

## Right to Information and Good Governance

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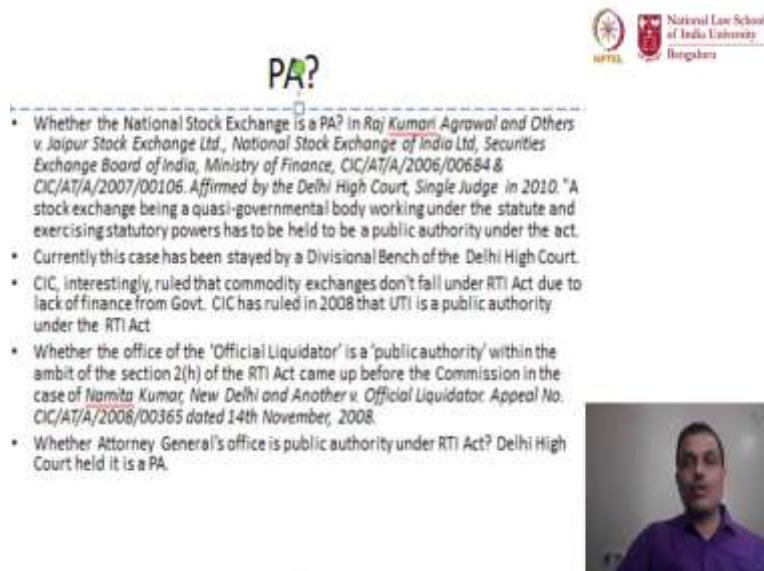
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Lecture 37



Public Authority - V

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PA?

- 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*. Affirmed by the Delhi High Court, Single Judge in 2010. "A stock exchange being a quasi-governmental body working under the statute and exercising statutory powers has to be held to be a public authority under the act.
- Currently this case has been stayed by a Divisional Bench of the Delhi High Court.
- CIC, interestingly, ruled that commodity exchanges don't fall under RTI Act due to lack of finance from Govt. CIC has ruled in 2008 that UTI is a public authority under the RTI Act
- 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.



Interestingly the next issue also came by on the fact about the role of the official liquidator. Now the official liquidator is an officer who is appointed by the government to take up out liquidation processes of companies. And the official liquidator actually is somebody who is appointed by the government, but is answerable to the court in terms of the liquidation processes that are generally undertaken for those companies that are sick and who cannot be revived in terms of their business and operation.

Now, interestingly, on the question of whether the office of official liquidator is a public authority, obviously the issue was because there was a denial and official liquidator refused to give information under the RTI Act. And hence then you know, case comes before the CIC in the year 2008. In this case called *Namita Kumar versus Official Liquidator*. Now, when you look at the official liquidator, he is somebody who is appointed by the government and works under the direct supervision of the High Court.

And you will notice that the salary and allowances to the official liquidator are actually paid by the company. Interestingly, official liquidator is a statutory appointee. And the government is bound to look at the appointment where the court considers it is necessary to do the same. And hence, in these circumstances when the appointment is by an organ of the government, when the salary and allowances are paid by the government. And there is the sense of responsibility that the official liquidator discharges representing the government and also as an officer of the court, it was quite obvious for the CIC to come to the conclusion that the office of official liquidator is a public authority under the Right to Information Act. So, it is not only the judiciary that is brought within the scope of the Right to Information Act, it is something that we will see how the judiciary was brought in. But I think those agencies that help the functioning of the judiciary, like official liquidator are also agencies that are held accountable under the Right to Information Act and having declared as public authorities as well.

Similarly, you will notice that the question that arose was whether the attorney general's office is a public authority under the Right to Information Act. Now, you know that there is the state where you have the advocate general and there is the centre where you know the attorney general of India. Now, interestingly, under Article 76 of the Constitution of India, the President shall appoint the Attorney General of India right.

And this is something that is provided by the Constitution. It also further stipulates that the attorney general is the main adviser to the Government of India, in all legal matters, rather he is the first legal officer to the government. And he does provide legal advice to the government from time to time, and he may also have to advise the president in his discharge of functions, from time to time. Now, the Attorney General of India, in short, we generally abbreviated as AGI, he represents the Government of India in court and its proceedings.

He has the right to audience in all courts throughout the territory of India. And he takes part in the legal debates, he defends the government. And you will notice that his position is that of a very important position, because he is somebody who represents government actions, defends them in the court of law. The what happened in this case was, it is a very interesting case,

somewhere in 2011 November, an RTI activist by name S. C. Agarwal, he is a very prominent RTI activist filed an RTI application to the AG's office seeking certain information.

Unfortunately, the AG's office declined to accept this application claiming that there was no CPIO appointed. Thereafter S. C. Agarwal filed a complaint for the Central Information Commission, and the Central Information Commission in December 2012 held that the AG's Office is a public authority under section 2(h) of the Right to Information Act. At the same time, another RTI applicant by name R. K Jain also made a similar application to the AG's office, this was in 2013.

This was after CIC had held that the AG is a public authority. So, in 2013, when R. K Jain sought certain information from the AG's office, the AG's office responded, saying that, you know, the AG is not a public authority, right. So, there was denial and writ petition thus was filed, seeking the declaration of AG's office is a public authority in the High Court. Now the single bench of the High Court, this was justice Vibhu in the Delhi High Court.

The learned judge, in a judgement dated 10th March 2015, declared that the AG's office is a public authority under the Right to Information Act and to state from the judgement, it said something like this, that the Office of the AG is an office established under the Constitution of India, the incumbent appointed to that office discharges functions as provided under the Constitution, Article 76(2) of the Constitution expressly provides that the AGI would perform the duties of a legal character, and also discharge the functions conferred on him under the Constitution or under any other law in force.

So, having got or derived powers under the Constitution, having, you know, the appointment conferred under the Constitution, it was inevitable for the Delhi High Court to have declared the AG's office as a public authority. Interestingly, you notice that this was also challenged before the divisional bench of the High Court, which initially stayed the matter. And then finally, it overruled the same matter. And it was denied that the AG is a public authority by the divisional bench.

So, the AG's office was exempted from the purview of RTI, through a judgement that was delivered on Feb 3rd 2017. Later on, S. C Agarwal files especially petition in the Supreme Court in March 2017. And the Supreme Court had to decide finally, whether the AG's office comes within the purview of RTI act or not. It was contended in the Supreme Court, that apart from Article 76 in the Constitution, there are privileges and functions under Article 88 of the constitution that the AG had, for instance, he had the right to take part in the Proceedings of the Parliament.

He also performed certain statutory duties under the Contempt of Courts Act 1971. And hence, it was contended that the AG brought within the domain of the public authority. However, it was contended on behalf the respondent that the functions performed by the AG do not alter the rights of any person nor do they bind the Government of India that means the advice of the AG is not binding on the government, but the government may either follow it or not follow it.

And hence it should not be construed an authority right. And the AG's office does not have the necessary infrastructure to support the applicability of the RTI Act. This was a very you know strong argument that was made. And the AG is generally a single person or it is a single person's office that is designated as an AG and you cannot have an appellate authority within the AG itself.

So, the AG is generally a lawyer, and above him there is nobody else within his office or within his organization. So, I think these were certain arguments that were made as against the issue of holding the AG's office as a right to AG office as, so I think the matter currently as we stand is probably pending and is left for final adjudication as well.