
(2012) 07 DEL CK 0402

In the Delhi High Court

Case No : Writ Petition (C) 2380 of 2010 and C.M. No. 4767 of 2010 (for stay)

Delhi Integrated Multi Model Transit System Ltd.

APPELLANT

Vs

Rakesh Aggarwal

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Constitution of India, 1950 — Article 14, 19(1)(a), 226, 227

Right to Information Act, 2005 — Section 18(1), 18(1)(a), 2(h), 6(3)

Citation : (2012) 131 DRJ 537

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Sandeep Sethi, with Mr. Rajat Navet and Mr. Rajnish Gautam, for the Appellant; Pranav Sachdeva, Advocate in W.P. (C) 2380/2010 and C.M. No. 4767/2010 (for stay) and Mr. Rohan Thawani, Advocate in W.P.(C) 2381/2010 and C.M. No. 4770/2010 for stay, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The present writ petitions have been preferred under Article 226 and 227 of the Constitution of India, to assail the Common order dated 05.03.2010 passed by the Central Information Commission (hereinafter referred to as the "CIC") in Complaint no. CIC/SG/C/2009/001472+001312 & Appeal No. CIC/SG/C/2009/000341, whereby the CIC has held the Petitioner Company to be a "Public Authority" under the Right to Information Act, 2005 (hereinafter referred to as the "Act"). The facts leading to the filing of the present writ petitions are as follows:

1.1. The petitioner company was incorporated on 19.04.2006 as a Special Purpose Vehicle (SPV) by the Government of National Capital Territory of Delhi (hereinafter referred to as the "GNCTD"), for the purpose of implementing "Integrated multi-modal transit Network Projects". The initial paid up share capital of the petitioner company was Rs.7,30,39,000/- divided into 73039 equity shares of Rs.1,000/- each, and the same was entirely held by GNCTD.

1.2. On 04.07.2007, a Shareholder's Agreement (SHA) was entered into between the GNCTD and Infrastructure Development Finance Company (hereinafter referred to as the "IDFC"), wherein IDFC agreed to subscribe to the paid up share capital of the petitioner Company to the extent of Rs. 7,30,39,000/-. After the Subscription by IDFC to the equity shares of the petitioner Company, the shareholding of GNCTD and IDFC was 73039 shares each. Six shares were held by six Government nominees. This position continued till 13.10.2009. Thereafter, on 14.10.2009, 6 shares of the petitioner Company were subscribed by IDFC, making its shareholding 50% in the petitioner company, i.e. equal to that of the GNCTD.

1.3. The respondent in W.P. (C) in 2381/2010 vide e-mail dated 03.02.2009, addressed to the petitioner, sought details of CPIO/APIO, First Appellate Authority etc. of the petitioner as the same had not been provided for on the petitioner's website. The petitioner vide its response dated 17.02.2009 claimed that it was not a "Public Authority" within the meaning of the Act, and therefore it did not have a CPIO, APIO etc.

1.4. Being aggrieved by the said response, the respondent filed a complaint (referred to as Appeal No. CIC/SG/C/2009/000341) before the CIC u/s 18 (1)(a) of the Act. Notice dated 29.07.2009 was issued to the Petitioner directing it to state whether it fulfilled any of the criteria laid down in Section 2 (h) of the Act. The petitioner vide its response dated 13.08.2009 stated that it did not meet any of the criteria.

1.5 The Respondent in W.P. (C) 2380/2010, as Secretary of "Nyaya Bhoomi", filed an RTI application under the Act on 03.09.2009, and sought certain information from the petitioner Company. In reply to the said application, the petitioner company claimed that the petitioner did not fall within the definition of "Public Authority" in terms of Section 2(h) of the Act and advised the respondent to direct his application/questions to the Transport Department, GNCTD.

1.6. Aggrieved by the response, the respondent filed a complaint no. CIC/SG/C/2009/001312 dated 10.09.2009 u/s 18(1) of the Act before the CIC. The CIC issued notice dated 16.09.2009 to the petitioner, calling upon the petitioner to provide the information as sought by the respondent and sought an explanation from the petitioner for not supplying the information within the mandated time, upon its prima facie observation that the information has not been provided by the petitioner without stating any reasons. The petitioner by its reply dated 05.10.2009 stated before the CIC that it was not a public Authority within the Act, and that the Act was not applicable to it.

1.7. In the meantime, the respondent (in W.P. (C) 2380/2010) filed another application dated 08.10.2009 seeking more information from the petitioner under the Act. Petitioner vide its reply dated 13.10.2009, advised the respondent to take up his request with the Transport Department, GNCTD, as the information sought was available with and belonged to the Transport Department, GNCTD.

1.8. In response to the petitioner's reply, respondent re-sent his application vide letter dated 14.10.2009, wherein it was alleged that the information as sought by him about the bus-clusters pertained to the petitioner and not to the Transport Department. It was also stated therein that the Respondent's application should rather have been transferred u/s 6 (3) of the Act to another public authority instead of being returned. Petitioner in its response dated 16.10.2009, informed the Respondent that his application has been returned since there was no Public Information Officer in the Petitioner Company for the purpose of transferring his application to another public authority.

1.9. Aggrieved by the replies dated 13.10.2009 and 16.10.2009, respondent (in W.P. (C) 2380/2010) filed a second complaint before the CIC on 20.10.2009, which was registered as complaint no. CIC/SG/C/2009/001472, wherein notice was issued to the petitioner on 04.11.2009, directing the petitioner to appear before the CIC on 16.12.2009.

1.10. The CIC, with reference to Complaint no. CIC/SG/C/2009/001312 & Appeal No. CIC/SG/C/2009/000341, vide notice dated 09.11.2009 called upon the petitioner to give reasons as to why the petitioner was not a public authority when the Board of the petitioner comprised four Directors nominated by the GNCTD out of eight Directors. Petitioner clarified its position vide reply dated 23.11.2009. The CIC, thereafter, issued notice of hearing dated 18.12.2009 directing the parties to appear before it on 21.12.2009.

1.11. In Complaint no. CIC/SG/C/2009/001472, the petitioner appeared before the CIC on 16.12.2009 and submitted that it was not a public authority as it was not controlled by the appropriate government. The replies dated 05.10.2009 and 23.11.2009 filed by the petitioner were taken on record and the matter was adjourned to 21.12.2009.

1.12. Eventually, on 03.03.2010, the parties appeared before the CIC and made their submissions.

1.13. The CIC by its order dated 05.03.2010 held that the petitioner company is controlled and substantially financed by the Government and is, thereby, a "Public Authority" under the Act. Consequently, it directed the petitioner to provide the information as sought by the respondent.

2. Being aggrieved by the said order of the CIC, the petitioner has preferred the present writ petitions.

3 Mr. Sandeep Sethi, learned senior counsel for the petitioner contended that the conclusions arrived at by the CIC that the petitioner was controlled and substantially financed by the Government is perverse and without any basis.

4. Mr. Sethi submitted that the CIC erred in holding that the petitioner company was substantially financed by the government without there being any evidence to that effect before it. He submitted that "shareholding" and "financing" are two different concepts, which cannot be compared. Government's shareholding in

the petitioner company being 50% would not, by itself, mean that the Petitioner is substantially financed by the GNCTD. It was further submitted that the petitioner company has not been given concessional land or other privilege, nor does it receive any grant or financial aid from the government. Merely because one of the ancillary or incidental objects of the petitioner is to receive grants from the government, the same does not, in any manner, make the petitioner company fall within the definition of "Public Authority" as defined u/s 2(h) of the Act. The petitioner submitted that it is a professionally managed company generating its own revenue and is paying salaries and other expenses out of the funds generated by it out of its business activities, and the Government does not provide any financial aid or assistance to the petitioner company.

5. Learned senior counsel contended that the CIC erred in holding that the GNCTD exercised significant control over the management of the petitioner company on account of 50% of the Directors of the petitioner company being GNCTD's nominees.

6. Mr. Sethi submitted that the said Directors are non-executive Directors and the only executive Director is the Managing Director, who is a nominee of the IDFC, and the substantial powers and control of the petitioner Company are vested with him. The Directors of the Government are not issuing any directions with regard to the day-to-day affairs of the Company and are merely part time officers. It was submitted that the CIC erroneously brushed aside the difference between executive and non-executive directors, in coming to its finding that the petitioner company is a body controlled by the government.

7. Learned senior counsel submitted that in the absence of more than 50% stake in the petitioner company, or management control of the petitioner company with the GNCTD, the latter could not be held to be in "control" of the petitioner company. It was submitted that the provisions of the Shareholder Agreement entered into between IDFC and GNCTD clearly demonstrate that the government is not in control of the petitioner company.

8. It was further contended that the petitioner does not discharge any public activity/function and/or provide public service to the general public for it to be brought within the purview of the Act. It was submitted that the petitioner company does not discharge any business activity on behalf of the government and that the petitioner company is totally a commercial organisation. Mr. Sethi submitted that the Comptroller and Auditor General (CAG) had itself recognised that the petitioner company had ceased to be a government company on equity participation by IDFC and as such had discontinued audit of the accounts of the erstwhile SPV.

9. Learned senior counsel substantiated his argument by placing reliance on letter no. CAV/15-2006 dated 22.11.2007 of the "Office of the Comptroller and Auditor General of India" issued to "The Accountant General (Audit), Delhi" which states that the audit of the Petitioner company for the year 2007-2008 had been

withdrawn as the Company ceased to be a Government Company on 01.08.2007.

10. Though, it appears that a plea of bias against the CIC, Mr. Shailesh Gandhi was raised before the Chief Information Commissioner, and is also pleaded in the writ petitions, no argument in support thereof was advanced before this Court at the time of hearing of this petition. Accordingly, the same is not being gone into by me.

11. Learned counsels for the respondents, on the other hand, contended that the CIC has correctly held the petitioner company to be a "public authority" as defined u/s 2(h) of the Act as the petitioner company is controlled and substantially financed by the Government.

12. While placing reliance on the Judgment of this Court in Indian Olympic Association vs. Veeresh Malik & Ors., W.P(C) No. 876 of 2007 decided on 07.01.2010, wherein it was held that- what amounts to "Substantial" financing cannot be straight-jacketed into a rigid formula of universal application, learned counsels for the respondents submitted that the percentage of funding for the purposes of "Substantially financed" is not "majority" funding. Even otherwise, it was submitted that the GNCTD holds 50% shareholding in the petitioner company and as such the petitioner is substantially financed by the GNCTD.

13. It was submitted that the concept of "shareholding" cannot be separated from "financing". Since each shareholder, i.e., GNCTD and IDFC, hold equal portions of the capital of the company, the GNCTD exercises authority and control over its affairs and the GNCTD has "substantially financed" the petitioner company.

14. Counsels for the Respondents submitted that on account of the fact that 50% of the Directors of the petitioner company are nominated by the GNCTD, the management of the company is significantly controlled by the Government. This is more so on account of the equal shareholding of the GNCTD in the petitioner company with that of IDFC. It was further submitted that the difference between executive and non-executive directors is not relevant for the present purposes. Reliance was placed on the definition of "Control" as provided for in the SHA. It was pointed out that the Chairman is the nominee of the GNCTD, and he is entitled to chair all meetings of the petitioner company.

15. Learned counsels for the respondents placed reliance on the SHA [Clauses 5.1, 5.2, 5.5, 5.6, 6(ii), 7.4 and 10.1] and the Articles of Association (AOA) of the petitioner company, to submit that the Government exercises significant control over the petitioner company. Reference is also made to Section 74(2) of Schedule I Table "A" of the Companies Act, which provides that in case of equality of votes, the Chairman of the Board, if any, shall have a second or casting vote. It was pointed out that the Chairman is the nominee of the GNCTD, and he is entitled to chair all General Meetings of the Petitioner Company.

16. According to the respondents, as per Article III of the "Memorandum of

Association" (MOA), the main objects of the petitioner company are primarily the performance of public functions, which fortifies the fact that the petitioner company is a "Public Authority.

17. The counsels for the respondent placed reliance on the judgment of this court in National Stock Exchange vs. Central Information Commission, W.P. (C) No. 4748/2007 decided on 15.04.2010, wherein the court took a similar view as taken by it in Indian Olympic Association (Supra), to further their submission that the petitioner company is a "Public Authority" under the Act.

18. The petitioner in rejoinder submitted that the Chairman of the company has no voting rights. It was submitted that the CIC failed to appreciate that the term "control" has not been defined under the Act and from the available definition of the term, it was evident that it meant either a stake in excess of 50%, or the management control of the company, both of which did not exist in favour of the appropriate government in the present case. To further his submission, Mr Sethi relied upon the following definition of the term "control": as provided for in "Words and Phrases" [Permanent Edition, Volume 9A, West Publishing Company]:

The word "control" means subject to authority, direct, regulate, govern, and dominate. *Madison Pictures V. Chesapeake Industries*, 147 N.Y.S. 2d 50, 55.

19. Learned senior counsel placed reliance on the balance sheet of the petitioner company, for the year ending 31.03.2010, to reiterate that the petitioner company is a professionally managed company generating its own revenue and is paying salaries and other expenses out of the funds generated by it in its business activities and that the Government does not provide any financial aid or assistance to the petitioner company.

20. It was submitted that the judgements relied upon by the respondent have been stayed by the Division Bench, and are pending adjudication before the Division Bench of this Court and the same, therefore, cannot be relied upon by the respondents to counter the submission of the petitioner herein.

21. Section 2 (h) of the Act, as published in the Official Gazette, reads as under:

2. In this Act, unless the context otherwise requires,-

x x x

(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 organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;" (Emphasis supplied).

22. The definition under consideration consists of two separate parts. The first part specifies what the expression means, and the second part, what it includes. The Parliament has expanded the meaning of the expression "Public Authority" by adopting an inclusive definition of the said expression.

23. In the case at hand, it is not in dispute that the petitioner company does not fall within the first part of the definition of "public authority". The question for determination is, whether the petitioner company falls within the second part of the definition i.e. in clause (i) thereof, i.e., whether it is a body owned, controlled or substantially financed directly, or indirectly, by funds provided by the appropriate Government.

24. The CIC by its impugned order has held the petitioner company to be a public authority on the ground that it is a body controlled and substantially financed by the Government.

25. To appreciate the meaning and scope of the terms "owned", "controlled" and "substantially financed", it would appropriate to examine and analyse them in the context of the Act, i.e. to say to interpret the terms in the setting in which they occur.

26. B.K. Mukherjee, J. in *Darshan Singh and Others Vs. State of Punjab*, stated the rule, as under:

Words and phrases occurring in a statute are to be taken not in an isolated or detached manner dissociated from the context, but are to be read together and construed in the light of the purpose and object of the Act itself.

27. To the same effect were the following observations of S.K. Das, J in *Pandit Ram Narain Vs. The State of Uttar Pradesh and Others*,

The meanings of words and expressions used in the Act must take their colour from the context in which they appear.

28. Applying the same principle in *Mangoo Singh Vs. The Election Tribunal, Bareilly and Others*, he again stated:

When the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out the diverse meanings a word is capable of, according to lexicographers.

29. In a latter decision in *Kehar Singh and Others Vs. State (Delhi*

Administration), , the Supreme Court observed:

Words and Sections like men do not have their full significance when standing alone. Like men they are better understood by the company they keep.

30. In light of the abovementioned pronouncements the terms "owned", "controlled" and "substantially financed" deserve to be interpreted in the context in which they occur in the Act.

31. The Act had been enacted with the object of ensuring greater and more effective access to information held by public authorities. There was a need/requirement to make the Freedom of information Act, 2002 (which now stands repealed by the Act) more progressive, participatory and meaningful. The preamble to the Act, inter alia, states:

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interest while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.

(Emphasis supplied).

32. The Act, in recognition of the right to information vested in every citizen, seeks to create a mechanism to enable access to the information held by a public authority. One of the objectives is to contain corruption and hold Government and its instrumentalities accountable to the governed. Therefore, in each sphere of activity that the government and its instrumentalities indulge in, subject to the reasonable restrictions, the government and its instrumentalities are bound to provide the information, inter alia, with regard to their actions, performance, decisions, composition, incomes, expenditures etc. to the citizens.

33. A Division Bench of this Court in LPA No. 501/2009 titled "Secretary General,

Supreme Court of India vs. Subhash Chandra Aggarwal", dealing with the concept of "Right to Information" under the Act observed as under:

30. Information is currency that every citizen requires to participate in the life and governance of the society. In any democratic polity, greater the access, greater will be the responsiveness, and greater the restrictions, greater the feeling of powerlessness and alienation. Information is basis for knowledge, which provokes thought, and without thinking process, there is no expression. "Knowledge" said James Madison, "will forever govern ignorance and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of obtaining it is but a prologue to farce or tragedy or perhaps both". The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world.

The Court, while explaining the importance and need of the Right, referred to the following observation of the Supreme Court in S.P. Gupta Vs. President of India and Others,

65. The demand for openness in the government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rulers and, once the vote is cast, then retiring in passivity and not taking any interest in the government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means inter alia that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the government and the merits of public policies, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of government - an attitude and habit of mind. But this important role people can fulfil in a democracy only if it is an open government where there is full access to information in regard to the functioning of the government.

After referring to a sea of judgments and scholarly excerpts, this Court held as follows:

60. The decisions cited by the learned Attorney General on the meaning of the words "held" or "control" are relating to property and cannot be relied upon in interpretation of the provisions of the Right to Information Act. The source of right to information does not emanate from the Right to Information Act. It is a right that emerges from the constitutional guarantees under Article 19(1)(a) as held by the Supreme Court in a catena of decisions. The Right to Information Act is not repository of the right to information. Its repository is the constitutional rights guaranteed under Article 19(1)(a). The Act is merely an instrument that lays down statutory procedure in the exercise of this right. Its overreaching

purpose is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and to help the governors accountable to the governed. In construing such a statute the Court ought to give to it the widest operation which its language will permit. The Court will also not readily read words which are not there and introduction of which will restrict the rights of citizens for whose benefit the statute is intended.

(Emphasis Supplied)

34. In the aforesaid context, I shall now analyse the meaning and scope of the clause (i) occurring in the second part of the Section 2(h) of the Act, in so far as the same is relevant for the present purposes, and the submissions of the parties.

35. As per the clause, a body owned by the appropriate Govt. would be a "Public Authority". In case of a company, its ownership would arise by virtue of a stake in the share capital of the Company, i.e., by being a shareholder of the company. Ownership is a bundle of rights, which would include the right to control the article/entity owned; to deal with it in the manner the owner deems fit; to partake of its gains, or suffer its losses - as, in a business. In the present context, ownership of shareholding to the extent of 50% in the petitioner company would, inter alia, mean that the GNCTD would have an equal right, as the IDFC, to partake of the profits of the company equally with IDFC in the form of dividends and to participate in all important decision making processes in the petitioner company. If there are any policy issues on which the two shareholders, i.e., IDFC and the GNCTD, differ- they would have to be resolved either by consensus, i.e. mutual agreement, or by a showdown at the general meeting of the petitioner company. Reference may be made at this stage to Clauses 5.1, 5.2 and 6.1 and 6(ii) of the SHA, which read as follows:

? Clause 5.1 of the SHA:

The Company shall be managed and controlled by the Board and the Board shall be responsible for the overall policies and objectives and activities of the Company...

(Emphasis supplied)

Clause 5.2 of the SHA: (Similarly provided for in Article 118 of the AOA)

The Board shall comprise of not less than 4 (four) directors and not more than 12 (twelve) directors. Unless otherwise agreed between the parties to this agreement, GNCTD shall have right to nominate four (4) directors and IDFC shall have the right to nominate four 4 directors to the Board. There shall be one (1) independent director, to be appointed on mutual agreement between IDFC and GNCTD.

(Emphasis supplied)

Clause 6.1 of the SHA:

(i) No obligation of the Company shall be entered into, no decision shall be made and no action shall be taken by or with respect to the Company in relation to Fundamental Issues whether by way of resolution by circulation or at a meeting of the Board or any of the committees of the Board or the shareholders of the Company, unless such obligation, decision or action, as the case may be, is approved by the affirmative vote of all the Shareholders Directors. Except for matters relating to Fundamental issues, all other resolutions and decisions of the Board shall be approved by simple majority of Directors present at the meeting. Provided, however, and in all cases, that no matter or resolution shall be placed before the general meeting of the shareholders of the Company unless such matter or resolution is discussed, deliberated and approved for placing before the shareholders by the Board.

(Emphasis supplied)

Sub clause (ii) of clause 6 of the SHA:

(ii) The quorum for the meetings of the Board or any adjournment thereof shall require the presence of one-third (1/3) of the directors in office for the time being. No such quorum shall be said to be complete unless atleast one director representing each of GNCTD and IDFC is present at such meeting..

36. In the case of a showdown it is the GNCTD, which has an upper hand. Reference may be made to Clauses 5.5 and 7.5(6) of the SHA, which read as follows:

Clause 5.5 of the SHA: (Similarly provided for in Article 153 of the AOA)

The Company a non-executive Chairman appointed by the Board, who shall be the Chief Secretary, GNCTD, ex-officio. The term of the Chairman shall be co-terminus with that of his term as the director of the Company. In case Chairman is unavailable for a meeting, one of the directors nominated by the GNCTD on the board, present at that meeting may be appointed by the Board as a Chairman for that particular meeting.

(Emphasis supplied)

Sub-clause (c) of Clause 7.5 of the SHA:

The Chairman of the Board shall preside as Chairman of the general meetings of the Company.

37. As per Section 74(2) of Schedule I Table "A" of the Companies Act, in case of a tie at a general meeting, the Chairman has a second or a casting vote, which clearly tilts the scales in favour of the GNCTD. The said provision reads as follows:

In case of an equality of votes, the chairman of the Board, if any, shall have a second or casting vote.

38. It is clear that while divesting its 50% stake in the petitioner company, the GNCTD clearly intended to, and indeed retained ultimate control by incorporating

the above clauses in the SHA and AOA.

39. It is well-settled that the ultimate power in a company resides in its general body. It is the general body which has the right and the obligation to appoint the Directors on the Board to run the management of the company. The Board of Directors are answerable to the general body of members and the Directors can be removed by the General Body from the Board, by following the prescribed procedure under the Companies Act. As per clause 5.2, as extracted above, the number of Directors of GNCTD and IDFC is equal. Therefore, in the present context it cannot be said that either IDFC or the GNCTD is the absolute owner of the petitioner company. At the same time, it cannot be said that neither is the owner. They are both joint owners of the petitioner company. In fact, in a closely held company like the petitioner, which has practically only two equal shareholders, the entity is in the nature of a partnership concern. Mutual trust, confidence and consensus is just as important, as in a partnership concern, in a company like the petitioner, as the lack of it can often result in a deadlock or breakdown situation.

40. The concept of "ownership" in the context of Clause (i) of Section 2(h) of the Act, in my view, is not an absolute ownership of the body concerned, by the appropriate Government. Keeping in view the object of the Act, i.e. to bring about transparency in the working of all Government bodies and other public authorities - which are having governmental control, i.e. they are not private entities, the expression "body owned..... by the appropriate Government" has to be given a wide meaning and interpretation. In my view, a 50% ownership of the shares of a company of the appropriate Government, coupled with the strategic control that follows such shareholding, and which has been specifically incorporated in the SHA and AOA, is sufficient to clothe the petitioner with the character of a public authority under the Act.

41. The legislature, keeping in view the object and purpose of the Act, did not restrict the ambit and reach of the expression "Public Authority" to bodies "owned" by the Government, and even included bodies which are "controlled" or "substantially financed" directly or indirectly by the funds provided by the Government. Therefore, even if the Government does not own a body, but controls or substantially finances it- then too, such a body would be deemed to be a "Public Authority" for the purposes of the Act. The intent of the legislature was therefore not to assign a restrictive meaning to the expression "Public Authority".

42. The term "control" in common parlance denotes the ability to regulate, exercise power or influence over a subject matter. Control in relation to a body could be financial control, administrative control etc. As aforesaid, ownership necessarily implies a certain degree of control. Where there is ownership, there are some, if not all, elements of control. At the same time, control could also exist without ownership. It is for this reason that the Act expressly uses the term "Controlled" independent of the term "Owned". "Control" in the present context

cannot be interpreted to mean absolute control, or the highest degree of control, that is to say a kind of deep and pervasive control. The term "controlled", keeping in view the context in which it occurs has to be construed liberally so as to facilitate the purpose and object of the Act and not defeat it.

43. However, it is also to be borne in mind that a Government in a democracy like India, frames policies and guidelines, makes laws, moulds actions and reactions, influences decision making of persons (real and juristic), and, thereby, exercises a certain degree of virtual control over the state and its constituents. Such virtual control cannot be misunderstood as, or rather equated to the term "control" as found under clause (i) of the second part of Section 2(h) of the Act.

44. The process of decision making involves the choosing of one out of various available options. Where the appropriate Government is instrumental in the making of one choice over the other for a body/entity, it can be said that it has "control" over the body/entity. "Control" is that influence, which is attributable to the appropriate government by virtue of its role or position in the body. Such role should be ascribed to it, expressly or impliedly, either by the law or by the constitution of the body itself, for example, in case of a company- by its MOA, AOA etc. To assume the existence of control otherwise, merely on account of the prevailing state of affairs, would tantamount to taking an extreme position, which was never intended.

45. Therefore, to determine whether or not the petitioner company herein is "controlled" by the appropriate Government i.e., the GNCTD, it would be necessary to examine the role or position of the GNCTD in the petitioner company by reference to the SHA and AOA. Some of the relevant provisions contained therein have already been taken note of above. A few others of relevance are reproduced below:

As per clause 5.6 of the SHA: (Similarly provided for in Article 144(a) of the AOA)

The Company shall have a Managing Director and Chief Executive Officer appointed by the Board, who shall be nominee of IDFC. Subject to the provisions of the Act, the terms and conditions of CEO shall be as stipulated by the Board.

(Emphasis supplied)

As per clause 6.2 of the SHA:

(i) The Company shall if required, constitute a committee(s) of the Board whose composition, powers and terms of reference shall be decided by the Board from time to time. The committee(s) shall be subject to and be under the supervision of the Board. Each of the Shareholders shall have the right to nominate its nominees to the each of the committee(s).

(ii) Unless otherwise agreed to by each of the parties to this agreement, no quorum of the meeting of any such committees shall be said to be complete unless atleast 1 (one) nominee of GNCTD and IDFC is present at such meeting of

the committee...

(Emphasis supplied)

As per clause 7.4 of the SHA:

Unless specifically waived in writing by the respective party, a valid quorum for meeting of the Shareholders/members shall be deemed to constituted only if, an authorised representative each of GNCTD and IDFC are present at the beginning and throughout such meeting...

(Emphasis supplied)

As per clause 10.1 of the SHA:

GNCTD hereby irrevocably undertakes to grant or assist the Company in obtaining all necessary approvals and permits required for implementation of the objectives of the Company and this Agreement and to issue and caused to be issued such Government orders, notifications and the like to enable the company perform its obligations under its Agreement and/or the agreements in respect of management of Funds entrusted to it by GNCTD.

(Emphasis supplied)

As per clause 12.2 of the SHA:

Upon notice to the Company and/or the Operating Companies, the Shareholders and its authorised representatives (such as employees, directors, shareholders, lawyers, accountants or other professional advisors) shall have the right to (a) visit and inspect the properties of the Company and/or the Operating Companies; (b) access and review the books, corporate and financial records and financial statements of the Company and/or the Operating Companies; and (c) discuss the business and finances of the Company and/or the Operating Companies with officers of the Company and/or the Operating Companies.

(Emphasis supplied)

As per clause 12.3 of the SHA:

The Company shall furnish or cause to be furnished promptly to a share holder all such reports and information as it shall reasonably request concerning (i) the financial statements and audit referred to in this Article 10; (ii) audited financial statements and auditors report of each of the funds under management of the Company; and (iii) any other matters relating to their respective investments in the Company. The Company shall, upon request by the Shareholder, consult with the Shareholder on any of these matters.

(Emphasis supplied)

As per Article 87B of the AOA:

Except as otherwise provided in the Act, every resolution to be passed at a

general meeting (including any adjourned General Meeting) with respect to matters relating to Fundamental Issues, specified below, shall require the affirmative vote of the authorised representative of each of the shareholder...

(Emphasis supplied)

Similarly as per Article 158A of the AOA:

Except as otherwise provided in the Act, every resolution to be passed at a Board meeting (including any adjourned Board Meeting) with respect to matters relating to Fundamental Issues, specified below, shall require the affirmative vote of the authorised representative of each of the shareholder...

(Emphasis supplied)

46. In view of the aforementioned provisions, it is abundantly clear that the GNCTD (being a shareholder to the extent of 50%; and comprising half of the Board of Directors) exercises substantial control over the petitioner company. The above clauses leave no manner of doubt that the GNCTD, while divesting its 50% stake in the petitioner company, continued to retain the right to keep itself abreast with all the on-goings in the company, and the right to have its say and to influence the decision making process in all important matters of the company. While the day to day management may have been vested with the officers/ Directors nominated by the IDFC - so as to bring about a professional management, firstly, they are responsible and answerable to the GNCTD/their nominee directors and, secondly, the overall supervision and control is retained equally by the GNCTD. In the eventuality of a showdown, the GNCTD has the last word.

47. The argument of the petitioner that the Directors nominated by the GNCTD are non-executive Directors, whereas those nominated by the IDFC are executive or functional directors - is neither here nor there. Merely because the Directors nominated by the GNCTD on the Board of Directors of the petitioner company are non-executive Directors, it does not mean that they have no role to play, or responsibility to share, in the decision making process of the Board. They are entitled to, and do participate in the Board meetings and are entitled to raise issues and even obstruct or oppose any move proposed by the Directors nominated by IDFC, if they are so instructed by the GNCTD, or if they are of the opinion that the same may not be in the overall interest of the company, or of the shareholder GNCTD - whom they represent on the Board of the petitioner company. They perform a higher duty of participating in policy making, and, therefore, discharge a higher responsibility than the routine and mundane day-to-day tasks, which are left to be performed by others. Mere lack of day-to-day responsibility on the shoulders of the nominee Directors of GNCTD does not dilute their powers, responsibilities and privileges as Directors of the petitioner company.

48. The term "controlled" is to be interpreted liberally keeping in view the object

of the Act. If the interpretation advanced by the petitioner to the term "control" were to be adopted, it would defeat the purpose of the Act. What is required to be seen is: whether by virtue of the constitution of the body, the appropriate government is in a position to regulate, or exercise power or influence over the affairs of the body. If so, as in the present case, then the body in question is deemed to be "controlled" by the appropriate government for the purposes of the Act.

49. For the aforesaid reasons, the submission of the petitioner that in the absence of more than 50% stake in the petitioner company or the absence of day-to-day management control of the petitioner company by the GNCTD, the latter could not be held to be in "control" of the petitioner company- also has no merit. Even otherwise, this submission of the petitioner is untenable in view of the definition of the term "control" as found in the SHA, which reads as under:

Control" shall mean with respect to any Person, the ability to direct the management or policies of such Person, directly or indirectly, whether through the ownership of shares or other securities, by contract or otherwise, provided that in all event the direct or indirect ownership of or the power to direct the vote of fifty percent (50%) or more of the voting share capital of a Person or the power to control the composition of the board of directors of a Person shall be deemed to constitute control of that Person

(the expressions "Controlling" and "controlled" shall have the corresponding meanings)

50. It is clear from the said definition that power to control the composition of the Board of Directors shall be deemed to constitute control. In the present case, it is not in dispute that the half of the Board of Directors shall be nominated by the GNCTD and, as such, it controls the composition of the Board. Consequently, the petitioner company is "controlled" by the GNCTD.

51. For the reasons stated above, the petitioner company in the present case, as held by the CIC in its impugned order, is "controlled" by GNCTD under Clause (i) of the second part of Section 2(h) of the Act.

52. The expression "Substantially financed" would also have to be construed in the context in which it occurs. I may refer to the decision dated 03.04.2009 of the Kerala High Court in Thalappalam Service Co-operative Bank Ltd. v. Union of India (UOI) and Ors., W.P. (C.) No. 18175 of 2006, wherein it was observed as under:

The word "substantial" has no fixed meaning. For the purpose of a legislation, it ought to be understood definitely by construing its context. Unless such definiteness is provided, it may be susceptible to criticism even on the basis of Article 14 of the Constitution. See *Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V. Visvanatha Sastri and Another*, . The

word substantial means-of or having substance: being a substance: essential: in

essentials: actually existing: real: corporeal, material: solid and ample: massy and stable: solidly based: durable: enduring: firm, stout, strong: considerable in amount: well-to-do: of sound worth. See the Chambers 20th Century Dictionary. In fact, the concept "substantial" has been understood in different shades and applied contextually. In relation to Section 100 of the Code of Civil Procedure, it was held that a substantial question of law means a question of law having substance, essential, real, important. It was understood as something in contradistinction to-technical, of no substance or consequence, or merely academic. See *Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs.*, "Substantial interest" in the context of the Income Tax Act was found to require a contextual construction, having regard to the succeeding expressions which enumerated what substantial interest really meant. See *R. Dalmia Vs. The Commissioner of Income Tax, New Delhi*, "Substantial portion of such goods", an expression occurring in the Customs Act, was understood to mean substantial portion of the goods, that have been imported keeping in view the quantity as well as the value of the goods that have been imported. See *M/s. India Steamship Company Ltd. Vs. Union of India and Another*, Such a spectrum of substantial wisdom essentially advises that the provision under consideration has to be looked into from the angle of the purpose of the legislation in hand and the objects sought to be achieved thereby, that is, with a purposive approach. What is intended is the protection of the larger public interests as also private interests. The fundamental purpose is to provide transparency, to contain corruption and to prompt accountability. Taken in that context, funds which the Government deal with, are public funds. They essentially belong to the Sovereign, "We, the People". The collective national interest of the citizenry is always against pilferage of national wealth. This includes the need to ensure complete protection of public funds. In this view of the matter, wherever funds, including all types of public funding, are provided, the word "substantial" has to be understood in contradistinction to the word "trivial" and where the

funding is not trivial to be ignored as pittance, the same would be "substantial" funding because it comes from the public funds. Hence, whatever benefit flows to the societies in the form of share capital contribution or subsidy, or any other aid including provisions for writing off bad debts, as also exemptions granted to it from different fiscal provisions for fee, duty, tax etc. amount to substantial finance by funds provided by the appropriate Government, for the purpose of Section 2(h) of the RTI Act.

53. From the aforementioned observations, two key elements of the expression "Substantially financed" emerge. Firstly, the meaning and scope of the term "Substantial", as occurring in the Act, has to be construed in contradistinction to the term "trivial"- that is to say it should not have small value/proportion/percentage so as to be insignificant; and, Secondly, the meaning and scope of the term "finance" i.e., financial benefit could be in the form of share capital contribution or subsidy, or any other form including provisions for writing off bad debts, as also exemptions granted to the body from fee, duty, tax etc- for the

purposes of Section 2(h) of the Act. I find myself in respectful agreement with the first of the aforesaid conclusions of the Kerala High Court. With regard to the second, I may only say that I am not confronted with the proposition which has been so widely stated by the Kerala High Court, and I am only concerned with a case of equity contribution by the GNCTD in the petitioner company.

54. In the present case, the petitioner company had been initially incorporated/established by the GNCTD. The equity share capital of the Company, before GNCTD entered into the SHA with IDFC, had been fully subscribed to and paid-up by the GNCTD. Even after having entered into the SHA with IDFC, GNCTD's share capital contribution continues to be 50%, which is significant and therefore "Substantial" for the purposes of the Act.

55. The petitioner's contention that GNCTD's shareholding in the petitioner company would not, by itself, mean that the company is substantially financed-has no merit. The activity of financing as generally understood entails the provision of finance, i.e. money to an enterprise, so as to allow it to run its business operations or undertake a business expansion or diversion exercise. Financing could either be by way of equity participation in the business enterprise or by way of advancement of a loan on terms and conditions with a view to secure the investment made by the financier. When the finance is provided by way of a loan, the financier seeks to secure the loan by requiring the borrower to furnish securities, indemnities, undertakings, sureties and guarantees, etc. The financier is generally not concerned whether the business of the enterprise is profitable or not, so long as its finance is protected, secured and punctually serviced. In such form of financing the investor/financier is only looking to returns on investment in the form of interest income.

56. However, when a financier provides the finance by picking up an equity stake in the enterprise, he participates in the business of the enterprise and is directly interested in the financial well-being of the enterprise. He takes the risks which come with the business of the enterprise. His returns on investment come not from interest income, but from the gain in the invested capital, i.e. by capital gains. Therefore, by its very nature, investment made by way of capital infusion is far more obtrusive than investment made by way of a loan vis-?-vis the enterprise concerned.

57. In the present case, the position, historically speaking, is that the GNCTD held 100% equity in the petitioner company. It is IDFC which later invested and infused funds to pick up equity share equal to that of the GNCTD. However, even after the capital infusion by IDFC, the GNCTD continues to remain invested in the petitioner company to the extent of 50%. This clearly constitutes financing of the enterprise of the petitioner company and it is not trivial. Rather it is substantial.

58. Merely because, the petitioner company is not receiving financial aid or assistance in the form of debt from the government, and the salaries and other expenses of the petitioner are being paid out of the funds generated by its

business would not lead to the conclusion that the petitioner company is not "Substantially financed" by the Government.

59. It is to be borne in mind that when a Government substantially finances a body, it uses public money and as such- the financing has to be in the larger interest of the public. It is for this reason that a citizen has a right to obtain information about such bodies which have received substantial financing from the Government.

60. Reliance placed on the view taken by the CAG does not advance the petitioner's submission. The CAG was not concerned with, and not competent to determine whether the petitioner is a public authority under the Act. The communication issued by it was relevant only from the point of view - whether it should carry out the audit of the accounts of the petitioner.

61. The submission of the petitioner that the decision of this Court in National Stock Exchange (supra) cannot be relied upon by the respondent as it has been stayed by the Division Bench which has dealt with the appeal from this decision, is neither here nor there. Firstly, I have examined the facts of the present case on its own merits and in the facts of this case, I am of the view that the petitioner is a public authority. No reliance need to be placed on the aforesaid decision to arrive at the conclusion which I have arrived at. Secondly, the stay of the operation of this decision only means that inter-parties the decision may not be relied upon and this decision does not constitute a binding precedent till so long as the stay order continues. However, that does not preclude another Court from independently evolving the same principles as have been laid down in this decision.

62. For the reasons, as stated above, I hold the petitioner company to be "Substantially financed", for the purposes of the Act.

63. In view of the aforementioned observations, I find no infirmity with the decision of the CIC holding the petitioner company to be a "Public Authority" under the Act.

64. I find no reason to interfere with the impugned order. The present petitions are accordingly dismissed. The respondent shall be entitled to costs quantified at Rs.10,000/- in each of the petitions. Interim orders stand vacated.