

(2010) 01 KL CK 0003
In the High Court Of Kerala
Case No : W.A. No. 1990 of 2007

Lee, V.S.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 19, 19(1), 19(2)
Right to Information Act, 2005 — Section 2, 3, 31, 4

Citation : (2010) 01 KL CK 0003

Hon'ble Judges : S.R. Bannurmath, C.J;Thottathil B. Radhakrishnan, J

Bench : Division Bench

Advocate : K. Ramakumar, A.N. Rajan Babu, P. Gopalakrishnan and Sunitha Vinod, for the Appellant; Benjamin Pual, Sr. Government Pleader for 1st Respondent, M. Ajay, S.C., State Information Commission for 2nd Respondent and M. Rajagopalan Nair, T.A. Shaji, P.C. Sasidharan and M. Sasindran, S.Cs., for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—Is an aided college in the State of Kerala "a public authority" as defined in Section 2(h)(d) of the Right to Information Act, 2005, for short, the "RTI Act"? This has been answered in the affirmative as per the impugned judgment. Hence, these writ appeals.

2. Adverting to the preamble to the RTI Act, the learned Judge held that it is abundantly clear that the scope of the Act is much wider in its applicability than getting confined to Governments and their instrumentalities and that the Act is intended to harmonise the conflict between the right of the citizens to secure access to information and the necessity to preserve confidentiality of sensitive information. Noticing that even the preamble states that the Act is intended to provide the practical regime of right to information in order to promote transparency and accountability in the working of every public authority, it has been held that in terms of Sections 3 and 4, the public authorities are obliged to supply information. Considering the definition of "public authority" in Section

2(h), it has been laid down that on the basis of the undisputed facts regarding the control and funding of the aided private colleges after the introduction of the Direct Payment Scheme, such an institution falls within the definition of the term "public authority" notwithstanding whether it may, or not, be "State" within Article 12 of the Constitution. It was specifically held that the Act is not confined to bodies answering the definition of "State" under Article 12, which definition primarily governs enforcement of fundamental rights. Holding that the Act is intended at achieving the object of providing an effective framework for effectuating the right to information recognised under Article 19 of the Constitution, it has been held that aided private colleges in the State of Kerala fall within the term "public authority" in the RTI Act.

Contentions and arguments of Appellants:

3. On behalf of the Appellants, Adv. A.N. Rajan Babu argued that the RTI Act, though intended to facilitate proper dissemination of information, the definition of "public authority" in Section 2(h) of that Act cannot take in a body or institution unless it is one established or constituted as envisaged by Sub-clauses (a) to (d) of Section 2(h). It is argued that the inclusive component in the said definition clause has no sweeping effect, but has to get confined to instrumentalities of the Government, having regard to the long title and preamble to the RTI Act expressing the predominant intention that the said legislation is brought in, among other things, to hold Governments and their instrumentalities accountable to the governed. It was accordingly argued that the concept of "instrumentality" as falling within the definition of "public authority" has to be understood as only instrumentalities of the Governments and hence, such an instrumentality, to be treated as public authority for the purpose of the RTI Act, has to be one over which the appropriate Government has a deep and pervasive control. Accordingly, it was argued that if the institution is not an instrumentality in terms of Article 12 of the Constitution of India, it cannot be brought within the definition of public authority under the RTI Act. *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, was pressed into service to describe the sweep of the definition of "State" in Article 12 of the Constitution.

4. Dilating on the scope of the definition clause, namely, Section 2(h), the learned Counsel for the Appellants argued that though the said clause uses the legislative device "means" and "includes", the inclusiveness provided thereby does not enlarge the scope of the earlier limb of the definition in as much as what is added on as inclusions should be read by applying the rule of construction: *noscitur a sociis*, which means that the meaning of a word is to be judged by the company it keeps and that the principle *eiusdem generis* applies to state that when particular words pertaining to a class, category or genus are followed by general words, there has to be an attempt to reconcile any incompatibility between the specific and general words and therefore, the elements brought into the definition of public authority by using the legislative device "includes" should be read to be compatible with what is provided for in

the earlier limb. It is accordingly pointed out that a body owned, controlled or substantially financed; or, a non- Governmental organisation substantially financed, directly or indirectly by funds provided by the appropriate Government, can fall within the definition of "public authority" under the RTI Act, only if it is one established or constituted by notification issued or order made by the appropriate Government.

5. On the basis of the materials, it was also argued on behalf of the Appellants that infrastructure like college building, land etc. belong to the respective educational institution or educational agency and therefore, the mere payment of salaries and little allowances for maintenance of buildings, would not be decisive to hold that the aided colleges are substantially financed by funds provided by the Government

6. With the aforesaid, it is contended that the finding in the impugned judgment that the aided colleges fall within the definition of public authority as defined in the RTI Act deserves to be vacated.

Contentions of the State Information Commission and arguments on its behalf:

7. Per contra, Adv. M. Ajay, the learned Counsel for the State Information Commission argued that the materials on record, including the terms of the Direct Payment Scheme under which the Government pays the salaries and other allowances etc., unequivocally show that the aided colleges function with substantial funding by the appropriate Government. With a tabular statement provided in one of the cases by the State Government, it is pointed out that the comparative figures would show the huge expenditure being incurred by the State Government for running the establishments of the aided colleges.

8. It is pointed out on behalf of the Commission that in many of the cases, arguments are made on the basis of the definition of "public authority" as printed out in some of the books by private publishers which contain misprint in as much as the linear segregation before the line commencing with the words "and includes" after Sub-clause (d) is omitted in those text books. The learned Counsel points out that this is an error which was brought to the notice of this Court while deciding the bunch of matters that led to the judgment in *Thalapalam S.C.B. Ltd. v. Union of India* 2009 (2) KLT 507, for short, "*Thalapalam (1)*", in which this Court considered the effect of the provision, going by the true version, by making reference to the RTI Act as available in the Gazette of India. He further pointed out that, in appeal against that judgment, the Division Bench approved such findings and by its Judgment 2009 (3) KLT 1001, for short, "*Thalapalam (2)*", had interfered only with the particular findings relatable to co-operative societies, essentially leaving it to the Commission to decide on the issue relatable to the societies, on case to case basis, when raised.

9. The learned Counsel for the Commission also referred to the judgments rendered by the High Court of Punjab & Haryana in *D.A.V. College Trust and Management Society and Others Vs. Director of Public Instruction and Others*,

and in Principal, M.D.S.D.G. College, Ambala City v. State Information Commissioner, Haryana AIR 2008 Punjab & Haryana 101 and that of the High Court of Allahabad in Dhara Singh Girls High School Vs. State of Uttar Pradesh and Others, laying down that aided educational institutions are public authorities for the purpose of the RTI Act.

Stand of the State of Kerala:

10. Adv. Benjamin Paul, the learned senior Government Pleader, supporting the contentions of the Commission, made specific reference to the Statement filed on behalf of the Government showing the amounts paid as salary and other expenses; contingency and maintenance grant; UGC grant for the year 2008-09 and argued that there is no reason as to why an aided college is not to be treated as a public authority as defined in the RTI Act.

Consideration by Court:

11. The Appellants represent different private colleges which are affiliated to the different Universities in the State of Kerala. Before the learned Single Judge and also before us, it is not disputed that after the introduction of the Direct Payment Scheme, teachers and staff of all aided private colleges are paid by the Government directly. Their retiral benefits are also paid from the exchequer. The emoluments, pattern, duties and conditions of service of the teaching and non-teaching staff of such colleges are as prescribed by or under the different legislations in relation to the Universities in the State of Kerala, as also the University Grants Commission Act, 1956. The qualifications for admission of students to the various courses of studies and to examinations and conditions under which exemptions may be granted are also prescribed by the Universities. Selection for admission of students has to be in accordance with such laws. Selection and appointment of teachers, though made by the managements, have to be in strict conformity with those laws. Selections are to be made by committees which include Government nominee. Such appointments are to be approved by the University and the Government. The fees collected from the students are remitted to the Government. The managements are paid maintenance and other grants for the upkeep of the buildings of the colleges. These are undisputed facts, as noticed in paragraph 9 of the impugned judgment. They are not disputed before us also.

12. The Articles of Agreement entered into between the Government of Kerala and an Educational Agency under the Direct Payment Scheme provides, among other things, in Clause 20 thereof, that the Government shall disburse, directly through the Principal of the institution, to the teaching and non-teaching staff of the institution, the pay and allowances due to them and which accrue from 1-9-1972. Clause 28 provides that the Government shall pay the Educational Agency a Grant towards contingency expenditure for each academic year and the Grant for each college or group of colleges shall be fixed by Government, calculated on a per capita figure with a ceiling, both to be worked out and fixed

for each category of students with reference to the courses; Pre- degree, Degree and Postgraduate in Arts and Science. Clause 29 provides that the Government shall pay the Educational Agency, every academic year, a Grant towards maintenance and repairs for each college or group of colleges calculated on the basis of a per capita figure with the help of the Public Works Department, with a ceiling to be worked out and fixed by Government separately with reference to the Arts Section and the Science Section, Junior Classes, Degree Classes and Postgraduate Classes. In terms of Clause 30, the Government shall pay a Grant towards library and laboratory based on the norms worked out in consultation with the Universities.

13. The Statement filed by the Government refers to sixteen colleges among the Appellants. It shows that for the year 2008-09, the total amount spent by the State Government towards salary and other expenses to the staff of those colleges is more than Rupees forty four crores, sixty four and a half lakhs; UGC Grant is around Rupees two crores nineteen and a half lakhs and the contingency and maintenance Grant is around Rupees two and a half lakhs. The Government are also on record with the undisputed statement that in addition to the above, huge sums are spent from the State Exchequer towards retiral benefits of teachers who have demitted from service.

14. It is also pointed out on behalf of the State that the establishment cost towards salary and other expenses and contingency and maintenance Grant in respect of the colleges can be drawn only after the bills are countersigned by the concerned Deputy Director of Collegiate Education. The State has pointed out that therefore the colleges are functioning with substantial funds from the State Government and further that the State has financial control over the institutions. It also needs to be immediately stated that the Articles of Agreement under the Direct Payment Scheme, provide in Clause 32 thereof, that the Educational Agency shall be responsible and liable for the due and prompt observance of and compliance with all the terms and conditions of that Agreement, except those which are to be observed by the Government. Clause 36 provides that all sums found due to the Government under or by virtue of that Agreement shall be recoverable from the Educational Agency and its properties, movable and immovable, under the provisions of the Revenue Recovery Act, as though such sums are arrears of land revenue. Clause 31 provides that the decision of the Government regarding the amounts payable to the Educational Agency under Clauses 26, 27 and 28 shall be final and binding on the Educational Agency. Added to this, as noticed in the impugned judgment, the emoluments, pattern, duties and conditions of service of teaching and non-teaching staff, selection and appointment of teachers etc. are regulated by the University Acts.

15. In the backdrop of the facts noticed above, an aided private college is a body substantially financed by funds provided, directly or indirectly, by the State Government. It is also a body controlled by the State Government in relation to various aspects, predominantly the financial aspect. The huge funding that is

extended by the State Government and by the University Grants Commission through the State Government and the Universities are regulated and controlled by the State Government. The Government controls the utility of the huge funds provided by it. Therefore, the finding in the impugned judgment that an aided private college is a body controlled and substantially financed, directly or indirectly, by funds provided by the Government of Kerala is only to be upheld. We do so.

16. The question now is as to whether the inclusive component of the definition of "public authority" in Section 2(h) of the RTI Act is to be read as a provision that expands the scope of that definition clause or whether it gets controlled by the earlier limb of that definition, to command that the words which form the inclusive limb, have to be read *ejusdem generis* and the rule *noscitur a sociis*, applied.

17. The Legislature has the power to define a word even artificially. When a statute says that a word or phrase shall "mean" a particular thing, certain things or acts, that definition is a hard-and-fast one and no other meaning can be assigned to the expression than is put down in that definition. That definition is an explicit statement of the full connotation of a term. Such a definition is *prima facie* restrictive and exhaustive. This principle is well-settled by precedents.

18. But, where the word defined is declared to "include" a particular thing, certain things or acts, such definition is *prima facie* extensive. The scope of the use of the word "includes" in a definition clause, after laying down what a term "means", as in the case in hand, calls for consideration from different angles. There are situations and situations. The words "means and includes" may be used as a single phrase. In such cases, it could be treated as exhaustive. Reading the words *ejusdem generis* and applying the rule *noscitur a sociis* would be made in such case. See also *Jagir Singh and Others Vs. State of Bihar and Another etc. etc.*, and *P. Kasilingam and others Vs. P.S.G. College of Technology and others*, . However, when the definition clause states that the word "defined" means a particular thing, things or acts; and thereafter goes on to state that it "includes" any other, or further, things or acts, it enlarges the scope of the things or acts defined, by employing the inclusive part of that definition. The context in which the tools "means" and "includes" are used would give the definite clue to the manner in which a particular definition has to be construed. Firstly, a dissection of the provision could be made. Secondly, a functional approach has to be adopted to reach at the real meaning attributed by the Legislature to the word "includes" as used in the definition clause of a particular piece of legislation. That is to query; did the Legislature, in the context of the legislation, use the word "includes" to expand the scope of the definition? A statute is best understood if we know the reasons for it and it is always safe to have an eye on the object and purpose of the statute, or the reason and spirit behind it-- *Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others*, . Justice G.P. Singh in his commentaries on the Principles of Statutory Interpretation (Seventh

Edition), quotes Lord Cairns, "I say that we must look to what the purpose is" *Arthur Hill v. East and West India Dock Co.* (1884) 9 A.C. 448 and the observation of Sir John Nicholl in *Brett v. Brett* 162 E.R. 456 that "the key to the opening of every law is the reason and the spirit of the law". Justice G.P. Singh further quotes Judge Learned Hand from *Lehigh Valley Coal Co. v. Yensavage* (1915) 235 U.S. 705 that statutes "should be construed not as theorems of Euclid, but with some imagination of the purposes which lie behind them". Each word, phrase or sentence is to be construed in the light of general purpose of the Act itself and the interpretative effort must be illumined by the goal, though guided by the word; thus advises the Apex Court through Justice B.K. Mukherjea and Justice V.R. Krishna Iyer-- *Poppatlal Shah Vs. The State of Madras*, and *Kanta Goel Vs. B.P. Pathak and Others*, . The aspect of "purpose" being utilised as a dependable tool and a safe guide goes as far back as 1584. When the material words are capable of bearing two or more constructions, the most firmly established rule for construction is the rule then laid down in *Heydon's case* 76 ER 637 which has now attained the status of a classic, as commented upon by the Apex Court in *Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, . This rule of interpretation and construction stands recommended through *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, as a sound rule of construction of statutes. The application of that rule enables consideration of four matters in construing a legislation: (i) What was the common law before the making of the Act, (ii) What was the mischief or defect for which the law did not provide, (iii) What is the remedy that the Act has provided, and (iv) What is the reason of the remedy. The rule then directs that the courts must adopt that construction which shall suppress the mischief and advance the remedy. The purposive approach to construction has been followed in innumerable decisions by the Apex Court and the different High Courts while dealing with penal or beneficial legislations, as also statutes which are restrictive or enlarging of the common law.

19. In the case in hand, if what are brought in by using the device "includes" have to run *ejusdem generis* with all that would fall within Sub-clauses (a) to (d) of Section 2(h) and if the rule: *noscitur a sociis* is to be applied, a body or a nongovernmental organisation, would fall within the definition of "public authority" by the operation of the inclusive limb, only if it is one constituted by or under the Constitution; by any other law made by Parliament; by any other law made by State Legislature; or by any notification issued or order made by the appropriate Government. If that were the clear legislative intention, every body owned, controlled or substantially financed by funds provided by the appropriate Government; as also, every non-governmental organisation substantially financed by funds provided by the appropriate Government, would fall within "any body established or constituted by notification issued or order made by the appropriate Government", which would necessarily fall within Sub-clause (d) of Clause (h) of Section 2. If that were so, the inclusive component of the definition clause becomes unnecessary, superfluous, meaningless and purposeless and gets

reduced to be a surplusage. In *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, , it was laid down that "it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute". "It is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application"-- *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, . In the interpretation of statutes, the courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect-- *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, . The Legislature is deemed not to waste its words or to say anything in vain--*Quebec Railway, Light, Heat & Power Co. v. Vandry* AIR 1920 P.C. 181 . A construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons-- *Ghanshyam Das Vs. Regional Assistant Commissioner of Sales Tax, Nagpur*, . Therefore, it would be injudicious for the judiciary to assume that the inclusive component as stated by the Parliament in Section 2(h) of the RTI Act is superfluous unless there is no go but to say so. The complete answer to this would merge, as we proceed hereunder, adopting the purposive approach.

20. In *Thalapalam*, the legislative history leading to the RTI Act was noticed to conclude that the change in the amplitude of the statute law relating to the field of freedom of, and right and access to, information shows that information in relation to private bodies would be "information" for the purpose of the RTI Act in as much as they would be accessible information, using different other legislative provisions. In the Freedom of Information Act, 2002, for short, the "FOI Act", which was the predecessor and which stands repealed by Section 31 of the RTI Act, "information" meant only materials relatable to the administration, operations or decisions of a public authority. But, u/s 2(f) of the RTI Act, "information" includes information relating to any private body which can be assessed by a public authority under any other law for the time being in force.

21. The backdrop and legislative history leading to the RTI Act would show that the evolution of the right to information as a necessary concomitant of the right to freedom of speech has evolved and blossomed with the growth of the Judge-made law in the interpretation and conceptualization of the salutary vistas of Part III of the Constitution.

22. As noticed in *People's Union for civil Liberties (PUCL) and Others Vs. Union of India (UOI) and Another*, , in the Constitution of our democratic Republic, among the fundamental freedoms, freedom of speech and expression shines radiantly in the firmament of Part III. This cherished freedom has grown from strength to strength in the post-independence era and has been constantly nourished and shaped to new dimensions in tune with the contemporary needs by the constitutional courts. In that precedent, pointing out that *The State of U.P.*

Vs. Raj Narain and Others, is, perhaps, the first decision which has adverted to the "right to information", Mathew, J. was quoted--"The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security" and that "in a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries." In S.P. Gupta Vs. President of India and Others, , the Apex Court noted that "the concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a)" and "therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception...." It was emphasised that no democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. After referring to Raj Narain's case and S.P. Gupta's case (supra), the Apex Court made further reference in PUCL's case (supra) to Dinesh Trivedi, M.P. and Others Vs. Union of India (UOI) and Others, noticing that in modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare and that like all other rights, even this right has recognised limitations and is, by no means, absolute.

23. Noticing the aforesaid, it was held by this Court in Thalapalam (1), as follows:

17. We, the People of India have constituted ourselves into a Democratic Republic; that Nation and her People, being governed by the Constitution of India. Democracy requires an informed citizenry and transparency of information that are vital to its functioning. Availability of information is necessary to contain corruption. The instrumentalities which meddle with public funds or with the interest of the citizens are to be made accountable. In actual practice, revelation of information 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. It is necessary to harmonise these conflicting interests while preserving the paramount status of the democratic ideal. The RTI Act is enacted in this constitutional backdrop. The object sought to be achieved by that enactment is to provide for setting out the practical regime of right to information for citizens to secure access to information. The purpose of that is to promote transparency and accountability in the working of every public authority. The RTI Act is a mode to access information. What may come out ultimately could be the assurance that all is well; or should be shocking revelations which may call for appropriate action. This again, would be a matter of concern for the citizenry.

18. As already noticed, the right to information and, therefore, the right of access to information are species of fundamental rights referable to the freedom of speech, enumerated in the Constitution as a fundamental right. This conceptualization is part of the law laid by the Apex Court in the precedents noted above. They are therefore part of the law of the land as emanating from the Constitution, that too, from Part III itself. Effectuation of the fundamental rights does not require any legislation. It inheres unitarily in every citizen and collectively in the citizenry, as a lot. Legislation can be to effect restrictions on the enjoyment of the fundamental rights; to the extent restrictions are permissible within the constitutional parameters. Or, legislations could provide for the free and orderly flow of the modality for the enjoyment of those rights. While the former is a restrictive covenant on the enjoyment and could affect only those who are entitled to enjoy, the latter class of legislative provisions are intended to provide the procedure to reach at the guaranteed fundamental rights, hassle-free.

19. Analysing the RTI Act with the aforesaid in mind, it can be seen that the provision in Section 3 thereof that subject to the provisions of that Act, all citizens shall have the right to information, is the legislative recognition of the constitutional right of every citizen to information, including the right to access information. The provisions in the RTI Act, subject to which the citizen could enjoy the right to information, are laws amounting to restrictions made by the Parliament on the right to information and the right to access information, and therefore, restrictions on the freedom of speech. The legitimacy of any such restriction has to answer the constitutional touchstones. The authority to make such restriction is provided for and controlled by Article 19(2) of the Constitution. The said provision enumerates the grounds on which a restriction could be imposed by law on the citizens' fundamental right to freedom of speech and expression. The authorization to make law imposing reasonable restrictions on that fundamental right is confined to be only in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Unlike in Clause (6) of that Article which carves out the limits of legislative permissiveness to impose restrictions on the fundamental right to the freedom to practice any profession or to carry on any occupation, trade or business, Clause (2) of Article 19 does not provide the interest of the general public as a ground on which the right to freedom of speech and expression could be curtailed. This distinction is well-established. See *Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI)*, . Unless justified under Clause (2) of Article 19, any restriction on the fundamental right guaranteed by Article 19(1)(a) would be plainly violative of the freedom of speech and expression, a valuable and cherished fundamental right. The parliamentary presentment through the RTI Act is not a statutory conferment of a right that could be passed off as merely a statutory right. For, legislation cannot whittle down a fundamental right guaranteed under the Constitution.

20. Apart from the restrictions imposed by its provisions on the right to

information inclusive of the right to access information, which restrictions operate against the conferee of that fundamental right, namely, the citizen, the RTI Act is, as its preamble declares, enacted to provide the practical regime of right to information for citizens to secure access to information.

24. Dilating on the inclusive component of the definition of "public authority", it was held in *Thalapalam* (1) that the legislative provision "by funds provided by" is a clear and specific expression that such funds need not necessarily belong to the Government but which would be within the regulatory control of the Government for being provided to such authorities. It was laid down that the essence of the act of providing is the making available of what is required to be provided. In this view of the matter, it was held that "funds provided by the appropriate Government" is not necessarily providing funds from what belong to the appropriate Government, either exclusively or otherwise, but also those provisions which come through the machinery of the appropriate Government, including by allocation or provision of funds with either the concurrence or clearance of the appropriate Government. This view emanates on a plain reading of the provision under consideration, having regard to the object sought to be achieved by the RTI Act and in this view, the said provision has to be read to take within its sweep all funds provided by the appropriate Government, either from its own bag or funds which reach the societies through the appropriate Government or with its concurrence or clearance. This view was further buttressed stating as follows:

Not only do I find no ground to exclude this interpretation, but see much support for it. If the legislative intention were not so, it was unnecessary to state in the RTI Act "...substantially financed...by funds provided by...." It would have been sufficient to state "...substantially financed by...." The use of the words "by funds provided by" enlarges and dilates the scope of the words "substantially financed" in that provision. It has to be remembered that it would never be assumed that the legislature uses language superfluously. The courts will not treat any legislative usage as surplusage, but will look at the very use of the language by the legislature, as intentional of conveying the true and complete meaning of what the legislature intended to say. As stated by the Apex Court in *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*, , the Legislature uses appropriate language to manifest its intentions. Arming of citizenry with information is not a matter that should be trimmed, crippled, clipped or excluded. It ought to be permitted to be available wherever it could, except where it is impermissible. This is why even in the Act, which transformed the concept of freedom of information to be that of a right to information, clear and specific exceptions and exclusions are legislatively provided and they are the only prohibited zones insulated from access under the RTI Act. This object of the RTI Act has to be achieved and the interpretation adopted above is purposive, to give effect to the legislative intention of that statute.

25. In *Thalapalam* (2), it was held that in so far as co-operative societies are concerned, the quantum of funding has to be considered on a case to case basis to determine whether a particular co-operative society is substantially financed by funds provided by the appropriate Government. The judgment in *Thalapalam* (1) was interfered with only to that regard. We concur with such affirmation and would profitably quote the following from *Thalapalam* (2):

10. For interpretation of the definition of public authority in Section 2(h), the definition of appropriate Government in Section 2(a) can be used as a key. Section 2(a) makes it clear that if a public authority is established, constituted, owned, controlled or substantially financed by the funds provided directly or indirectly by the State Government, it shall be the appropriate Government in relation to that public authority. Keeping in mind Section 2(a) of the R.T.I. Act, when the definition of public authority is scrutinised, we find that it has broadly two parts. The first part deals with any authority/body/institution of Self Government established or constituted by the State Government. The establishment or constitution can be under the Constitution, under an Act of Parliament, under an Act of the State Legislature, or by a notification or order issued or made by the State Government. The second part clarifies that a body owned or controlled or substantially financed by the funds provided by the State Government directly or indirectly or non-government organisations substantially financed directly or indirectly will come under the definition of public authority.

26. Now, it needs to be noticed that in spite of the recognition of the right to information as part of the right to know within the concept of the freedom of speech, the statute law did not provide for a practical regime of right to information for citizens to secure access to information. The need was to further the democratic process which requires an informed citizenry and transparency of information. These are vital to the functioning of the democracy and also to contain corruption. It is also necessary to hold the Governments accountable to the governed.

27. The instrumentalities of the Government are not merely instrumentalities which answer the definition of "State" in Article 12 of the Constitution. The obligation of the State to secure the constitutional goals, including those envisaged in the Directive Principles of State Policy is canopied by all the constitutional beacons embedded in the preamble to the Constitution. In actual practice, this is worked out into reality even through private bodies which act as the conduit of carrying the State's funds and other funds in the control of the Government to the needy in the form of food, shelter, clothing, education, medicinal support, infrastructure facilities and what not. The law that existed before enacting the RTI Act, at the first instance, did not provide for any operational mechanism for the citizens to obtain information and therefore the assurance, that there is optimum use of the national wealth and other inputs for the public good. The FOI Act was found to be insufficient to answer the constitutional need of this Republican Nation. The mischief and defect that

prevailed earlier was that there was lack of transparency of information. This led to an uninformed citizenry. In spite of being a democratic Nation, the citizens stood effectively excluded from contributing to the transparency in the functioning of the State and its governance and containing corruption in the instrumentalities which, and through which, the governing process is carried out. There was also apparent conflict between larger public interests, including preservation of confidentiality of sensitive information on the one hand and the imminent abundant public need that transparency and accountability is ensured, including by the participation of the People, in the working of every public authority, on the other. This mischief and defect in the law that prevailed was remedied by the Parliament. This itself is the true reason for the remedy. The remedy provided by the Parliament is that wherever there is substantial financial support, directly or indirectly, by funds provided by the appropriate Government, the People, the ultimate repository of the sovereign power, have the right to know and therefore, they have right to information and hence, the opportunity to secure access to information. With this, the principle of interpretation and construction that needs to be applied in the context is the purposive approach which only furthers the objects sought to be achieved by the RTI Act. The plea of the Appellants to the contrary, therefore, fails.

28. The long preamble to the RTI Act along with its not so long title, only furthers the conclusions arrived above and in the context, the only guidance available from the preamble to the RTI Act is that the instrumentalities who became accountable are all those through whom the substantial funds under the control of the appropriate Government flow out with the sole expectation that it would be utilised for the common good and never otherwise.

29. We are also in respectful agreement with the views of the High Court of Punjab & Haryana and of the High Court of Allahabad in the decisions referred to, in paragraph 9 above.

30. For the aforesaid reasons, we find no reason to interfere with the findings in the impugned judgment

In the result, these writ appeals fail and are accordingly dismissed. No costs.