

Right to Information and Good Governance

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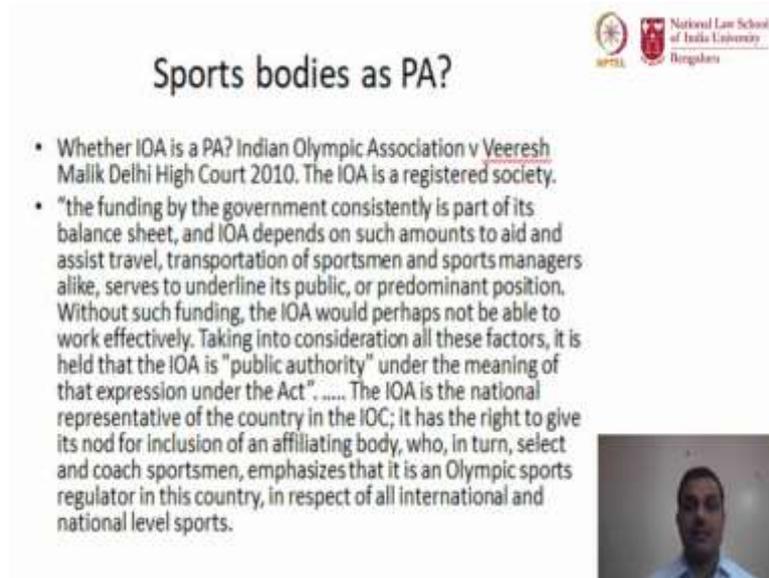
Department of Law

National Law School of India University

Lecture 43

Public Authority - XI

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The slide is titled "Sports bodies as PA?". It features two bullet points and a small video inset of a man in a blue shirt. The top right corner has the logo of the National Law School of India University, Bangalore.

- 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.

Now, the applicant in this case had requested for the following sets of information. First of all, he complained that CPIO and EPIO were not appointed as per the requirements of the RTI act. Second, he sought the particulars and status of the latest accounts for the fiscal year 2004 and 05 and 05 and 06.

But most importantly, the information that was sought by Veeresh Malik was about the expenses that were incurred by the Indian Olympic Association in connection of visits of some celebrities and persons who went to Melbourne in connection with the Commonwealth Games.

This was something that was organized by the Indian Olympic Association so that they could get the games from Australia to India for 2010. And hence, between 1st Jan and 15th April lot of people were taken to Melbourne by the Indian Olympic Association. So hence, he wanted the details of expenditure incurred on such persons.

Now, the Indian Olympic Association did not reply. And the applicant, unfortunately, did not

get the said information. So, he filed a complaint. And comments were invited from the Ministry of Sports interestingly because whether the Ministry of Sports thinks that IOA must give this information or not was something that was sought for.

However, very interestingly the Ministry of Sports said that they were not in a position to decide whether an IOA is a public authority and should give this information or not. So, the Ministry unfortunately expressed its disability to decide whether an IOA is a public authority or not. And it said that it is appropriate if the commission makes the said decision.

Now, in this case, it was very clearly, again, perused about whether an IOA is a public authority or not. IOA definitely could have been a public authority if it was established by the Act of the Parliament or by a notification of the government. Like any department or ministry is something that is functioning directly under the rules of the government.

However, in this case, it was noticed by the CIC that the Indian Olympic Association is a society established under the Societies Registration Act. And under that it had its own constitution, rules and regulations. And unfortunately, what was argued was that the Indian Olympic Association does not receive grant in aid from the government.

And industry is supposed to be totally autonomous under the supervision of the International Olympic Committee. And it is affiliated also to the International Olympic Committee which is the owner of Olympic Games. That was how the IOA argued before the Central Information Commission.

What were the responsibilities of the Indian Olympic Association? Obviously, it is to develop and promote Olympic spirit in India. And under the obligations that were there under the Olympic Charter to see that it goes about with the spirits of the games for Olympics per se.

It was the responsibility of the Indian Olympic Association to cooperate with government and non-governmental organizations. And it is not supposed to affiliate with the government because then that affects the autonomous nature of the organization is what was also put forward too.

However, the Indian Olympic Association very clearly clarified that it is not the functional

autonomy of IOA that was there. However, IOA never had a government nominee. So, no government agency was nominated to the governing board of the society called the Indian Olympic Association.

So, this was something that they said that this will avoid stringent measures of interference from government and keep bureaucracy out of sports and that was necessitated and that was the real reason why it was so. So, the IOA clearly said that they do not come within section 2(h) of the Right to Information Act. And they are not supposed to give this information what Mr. Veeresh Malik seek for.

Now, the Ministry of Sport, on the other hand, did acknowledge the contribution of the Indian Olympic Association and they said that for the promotion of sports activity, Indian Olympic Association was using stadiums and infrastructure of the Sports Authority of India which is a government organization.

And please note, the Sports Authority of India would not charge IOA. So, it was done free of cost. And interestingly, the Government of India was providing funds to the IOA for specific projects related to participating of the Indian contingent in various disciplinary events which included the Asian Games, the Commonwealth Games and Olympic Games.

So, the Indian contingent whenever they participated in Asian, Common and Olympic Games got funding from the government. And the funding included the cost of air ticket, payment of out of pocket expenses, ceremonial dress for the participants, so on and so forth. Thus, the major activities of the sports under the auspices of the IOA have been funded and facilitated by the Ministry is what was declared by the Ministry of Sports.

A reference was also drawn to the annual accounts of the Indian Olympic Association for the year 2003 and 04 where the total funding of the IOA for the year which was around 396 lakhs. The contribution from the central and the state government amounted to nearly 320 lakhs. So, kindly note, out of 396 lakhs, 320 lakhs came from central and state governments.

Interestingly, the Indian Olympic Association did bid for the Commonwealth Games and the Government of India provided funds to the tune of 80 percent of the bidding. However, the government is not funding the day to day administration of the IOA is what was accepted by

the Ministry of Sports.

Now, interestingly, since the grants of the government exceeded 25 lakhs, CAG conducts the audits of the account of the IOA was also something that was accepted. IOA has been allotted an office space in Jawaharlal Nehru Stadium of which IOA is not paying any rent. Interesting. So, they had a rent-free office space in government stadium. And this was something that the IOA enjoyed.

For the construction of the Olympic Bhavan various state governments had given nearly 2.5 crores out of the 3.8 crores that was spent for the building. So, the Olympic Bhavan which now houses the Indian Olympic Association was built at the expense of 3.8 crores. However, out of the 3.8 crores 2.5 crores came from the state government and government agencies.

So, looking to all of these funding that was given to the Indian Olympic Association, it was for the Indian, for the CIC to determine whether the IOA is a public authority or not. So, what did the CIC say? They said that, it is a known factor that IOA is a society registered under the Society's Act and it is not a governmental organization.

However, it definitely fits within the tune of the non-governmental organization definition. And the RTI act very clearly says that it is wider in scope, and it can cover non-governmental organizations receiving substantial funding directly or indirectly provided by the government.

And hence, referring to the Navneet Kaur versus the Electronics and Computer Software Export Promotion Council case, the CIC said something like this. They said that for the purpose of section 2(h) of the RTI Act, what is to be seen is whether the body is owned and controlled substantially financed by the government. Whether the funding is for specific programs and projects carried on by the petitioner or funds are given not for a specific program to the petitioner will make the petitioner not financed by the government.

The government can give funds without specifying as to how the funds are to be utilized. So, "the funding of the government consists in part of its balance sheet, and IOA depends upon such amount of aid and assist travel, transport of sportsmen and sport managers alike, serves to underline its public and predominant position."

So, obviously, IOA is in a monopolistic position in organizing games, especially those that qualify athletes for Asian Games, Commonwealth and Olympics. “Without such funding, the IOA would perhaps not be able to work effectively.” The but-for test. If without this funding, will the organization exist or not?

“Taking into consideration all these factors, it is held that IOA is a “public authority” under the meaning and expression of the Act”. IOA is the national representative of the country in the International Olympics. It has the right to give its nod for inclusion of an affiliate body who in turn selects the coaches, sportsmen and it emphasizes on the Olympic sport regulation in this country, both at the international and the national level.

And hence, I think, in this case, the CIC did not have any hesitation in saying that the substantial funding is up to nearly 80 percent or nearly 75 to 80 percent of the expected expenditure incurred by the Indian Olympic Association.

And the audit by the CAG only affirms the fact that when public money is utilized by the Indian Olympic Association, it has to assume the significance of a public authority under the Right to Information Act and come under the transparency law and provide the information as the case may be to the citizens of this country.

I think after the decision of the CIC, the Delhi High Court was approached by the Olympic Association. And the Delhi High Court also affirmed with the decision of the Central Information Commission.