

Right to Information and Good Governance

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Lecture 38

Public Authority - VI

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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.



Friends as we would notice that with the case of the official liquidator, to be determined as a public authority and further on to look at whether the attorney general's office is a public authority or not. As we see that, as we currently look at this course, you know, the Supreme Court has not finally put a word on whether AG's office is a public authority. However, from my perspective, and from my interpretation of the Right to Information Act, though there are practical difficulties of establishing the RTI regime, we cannot exclude the AG from the accountability perspective of the Right to Information Act.

It is not necessary that the AG office is in particular declared as a public authority, however, the AG's office shall be amenable for providing information under the Right to Information Act. The practicality of who shall be an appellate authority, the appellate authority to the AG's office can be the law minister or the law ministry, can be at the Prime Minister's office or can be at the President's office as well.

That is not the issue in terms of saying the AG's Office should not be brought on the RTI act, I think the AG being paid by the government, the AG being accountable by the government, the AG representing the government, he is another organ of the government, in terms of the first law officer. And hence, despite it being a law office or lawyer's office, should not in any way exclude the AG from the purview of the Right to Information Act.

And hence from my perspective, the AG's office is to be brought within the RTI regime, and the AG shall be held accountable to share information that is disclosable and that is permissible. And that is why anything that he represents the government or anything that is relevant for the citizens to hold the government accountable, vis a vis the legal proceedings in which AG is involved, I think the Right to Information Act should squarely apply on the AG's office.

And I see AG's office I mean, the attorney general's office at the central government level and advocate general's office at the state government level as well. So, I think the supreme court must clarify and finally settle this matter as soon as possible and should settle the matter in the positive spirit of the legislation and the purpose behind which the Right to Information Act was enacted.

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Control test

- The Gujarat Information Commission (GIC) in the case of Dilipsinh Jhala v/s APMC Unjha, has held that co-operatives and APMCs are public authorities. "Co-operative societies and Agriculture Produce Market Committees (APMC) across Gujarat will now be considered as public authorities under the Right to Information Act (RTI)", according to a recent state circular. Disposing of 28 complaints and appeals, the state Chief Information Commissioner of Gujarat Mr R N Das on may 15, 2005.
- The Delhi High Court held the Krishak Bharti Co-operative Ltd. - a society registered under the Multi-State Co-operative Societies Act, 2002 to be a "public authority" for the purpose of the RTI Act.
- The National Cooperative Consumer Federation of India Ltd. (and the National Agricultural Cooperative Federation of India Ltd. - two other societies registered under the MSCS Act - are "public authorities".



Going further, if we look at the test, control test, which is applicable to public authorities, because government control on certain organizations is very important and relevant. Interestingly, the case of the Gujarat information commission, deciding in this Dilip Singh Jhala versus APMC, this case, spoke about what are the roles of the co-operative movement in India, as we know that the corporate development has been very strong, it has contributed enormously in the housing sector in the banking sector.

And in the producer's co-operatives are doing pretty well in food grains, in the supply chain, in milk production, in dairy and so on and so forth. And hence many of the co-operatives have government support, government control as well. And very often than not the government has offices working for these co-operatives and nominated at this corporate is have a law for themselves as well.

And hence, the particular question that is to be asked is can information be sought from the co-operatives as well? Now, in this case, the Gujarat information commission did say that, if the co-operative is controlled by the government, and if substantially financed by the government, then to that extent the co-operatives must be brought within the purview of section 2(h) of the Right to Information Act.

So, disposing some nearly 28 complaints and appeals, the information commission in Gujarat in 2005, clearly held that co-operatives are accountable and should be brought within the purview of the Right to Information Law. Similarly, the Delhi High Court in this Krishak Bharti Co-operative limited case has sent that multistate co-operative societies you will notice that multistate co-operatives are those that are registered under the multi state co-operatives act of 2002 and they may have their operation in more than one and hence that is why they are called the multistate co-operatives.

Those co-operatives who come under this Act and who get registered this act should be brought within the accountability of the Right to Information Act is what the Delhi High Court held in this case. And hence similarly, you know, the National Co-operative Consumer Federation of India are, you know and the National Agricultural Co-operative Federation of India, so the

Consumer Federation and the Agricultural Co-operative Federations, which are supposed to be the multistate co-operatives that are there, these were held to be public authorities under the Right to Information Act.

Now, while we look at the control test, as applicable to co-operative societies must, one must be cautious here. And the caution is that, remember, while these three judgments definitely bring co-operatives under the RTI regime, it should not be a blanket test and it should not be a test in which you paint to the brush of RTI on, on co-operatives. I think there are certain co-operatives that may be registered under the Co-operatives Act, that will not have probably any control or any finance from the government, it is not necessary that if agency has been registered as a co-operative, it is controlled and funded by the government right.

So, I think, if we say co-operatives are controlled, in that sense, then every other business in India is controlled by the government. That alone, I think the control test alone should not be the test in which the commission or the high court must determine an agency to be, to be a public authority. I think the control test if solely applied to agencies without the test of ownership and finance will be misleading. Because in India, I do not think there is any business that is not controlled by the government.

There are companies that are controlled, there are co-operatives that are controlled, there are societies that are controlled, there are banks that are controlled. So, every other activity, I think is controlled by the government in some form or some way. And hence, it would be difficult to apply the control test as a single test for applicability of section 2(h) for institutions.

However, at this point of time, I would definitely want to clarify and state that, you know, in my view, the control test is a different test than a regulation test, because the government does regulate different activities, whereas when it tries to control, it takes management control, it takes control of the way, the day to day functioning of an organization is to be administered, it definitely guides the day to day functioning.

And this control can only be done if the government has ownership, the government is able to

nominate officers who can work for the organization and the government can actually to guide the directions given by the government, the government also adequately funds such organization. So, in those instances, I am sure one would appreciate how the test under section 2(h) must be applicable to such co-operatives and to such organizations.

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Status of NGOs under the Act



- Suman Bakhshi v. Directorate of Health Services Governemnt 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)]



The next aspect for our discussion under the aspect of public authority is the status of non-governmental organizations. Now, I am sure you all are quite aware of NGOs or non-governmental organizations, please note they are called as non-governmental because they are not government and they are non-state.

However, when one has looked at section 2(h), it clearly stipulates and states that non-governmental organizations also come within the purview of the Right to Information Act provided they have been substantially financed by the government. Now the reason even though you are not established by the government, even though you are not controlled or owned by the government, if you are funded by the government, then there needs to be accountability, there needs to be transparency, there needs to be a system where citizens can demand information from such organizations.

And that is the reason and the purpose behind why NGOs who receive funds from the government are also brought within the purview of the Right to Information Act. Now let us look at some of the, you know cases or some of the instances where this test has been applied. And what kind of NGOs were either brought into the purview of right Information Act, or probably were not brought into the purview of the Right to Information Act, if so what reasons were provided in those cases. That is this first case is a case of Suman Bakshi versus Directorate of

Health Services, government of NCT Delhi. And the single issue in this case was whether the family Planning Association is a public authority or not.