration to the Members of the Board of Management

9. No member of the Board of Management in his capacity as such as member shall be entitled to receive any remuneration of allowances from the AWHO provided however that the Board of Management may sanction payment of "Out of Pocket" allowances to co-opted members for attending its meetings at such rates as it may decide.

Functions and Duties of the Board of Management

10. The Board of management shall have all the powers relating to Financial, Executive and Administrative control of the AWHO and lay down all policies in this regard inter alia as below:

- (a) Financial Management
- (b) Stores purchases and their account.
- (c) Procurement of Lands
- (d) Project accounting
- (e) Recruitment of staff maintenance of employees provident fund and allied matters.
- (f) Any other matter.

Dissolution

23. If in a special meeting called for the purpose, the Board of Management by a 3/5 majority of its members holding office, decide that the AWHO may be dissolved either immediately or with effect from a certain prescribed date, it shall stand dissolved. Provided, however, that before dissolving the AWHO, a public notice indicating intention to dissolve the AWHO and inviting objections thereto, shall be published in the various National English News Papers and objections

received shall be considered and disposed of.

6. It would thus be seen it is the Board of Management which manages administration and controls the affairs of the petitioner society. Unlike private societies, the regulations do not provide for enrolment of members nor do they provide for election of the Board of Management. All the members of the Board are specific public servants holding responsible position in the Army. The Board is headed by an Adjutant General in the Army Headquarters and the Quartermaster General in the said Headquarters is its Vice-Chairman. All the members of the Board hold their office in the petitioner society only so long as they are holding public office by virtue of which they become members of the society. Though the Board of Management is competent to nominate other members, such nominations can be made only from amongst the holders of public offices specified in the Regulations, as would be evident from the proviso to Regulation 6 of the petitioner-society. Moreover, such members can be removed by the Board of Management. The very fact that all the members of the Board of Management are holders of specified public offices and they become office bearers/members of the petitioner society only by virtue of public office they hold, clearly shows that the petitioner society is controlled by the government, through the Board of Management consisting only of the holders of designated offices. As would be evident from a perusal of Regulation 8, the moment a member of the Board of Management ceased to hold a public office by virtue of which he became a member of the Board, he also ceases to be a Board member of the petitioner society. This is yet another method by which the government controls the affairs of the petitioner society. If the government finds that the Board of Management is not functioning in the manner it desires, nothing prevents it from transferring the members of the Board from the public office held by them and appoints other public servants to hold such public offices, thereby making them the members of the Board of Management.

7. Thus, though the government does not directly controls the affairs of the petitioner society in the sense that there is no provision in the regulations which mandates the society to comply with the directions of the government, indirect control of the government on the affairs of the society can hardly be disputed. For the purpose of section 2(h), it is not necessary that the government should directly control the affairs of a public body before it can be said to be a body controlled by the government, such a control can also be indirect such as by controlling those who have to manage the affairs of the society. In fact, as noted by the Commission, the petitioner has been shown as one of the branches/offices of the Adjutant General on the website of the Army. This is yet another indicator that the government has been treating the petitioner society as one of the offices controlled by it.

8. Referring to the Regulation 23, which empowers the Board of Management to dissolve the petitioner society, it was contended by the learned counsel for the petitioner that vesting of such power in the Board of Management is wholly

incompatible with the control of the government and, therefore, it cannot be said that the petitioner-society is controlled by the government. I, however, find no merit in the contention. Though, the Board is competent to dissolve the society by the majority of 3/5, considering that the Board consists of only those who hold specified public offices, no such decision can be taken by the Board if the government desires otherwise.

9. In *Brij Bhushan Gupta Vs. Union of India and Others*, the question referred to a Division Bench of this Court was as to whether the Army Welfare Housing Organization is the State within the meaning of Article 12 of the Constitution and, therefore, amenable to the writ jurisdiction of this Court. Holding the petitioner to be State, within the meaning of the said Article, the Division Bench, *inter alia*, held as under:

The aforesaid averment in the counter affidavit sworn by Director in Adjutant General's Branch, Army Headquarters, New Delhi, clearly brings about as to why A WHO was brought into existence. The averments clearly show that great need was felt by the Government to provide social security by providing houses to) be Army personnel and in order to fulfill this need by Administrative Orders issued by the Chief of Army Staff, the Organisation was created and it was decided that the welfare programme for construction of houses would be taken up through this Army Welfare Housing Organisation. This clearly indicates that the function was to be performed by the Government and in order to achieve the said object it was decided to bring into existence an agency to carry out the object and as such the said Who was created. It is being managed by nine serving officers of the Army and is further subject to supervision by the Chief of Army Staff Sub-rule 10 of supplementary rule I of the Organisation also confers discretion upon the Chief of Army Staff to allot 1% of the total houses available for allotment at his discretion without the Chief of Army Staff being on the Board of Management. The Headquarters of the Organisation are located in the Army Headquarters and for years no lent was being charged by the Government though at a later stage a demand was raised which we were told has not yet been paid. The demand was probably raised in order to defeat the writ petitions filed against the Organisation Thus, we have no doubt in our mind that the function of the Government of providing security to the families of the Army personnel by providing houses is being performed by A WHO a(r) an agency of the Government. Thus, A WHO is clearly an agency or instrumentality of State and is Slate within Article 12 of the Constitution of India.

In taking the aforesaid view, this Court referred to the following observations made by the Apex Court in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*,

We may point out that it is immaterial for this purpose whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not us to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been

brought into existence. The corporation may be a statutory corporation created by a statute or it may be a Government company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever Be its genetically origin, it would been "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12.

In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, the Hon'ble Supreme Court, inter alia, observed as under:

... The words "any person or authority" used in Article 226 are, Therefore, not to be confirm only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. Their duty must be judged in the light of positive obligation owed by the person or authority to the affective party.

Considering the view taken by the Division Bench while holding the petitioner to be State within the meaning of Article 12 of the Constitution, it would be difficult to say that it is not a public authority within the meaning of Section 2(h) of the Right to Information Act.

For the reasons stated hereinabove, I find no good ground to interfere with the view taken by the Central Information Commission. The writ petition is devoid of any merit and is hereby dismissed. There shall be no orders as to costs.