

Right to Information and Good Governance

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Lecture 41

Public Authority - IX

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Status of NGOs under the Act

- Suman Bakshi v. Directorate of Health Services Government of NCT Delhi, CIC/PB/C/2008: whether Family Planning Association is a PA?
- Whether Rajiv Gandhi Foundation is a PA? Shri Shanmuga Patro v. Rajiv Gandhi Foundation, CIC/WB/2009
- Supreme Court in Thalppalam Service Cooperative Bank Ltd. And others v. State of Kerala and others, Civil Appeal No. 9017/2013
- Are pension trusts PA? The Central Information Commission has also held that pension trusts are "public authorities" under the RTI Act. [Mr. SK Choudhary v. Delhi Transco Limited [2010] (CIC)]



In the last case and the point for discussion under this current slide is also another interesting case that was decided by the Central Information Commission in 2010. This case is based on an application made by a gentleman, by name of Mr. SK Choudhary versus the Delhi Transco Limited. And the single issue in this case was our pension trust or funds, public authorities under the Right to Information Act.

Now let us look at the information sort by the applicant first. So, okay so the applicant sort copies of document relating to the formation of a pension trust. So, you know, the government organizations for their employees do create a pension trust. And generally, this pension trust has contributions from the employees. But more importantly, it has also contribution from the employer, which is the government and hence the government appoints a pension trust fund or creates a pension trust fund so that it is co-managed between the government as well as the employees.

However, you know when information was sort about the pension trust fund. This was denied unfortunately, saying that such information cannot be brought under Right to Information Act because the pension trust is not public authority. So, that was the whole reasoning behind the case to be brought about. Interestingly, the pension trust fund in this case was created from the Delhi Vidyut board which is a government organization, and it is a pension trust was for the employees of the Delhi Vidyut Board.

So, the second information that was asked in this case was the procedure to collect funds from the successor entities of the Delhi Vidyut Board in lieu of the pensionary benefits which need to be paid to employees on or after superannuation. So, that was the second issue that was asked in this case. Similarly, the status of the fund was asked, especially from the time of unbundling of the Delhi Vidyut board.

We know that electricity boards were unbundled into production, transmission and distribution companies. So, he wanted some information regarding the time of how the fund was managed, especially when it was unbundled, the organization was unbundled. Fourth, he wanted to know the number of pensioners at the time of unbundle.

He also wanted to know certain other information's and over all you will notice that this was information relating to the pension trust which was emanating from the Delhi Vidyut board. And that related information was something that was asked by the applicant in this case. Now, what happened in this case was interesting. The manager of the Delhi Vidyut Board was Mr. KG Vishwanathan and he denied this information, saying that the information that was asked was something that he cannot provide for.

So, in this case what happens is the complainant had filed and RTI application to the APIO Delhi Transco Limited and Delhi Transco Limited APIO transmitted to Mr. KG Vishwanath, the manager of the Delhi Vidyut Pension Trust Fund. So, the APIO of Delhi Transco uses Section 6(3) to transfer this application to, KG Vishwanathan, the manager in the Delhi Vidyut board. So, what did KG Vishwanathan said? He said he took a legal opinion from the standing council

and submitted it to the board of trustees and in the opinion of the additional solicitor general of India, was also obtained.

And he said that this trust is not a public authority. So, the commission simply asked Mr. Vishwanathan, what about the government funding? And Mr. Vishwanathan informed to the Commission that the Delhi Vidyut board that is the government of Delhi undertaking had provided nearly 443 crores, and the Delhi government provided a onetime funding of nearly 886 crores to the pension trust.

Now, with this kind of funding that was received by the pension trust, the commission then went about asking Mr. KG Vishwanathan to send the audited income and expenditure statement and the balance sheet from its inception that is from 2002, from when it was actually created. Later on, on a perusal of the balance sheet, the audited statement and the kind of funding that was received, you know the commission in this case had no hesitation in declaring the pension trust as a public authority. So, when such a huge sum of money that is 860 crores was received as a onetime corpus funding, I think that was clearly reflected in the account statement.

And from there on, I think the pension trust started its functioning. So, I think there is a substantial finance. And interestingly, the pension trust is controlled by the government, right. That is something that cannot be lost sight of at all because it is controlled through the Delhi Vidyut Nigam. And hence the Commission in this case declared the pension trust as a public authority and held it accountable under the Right to Information Act.

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