
(2015) 03 DEL CK 0151

In the Delhi High Court

Case No : Writ Petition(C) 6946/2011 and CM No. 15943/2011

Hardicon Ltd.

APPELLANT

Vs

Madan Lal

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Right to Information Act, 2005 — Section 2(h)

Citation : (2015) 3 RCR(Civil) 510

Hon'ble Judges : Vibhu Bakhru, J.

Bench : Single Bench

Advocate : Dinkar Singh, for the Appellant

Final Decision : Allowed

Judgement

Vibhu Bakhru, J.—The petitioner impugns a decision dated 21.04.2011 (hereafter the "impugned order") of a Full Bench of the Central Information Commission (hereafter the "CIC") . The CIC, by a majority opinion, held the petitioner to be a public authority within the meaning of Section 2(h) of the Right to Information Act, 2005 (hereafter "the RTI Act") . The controversy to be addressed in the present petition is limited to the question whether the petitioner is a public authority as defined under Section 2(h) of the RTI Act.

2. Briefly, stated the relevant facts are as under:-

2.1. The respondent filed an application dated 27.01.2010 under the RTI Act, seeking certain information from the petitioner. The petitioner declined to give the information as sought for by the respondent on the ground that the petitioner was not a "public authority" under the RTI Act. This led the respondent to file a complaint before the CIC. The CIC, by a majority of four members to one, held that the petitioner was a public authority within the meaning of Section 2(h) of the RTI Act.

2.2. Admittedly, the petitioner is a public company incorporated under the Companies Act, 1956. The petitioner was promoted by various financial

institutions and nationalized banks with the twin objectives of facilitating overall industrial development of the country by catering to the technical consultancy needs of the industry. Admittedly, the petitioner company was incorporated as various banks and financial institutions were availing the services of technical consultants for various purposes including for appraising the projects of borrowers/proposed borrowers. Initially, the petitioner company was known as Haryana Industrial Consultants Ltd; subsequently, it was renamed as Hardicon Ltd.

3. The constituent shareholding pattern of the petitioner is as under:-

"At the hearing held before the Commission on 08/04/2011, the Counsel for the Respondent provided the shareholding pattern of Hardicon, which has been reproduced as follows:

4. The above shareholding pattern indicates that 38.5% of the equity capital of the petitioner company is held by IFCI Ltd. and ICICI Bank Ltd. The balance 61.5% equity is held by public sector banks/undertakings. The CIC was of the view that as over 61% of the equity of the petitioner was subscribed by various banks and financial institutions which were funded by the Government, the petitioner too was indirectly funded by the appropriate Government. It was held that the equity subscription by public sector banks and corporations amounted to an indirect financing by the appropriate Government.

5. The petitioner disputes the aforesaid view and contends that the Public Sector Undertaking cannot be substituted or be considered analogous to an appropriate government. The learned counsel for the petitioner contended that subscription of equity by public sector enterprises did not amount to substantial financing by an appropriate government. It was further pointed out that the petitioner had not received any financial assistance except the equity subscription from its shareholders.

6. It is further contended that investment by Public Sector Undertakings in a capital market is a part of their commercial activity as distinguishable from financing by an appropriate Government. Therefore, equity participation in commercial ventures by Public Sector Undertakings could not be construed as substantial financing by an appropriate Government.

7. The expression "Public Authority" is defined under Section 2(h) of the RTI Act as under:-

"(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;"

8. The Supreme Court in the case of Thalappalam Service Cooperative Bank Ltd. and Others v. State of Kerala and Others: (2013) 16 SCC 82 had referred to the aforementioned definition and held as under:-

"30. The legislature, in its wisdom, while defining the expression "public authority" under Section 2(h) , intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions "means" and "includes". When a word is defined to "mean" something, the definition is prima facie restrictive and where the word is defined to "include" some other thing, the definition is prima facie extensive. But when both the expressions "means" and "includes" are used, the categories mentioned there would exhaust themselves. ."

9. The Court had further held that the categories as mentioned under Section 2(h) of the RTI act were exhaustive and exhausted all categories of public authorities. The Supreme Court explained that there was no scope to enlarge the aforesaid definition by including any other category or class of entities which did not specifically fall within the following categories:-

(1) an authority or body or institution of self-government established by or under the Constitution,

(2) an authority or body or institution of self-government established or constituted by any other law made by Parliament,

(3) an authority or body or institution of self-government established or constituted by any other law made by the State Legislature, and

(4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate Government.

(5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government,

(6) non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate Government.

10. In view of the aforesaid, the principal question to be addressed is whether the petitioner is, owned, controlled or substantially financed, directly or indirectly, by funds provided by the appropriate Government.

11. Insofar as the ownership of the petitioner is concerned, the petitioner is an incorporated entity and its constituents are several independent entities; thus,

the petitioner cannot be stated to be owned by the central government. It is also not the respondent's case that the petitioner is a body indirectly owned by an appropriate government.

12. Insofar as the control of the petitioner is concerned, it is not the case of the respondent that the petitioner is indirectly controlled by an appropriate government. Analysis of the shareholding pattern of the petitioner indicates that 18% of its shares are held by nationalized banks, namely, Punjab National Bank, Oriental Bank of Commerce, State Bank of India, Central Bank of India, UCO Bank, Bank of India and Union Bank of India. Although, substantial capital of the said banks is held by the Central Government, it is also true that a significant capital is held by other shareholders including public at large as well as Institutional Investors. These banks do not exercise majority control over the petitioner as they are only minority shareholders. 12.5% of the share capital of the petitioner is held by Small Industries Development Bank of India (SIDBI) . SIDBI's shares are held by several banks and insurance companies. Even if it is assumed that the Central Government holds indirect interest in SIDBI and consequently in the petitioner, nonetheless, the aggregate equity interest of nationalized banks and SIDBI together does not constitute a majority equity interest in the petitioner. Indisputably, this indirect holding cannot be construed as extending pervasive control over the petitioner.

13. Admittedly, IFCI Ltd. and ICICI Bank Ltd. are not Public Sector Enterprises. These entities hold 38.5% of the equity capital of the petitioner. The Haryana State Industrial and Infra. Development Corporation Ltd. and Haryana Financial Corporation together holds 16% of the outstanding equity capital of the petitioner. Admittedly, the Central Government does not exercise any direct or indirect control over these two entities which are mainly controlled by the State Government of Haryana. The remaining 8% shares of the petitioner are held by Delhi Financial Corporation, which is also not under the direct control of the Central Government. In the aforesaid facts, it is not possible to conclude that the central government exercises a pervasive control or that it has the power to control the appointment of the Board of Directors of the petitioner through its other entities. The State Government of Haryana also does not have such pervasive control as the state corporations also do not hold majority shares in the petitioner company. It is, thus, apparent that neither the private entities nor the public sector enterprises can independently exercise substantial control over the petitioner company. The Articles of Association also provide for special rights to IFCI Ltd to nominate one third of the number of directors as a lead institution provided a specified percentage of shares are held by IFCI Ltd along with other institutions.

14. The next question to be examined is whether the petitioner is substantially financed by the appropriate Government. In my view, this question must also be answered in the negative as there is no material to indicate that the petitioner has been indirectly funded by the appropriate Government. Undoubtedly, the

Central Government has substantially funded the nationalized banks. However, it is equally true that the said banks have been funded to a significant extent by other shareholders. Concededly, the petitioner has been promoted by its shareholders as a commercial entity to render consultancy services on a commercial basis. The petitioner is, clearly, a joint commercial venture by several entities.

15. The CIC held that as 61.5% of equity of the petitioner was subscribed by government owned entities and the same would meet the criteria of substantial financing by an appropriate Government. I find it difficult to agree with the said conclusion. Admittedly, the Government - whether it be State Government or Central Government - has not provided any direct funding to the petitioner. The question whether the entity has been indirectly financed is to be determined on the facts of each case. In this case, there is no material to indicate any flow of funds from any government to the petitioner. In order to hold that an entity has been indirectly financed by an appropriate Government, first of all, it is necessary to find that the Central Government has parted with some funds for financing the authority/body; and secondly, the said funds have found their way to the authority/body in question. The link between the financing received by an entity and an appropriate Government must be clearly established.

16. In this case, there is no material to indicate that any of the funds received by the petitioner owed their source to either the Central Government or the State Government. The constituent shareholders of the petitioner are independent entities and whose source of funds are not limited to the Central Government/ State Government. Although, substantial part of equity of nationalized banks is held by the Government, the sources of funds available to the bank are not limited to the Government alone. Banks receives substantial deposits as a part of their business. In addition, the banks also generate substantial income from their commercial activities. Such funds are also deployed by banks by lending and investing in other entries. Since the funds received by the petitioner by way of subscription to its equity cannot be traced to any Government. The conclusion that the government has indirectly provided substantial finance to the petitioner is not sustainable.

17. In view of the above, the petition is allowed and the impugned order is set aside. The petition and the application stand disposed of. No order as to costs.