

Right to Information and Good Governance

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Lecture 42

Public Authority - X

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CAG audit and NGOs



- In *Pradeep Gupta v/s Servants of the People Society* the CIC held that the NGO which is eligible for audit by CAG under section 14 (2) of the CAG's Act 1971, is indeed a public authority because it is substantially financed by Government and will, therefore, fall within the definition of public authority under Section 2 (h) (d) (ii). Hence, an N.G.O. is a public authority under the RTI Act if:
 - grant or loan from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly in a financial year
 - is not less than rupees one crore OR
 - is not less than rupees twenty-five lakhs and the amount of such grant or
 - loan is not less than seventy-five percent of the total expenditure of that body or authority.
- It is immaterial whether CAG actually audits the accounts of NGO or not. It is sufficient if it is eligible for audit by CAG. CIC/WB/C/2006/00157.



In fact, the next position of determining institutions as public authorities under the Right to Information Act is looking at the non-governmental institutions vis-a-vis the purview of substantial funding. And we all know that to a larger extent whenever government funding is extended to organizations, it is inevitable that these organizations accounts are audited and sometimes could be audited by the comptroller and auditor general of India.

And hence, on the fact of establishing non-governmental organizations or determining them to be public authorities under the Right to Information Act, an interesting complaint comes before the Central Information Commission in 2006. Now, kindly note this was not an appeal. It was a complaint. And you will notice that while appeals are filed under Section 19 of the Right to Information Act. Complaints are filed under Section 18 of the Right to Information Act.

And the grounds of complaint could be that an institution has failed to recognize or come within the scope and ambit of the Right to Information Act and has not appointed a public information officer. And hence Section 18 very clearly provides a right to citizens to make a complaint to the Information Commission directly in case they think that an institution has not come within the purview of the Right to Information Act and is not providing information.

Now, a gentleman by name Pradeep Gupta on 7-8-2006, filed a complaint to the Information Commission against to the servants of the people's society. He said that this NGO or as it was registered as a society having its office in Lajpat Nagar, New Delhi with a telephone number and a fax number, they are receiving and spending government money, but still did not have a public information officer.

So, he requested the Information Commission to inquire into this matter and come to the appropriate conclusion. Now, while we look at the servants of the people society, this society has been or was receiving funding from the government. An interesting part was that when one looks at the CAG act of 1971, Section 14 subclause 2 generally the comptroller and auditor general goes about auditing organizations who have been receiving funding from the government.

And if they have received say, probably more than 25 lakh rupees in any given financial year, such accounts could be audited by the comptroller or auditor general of India. So, if any organization be it government or non-government receives such funding from government, either directly or indirectly as the section 2(h) clearly depicts, then its accounts is subject to the scrutiny of the government auditor. So, in this case to determine whether these servants of people society is a public authority or not the matter was taken before the Information Commission.

Now, interestingly the total income of the society varied from around 25 to 28 percent. And such grant money, the NGO claimed did not amount to substantial funding. So, whatever the grants that were received by the NGO? So, this was actually pursued by the central Information Commission the accounts were called for. And interestingly, the Ministry of Human Resource Development, Department of Culture was funding this NGO.

And that was a funding that was being received by the NGO right from 1999. Interestingly, the society was also running a Vidya Bhavan School, and this Vidya Bhavan School was under the provisions of the Delhi Education Act of 1973. And this school was also receiving grants by the payment of salary to the staff by the Delhi government.

So, it was not only this central government that was funding this NGO or society, but it was also the state government that was funding one of the schools that was run by the servants of people society. Interestingly, they also had a memorial academy and the Memorial Academy had received a grant of nearly 1.2 lakhs from the Ministry of Education, Government of India. And this was academy that was like a school for mentally challenged children.

And this money, or amount that was given by the minister of education, was utilized not only for running the school, but for serving certain clients of the society as well. The society also ran a Sevak Ram Gramin Seva Kendra, this also was receiving grants from the Directorate of Health Services. Now, look at it so many departments and ministries of the central government were giving aid to the so-called society called the Servants of People Society.

Now, interestingly, the Sevak Ram Gramin Seva Kendra which was receiving a grant from government of Delhi directorate of health services, was utilizing these funds for medical facilities. And this was also something that was perused. Now, the society was running a creche, which also received substantial grant from Delhi Social Welfare Advisory Board. This was in the form of reimbursement of expenses that were incurred for the maintenance of the creche as well.

Now, these were certain factors that were taken into account and all the kind of funding were inquired into to determine whether such an organization, which is a society, which is not a department or a ministry of the government, which is not a government agency at all. However, it is definitely something non-governmental, but receiving funding from the government. So, in those circumstances, should such an organization come within the purview of the Right to Information Act?

So, the Central Information Commission looked into the fact of what about an NGO receiving

grant or loan from the consolidated fund of India. When departments of some ministries provide finance to these organizations, they use the money from the consolidated fund of India or of the consolidated fund of the State or as the case may be in a given financial year.

And if this is less than rupees one crore or should not be less than rupee one crore. Or is not less than rupees 25 lakhs, and the amount of such grant or loan is not less than 75 percent of the total expenditure of that body or authority. In those circumstances, then it will be viable to hold such organizations within the purview of the Right to Information Act is what the Central Information Commission had to look into.

Now, in this case, the court gave a very important decision and they said something like this. They said that nearly the school at least received 95 percent grant in aid. So, that was quite substantial. It was more than 75 percent of the total expenditure of the organization as well. And the question of whether the organization's audit have to be done by the CAG it was answered in the affirmative.

And finally, the CIC held something like this. They said the Servants of the People Society itself together with the Balvantarai Vidya Bhavan senior secondary school, Senior Citizens of Dwarka, Sevak Ram Gramin Seva Kendra do not qualify as public authorities. However, the Balvantarai Meheta Senior Secondary School does. So, they try to distinguish the various functions or the different organizations that are run by the NGO.

And they came to the conclusion about saying that the senior secondary school, which was receiving 95 percent grant in aid should be declared as a public authority, whereas the rest probably do not qualify to be a public authority because they do not fit within the test of CAG audit, neither do they fit within the test of receiving 75 percent of the total expenditure in a given financial year.

So, I think this judgment very clearly depicts that within a non-governmental organization's functions, again the kind of functions or institution that it manages can also be segregated to determine whether it fits within the definition of a public authority or it does not fit within the

definition of a public authority.

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Substantial funding: definition?



- (i) relates to investments and (ii) relates to the running expenses. Is the 50% test applicable?
- Quantum of the finance to hold a body being considered as substantially financed is not specified. For the word "substantial" it is not possible to lay down any clear and specific definition. It must be a relative one, however, "substantial" means real or actual as opposed to trivial, "Substantial" also means practicable or as far as possible, hence the word substantial not to be construed as higher percentage of the estimated amount or otherwise. New Tirupur Area Development Corporation Ltd. v/s State of Tamil Nadu 2010 TN HC
- Thus, the emphasis made therein is the activity of a body must be based on its "public duty". See Tamil Nadu Road Development Company Limited rep. By its Director-in-charge, Chennai v/s Tamil Nadu Information Commission reported in 2008 (8) MLJ 17, which was confirmed by the division bench vide judgment MANU/TN/0874/2008 : (2008 (6) MLJ 737.



Now, interestingly when we look at the substantial funding definition, one must always make a distinction between what it relates to investment and what relates to running expenses. Now, we always say more than 50 percent like in the Pradeep Gupta case, we applied the 75 percent of expenditure as the case maybe.

Now, the quantum of finance to hold in a body being considered as a substantial funding is not specified. For the word substantial, it is not possible to lay down any clear or specific definition. It must be a relative one, however, substantial means, real or actual, as opposed to trivial and substantial also means practical as far as possible. And hence, the word substantial should not be construed as higher percentage of the estimated amount or otherwise.

This was held in the case of New Tripura Area Development Corporation verses the State of Tamil Nadu by the Tamil Nadu High Court. Thus, emphasis made herein is the activity of a body must be based on its public duty. That is very, very important. That is what has been held in this case, decided by the Tamil Nadu High Court.

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Sports bodies as PA?



- Whether IOA is a PA? Indian Olympic Association v Veeresh Malik Delhi High Court 2010. The IOA is a registered society.
- "the funding by the government consistently is part of its balance sheet, and IOA depends on such amounts to aid and assist travel, transportation of sportsmen and sports managers alike, serves to underline its public, or predominant position. Without such funding, the IOA would perhaps not be able to work effectively. Taking into consideration all these factors, it is held that the IOA is "public authority" under the meaning of that expression under the Act". The IOA is the national representative of the country in the IOC; it has the right to give its nod for inclusion of an affiliating body, who, in turn, select and coach sportsmen, emphasizes that it is an Olympic sports regulator in this country, in respect of all international and national level sports.



So, after this, I think we should move forward and look at a very interesting aspect of weather sports body, like there are various sporting federations sporting bodies can be determined as public authorities under the Right to Information Act. That the most prominent issue in this case comes from the Indian Olympic Association.

A case that was filed by one Mr. Veeresh Malik and from the Central Information Commission reached to the Delhi High Court, finally. Now, the case is the most interesting one on the fact that it was about an association that was in charge of the Commonwealth Games or organizing the Commonwealth games. That was organize in Delhi 2010.

And unfortunately post that led to Commonwealth games scam. In this Mr. Suresh Kalmadi unfortunately had to face charges of corruption in that sense. But this case commenced even before that and the RTI applicant just filed an RTI petition to the Indian Olympic Association seeking information and unfortunately that information was denied in that case.