

Right to Information and Good Governance

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Lecture 35

Public Authority-III

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PA

- Whether LIC Housing Finance Ltd is a PA? *Shri Nisar Ahmed Shaikh and Ors. v. LIC Housing Finance Limited.* It was held that LIC is a body established, constituted, owned and controlled by Central Government. Further, LIC is a public authority having been constituted by an Act of Parliament. And, since the Chairman and Managing Director for both LIC and LICHL is the same, and since LIC has 40.497% of the shares of LICHL, LICHL would be regarded as a "public authority" for the purposes of the RTI Act.
- Whether LIC Mutual Fund is a PA? CIC had further stated that the practice of funding and general control over the affairs and functions of the LIC Mutual Fund by the Central Government is nothing but a manner of indirect funding, and hence LIC Mutual Fund would qualify as a "public authority" under the RTI Act.
- Whether Private Aided school is a PA? *Dhara Singh Girls High School v. State of Uttar Pradesh:* The petitioner being an institution recognized under the provisions of U.P. High School and Intermediate Education Act, 1929 and receiving grant-in-aid from the State Government is therefore, covered under the aforesaid Act.

The next case for discussion is the case from the Dhara Singh Girls High School versus the State of Uttar Pradesh where the concerned issue on Section 2(h) was whether a private aided school is a public authority. Now interestingly we know that across the country schools are either established by the government and they are known as government schools or they are established by private entities but aided by the government.

Once there are these private schools that are aided by the government they definitely should be covered as public authorities because it is the utilization of public funds and the accountability that is required under the Right to Information Act. However please note there are certain institutions that are private unaided schools as well. They may get some recognitions from the government bodies like CBSE, ICSE and others.

And those institutions to be determined as public authorities can also be challenged because

finally some of these schools though they are not aided have to provide information to certain organizations in the government including the department of higher education and so on and so forth. So, the schools will definitely be treated as third parties in those instances.

However, in this case the petitioner was an institution recognized under the UPA high school and intermediate Education Act of 1929 and the school though it was a private management school was receiving granting aid from the state government. Generally the granting aid from the state government covers the salary of teachers and this funding is creating the institution of aid from the government and the state.

And once these are such so called private aided schools then the question arises whether these private aided schools are covered under the Right to Information Act. I think in this case it was very clearly held that private aided schools do come within the purview of the Right to Information Act and they are public authorities plus they have a duty to provide the information to government departments including the department of higher education and they should proactively implement Section 4 and provide information suo moto as well.

And it is the duty of such schools to appoint public information officers to notify the same and to facilitate providing the information to the citizens as well.

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PA: contd

- Whether a school that received grants at the initial stage of establishment, though not later, is a PA? *Manju S. Kumar v. Sanskriti School, New Delhi, CIC/OK/C/2006/129 dated 23rd January, 2007.* first that it received grants from the Central government and second that wife of the Cabinet Secretary is ex-officio chairperson of the Board of Management of the school
- Whether the Computer Software Export Promotion Council is a PA? *Navneet Kaur v. CPIO, Dept of Information Technology as well as Electronics & Computer Software Export Promotion Council, ICPB/A-8/CIC/2006 dated 22nd March, 2006.* The Court ruled that a "trade facilitation organization" is a public authority that must abide by the RTI Act because it (a) receives financial support from the government, and (b) is subject to some administrative control, including that it is audited by a government department, reports to the central government through a department, and receives department assignments.



Now if I can continue this same discussion another issue was about how does this grant in aid operate? Should it be yearly or should it be one time? Suppose it is a grant that was provided at a very initial stage can then it be considered to be brought under the domain of public authority.

Because granting aid as I told you earlier is a yearly basis on which the salary of the teachers is provided by the government. There could be aid that was provided at the initial stage of the establishment of the school itself then in those circumstances the test is should such schools be declared as public authority? So, the granting aid could be a continuous aid, it could be onetime aid and if it is one time should it be considered as a public authority.

Now in this Sanskriti school New Delhi case, this is *Munju S Kumar versus Sanskriti School* this was a case decided by the central information commission in 2006 and in this case this school had received the initial grant from the government. So, at the initial stage only this was granted but not at any later point of time. However, the commission they definitely look at how the school was established? How is the grant being provided? Who are managing the affairs of the school?

Now in this Sanskriti case, you will notice that the central government controls the functioning of the school in such a manner that the wife of the cabinet secretary in the government of India is

ex-officio chairperson of the board of management of the school which means there is a persuasive government control in the functioning and the affairs of the school which fulfills the control test and having received the initial grant for its establishment it was held that Sanskriti School is a public authority.

So, these are how probably the information commissions have gone about bringing institutions under the domain of the Right to Information Act because they refuse to come within it and hence through judicial interpretation through the judgments of the information commission. We see a large number of such institutions who are probably doubtful about their status as a public authority being brought under the domain of the Right to Information Act.

Similarly, whether the Computer Software Export Promotion Council is a public authority? This was tested in the case of Navneet Kaur versus the Department of Information and Technology. This was a case decided in 2006 by the CIC and in that case the commission said that the software export promotion council is a trade facilitation organization and it is an organization that receives substantial finance from the government and is subject to administrative control by the government through its audit through, the reports and through the functioning of certain assignments that are actually given to the Software Export Promotion council.

And hence it was declared in this case that the Computer Software Promotion Council is a public authority under the Right to Information Act and should be countable under various provisions of the Right to Information Act.

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High Court laid down test for a PA



- Madras High Court in *Tamil Nadu Newsprint & Papers Ltd v. State Information Commission* the court had observed that since the mere requirement of the RTI Act for an institution to be deemed a "public authority" is that the Government must substantially finance it, and exercise control over its affairs, it is not necessary that the Government must be the *majority* shareholder in that institution. The Court had further gone ahead to make an observation that whether or not the government exercises such control is immaterial.



If you continue further you would appreciate that apart from the Punjab and Haryana high court that attempted to lay down the test of determining public authority kindly note the test of determining public authority may be different for those public authorities that have a control from the government.

Those that are owned by the government and those that are substantially financed by coming so for every and each of these the test could be slightly different. Now the Madras high court in *Tamil Nadu Newsprint and Papers Limited versus the State Information Commission* the Court observed that since the RTI Act wants institutions to be public authorities, the government must substantially finance such public authorities and they should after financing exercise a fair degree of control over its affairs.

However please note if there is finance and fair degree of control, it is not necessary that the government must be a majority shareholder in that institution. So substantial finance does not mean a majority stake. It should be finance plus control and that should be sufficient for the institutions to be declared as a public authority.

Court held in this case that whether or not the government exercises controlling stake is immaterial. So, it is important that the government must decide after it finances an institution

what degree of control it has on those institutions and this will be perused and in corporate law we have the dimension of lifting of the corporate veil which means look to the background of the organization or the institution.

See how much of government funding is there. Try and peruse whether the government has any degree of control that will be enough to hold that institution to be public authority. If it is not sufficient enough then the institution will not be held as a public authority. The court has also declared in the case of GIC Finance, Housing Finance to be precise, that the shareholding of say a housing finance like GIC.

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Court has declared that

- GIC Housing Finance Limited is also a "public authority" for the purposes of the *RTI Act* since "the shareholding of six Public Authorities in GIC Housing Finance is 47.68% and coupled with the control they exercise over the GIC Housing Finance, it is sufficient to bring them within the ambit of the definition of 'Public Authority' as defined in Section 2(h) of the *Right to Information Act, 2005*."




The shareholding was actually of 6 different public authorities and because the 6 different public authorities had 47.68 percent of shareholding they had a fair degree of control over the Housing Finance Limited and hence by applying the test of substantial funding by public authorities. Now these public authorities are authorities uh established owned and controlled by the government they are creating another housing finance.

And hence once you have 47 percent shareholding you have a fair degree of control in that organization. That the court said is sufficient to hold GIC Housing Finance Limited as a public authority under Section 2(h) of the Right to Information Act. So, this clearly says that money

investment finance plus the fair degree of control that is necessary to run the organization if it lies fairly with government or its agencies such institutions shall be declared as public authorities under the Right to Information Act.

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PA?

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- Whether the National Stock Exchange is a PA? In *Raj Kumari Agrawal and Others v. Jaipur Stock Exchange Ltd., National Stock Exchange of India Ltd, Securities Exchange Board of India, Ministry of Finance, CIC/AT/A/2006/00684 & CIC/AT/A/2007/00106*
- Whether the office of the 'Official Liquidator' is a 'public authority' within the ambit of the section 2(h) of the RTI Act came up before the Commission in the case of *Namita Kumar, New Delhi and Another v. Official Liquidator. Appeal No. CIC/AT/A/2008/00365 dated 14th November, 2008.*
- Whether Attorney General's office is public authority under RTI Act? Delhi High Court held it is a PA.



Continuing further the test of determining public authorities the next question that interestingly arose was whether the National Stock Exchange is a public authority? As we know that stock exchanges play a very important role in the stock market and these exchanges are platforms for shares to be traded and most of these stock exchange beat Bombay Stock Exchange or the National Stock Exchange attract huge consumer and citizen interest and the transaction of money through stock trading is pretty high.

And inevitably there is a public interest test that is involved in the functioning of national stock exchanges or even any other stock exchange in the country and hence in *Raj Kumari Agarwal versus the Jaipur Stock Exchange*, that is a case, and the *National Stock Exchange Limited Security Exchange Board of India ministry of Finance* before the CIC the most important question is can you hold such an organization like the National Stock Exchange to be public authority simply because of the fact that there is a lot of consumer citizen interest involved in the same?

