

# CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

**CIC/AD/C/2013/001304-SA**

**CIC/AD/C/2013/000276-SA**

**Appellant : Biswamber Nayak**

**Respondent : Batra Hospital &  
Medical Research Centre**

**Dates of hearing : 31.10.2014 to 5.8.2015**

**Date of decision : 10.09.2015**

**Information Commissioner : Prof. M. Sridhar Acharyulu  
(Madabhushi Sridhar)**

**Referred Sections : Section 2(h) of the  
RTI Act**

**Result : Resp. is Public Authority**

1. Heard on 31.10.14. Appellant present. Respondent is represented by Shri Manish Sharma, Advocate and two other officials. Heard again on 5.8.2015. Appellant is not present. Dr. Lily Gangmei, PIO, Directorate of Health Services, GNCTD, Delhi represents Public authority. In between, the hearing has been adjourned several times at the request of council for the Hospital and PIO of Directorate of Health Services, and also for the purpose of filing submissions, affidavits and relevant documents.

## Appellant's case

2. Appellant submitted that the Batra Hospital and Medical Research Centre was a unit of Ch. Aishi Ram Batra Public Charitable Trust, registered under Societies registration act, 1860; he also stated:

a) That on 10.06.1949, in a meeting which took place between the Ministry of Finance and Ministry of Rehabilitation, a decision was taken to allot land on incentivized rates to institutions of secular and non-communal character to meet the needs of the situation intended to give incentive to all genuine charitable trusts and institutions to open schools, hospitals etc. Broadly the decision noted that the land would be made available for schools and hospitals which should run for the good of the public without profit motive and that the premium chargeable to the land in Delhi would range from Rs. 2000/- to Rs 5000/- per acre. The annual ground rent chargeable was @ 5 % on the premium. The decision was confirmed by the Government of India vide letter dated 19-09-1949.

b) Thereafter a hospital, college and their residential units have been built in that land allotted by DDA on highly subsidised rates.

c) That DDA had provided 3.61 acres of land at Rs 5000/- Per acre with ground rent of total premium @ 5 % per annum, for hospital purposes to Ch. Aishi Ram Batra Public Charitable Trust and Batra hospital & Medical research centre. That apart from the above, DDA provided 4.7175 acre of land @Rs. 10,000/- per acre with ground rent of total premium @ Rs 5/- per annum, for hospital purpose, to Ch. Aishi Ram Batra Public Charitable Trust. DDA has also provided 0.64 acre of land @ Rs 1 Lakh per acre and 0.8325 acre of land @ Rs 6 lakh per acre with ground rent of total premium at Rs 2 ½ per annum in both for essential staff quarters.

- d) That as per DDA letter No. F 11(2)/78/iiD/4295 dated 03.12.2004 Batra Hospital and Research Centre is required to provide **free beds to the extent of 25 % of the total bed and free OPD to the poor and indigent patient** and that **there will be representatives of Directorate of Health Services, Govt. of NCT of Delhi in the managing Committee of the Society/Hospital.**
- e) That the management is running the hospital from donations and income from patients and it was getting income tax rebates, rebates on other services from South DMC, DJB etc.

#### **Respondents' contention**

- f) Respondent in response to appellant submission, contended that their hospital was not public authority in terms of Sec 2 (h) of the RTI Act, 2005. They claimed to be a society running according to by laws and the law, independently without any control from Government in its day to day functioning of hospital.
- g) Respondents submitted that the complainant has not substantiated the allegation of government control with any proof or evidence.
- h) They contended that the word substantially financed as used in the Act has to be understood in the context of its usage and in the context of its definition which in the facts of the present case would be if is related to benefit flowing from the share of capital contribution or susidy, or any other aid including provisions for writing off of bad debts, as also exemption granted from different fiscal provisions for fee, duty, tax etc which amount to sunstantial finance by funds provided by the appropriate government.
- i) Referring to copy of the perpetual lease dated 24.07.2000, filed by complainant, the respondent contended it did not indicate any control of the

government and neither is the word concession used in the lease so as to bring the lease within the understanding of substantial finance.

- j) The respondent submitted that the total land in possession of the respondent society is around 11 acres. The land is being utilised for running a hospital and other ancillary purposes as per the terms of the lease deed executed with the President of India as the lessor. There are 5 lease deeds covering the total land and in none of the leases is the word concession mentioned in the context of the benefit in the nature of substantial finance being given.
- k) That the land in question was procured at different rates depending upon the extent of the holding and the year in which the land was acquired. Four of the leases was executed on 3.5.1985 while the 5th lease was executed on 24.07.2000. The leases are for different lands and comes into operation with retrospective effect from 28.11.1983 in two cases, from 31.05.1979 in the other two cases and from 19.03.1996 for the last case.
- l) That the respondent submitted that the rate at which the said land were allotted is neither concessional nor amounts to substantial finance. All constuirction carried out by the respondent scoiety on the land is out of its own pocket and funds, without taking any benefit or aid from the government. It was submitted that the rate at which the land was provided is different for each parcel as per then pervailing rates.
- m) Lastly, in the alternative and without prejudice to the aforesaid Respondent submitted that the land given by the government to the hospital was in the nature of a incentive and is not in the nature of concession. It is submitted that a concession would be when the land is given either free of cost or at a rate so low in comparision to this actual value that it amounts to being given

virtually free as if a rate of Rs 1 or 2 is fixed for the land regardless of its size.

- n) Representative of the respondents in pursuance of the direction of the Commission dated 09.10.2014, have submitted the following details about extent of land, rate, rent and date:

Land Area (Acres)	Date of Execution	Date of Operation	Purpose	Total Payment	Annual Rent(%)
0.8325	03.05.1985	28.11.1983	Essential quarters	Rs. 4,99,500/-	2.5
4.7175	03.05.1985	28.11.1983	Hospital	Rs. 47,175/-	5
0.64	03.05.1985	31.05.1979	Essential quarters	Rs. 64,000/-	2.5
3.61	03.05.1985	31.05.1979	Hospital	Rs. 18050/-	5
1.23	24.07.2000	14.03.1996	Dharamshala & Nursing School	Rs. 9840000/-	2.5

- o) The documents produced by both the parties were taken on record. During the hearing, the Respondent submitted that land was given by the Govt. at different stages at different rates and at the market value prevailing at the time. He added that Govt. has issued a general circular whereby 10% bed should be allotted to poor patients. The Appellant refuted it by stating that while the DDA in response to his RTI application had stated that 25% bed should be allotted, the Department is allotting only 10%. The Appellant also stated that a representative of DHS will be a member of the managing Committee. The Appellant also alleged that Public Authority has sub-let a portion of the land for bank and restaurant which is a commercial activity. **The Respondent contended that since the Government has not taken any action, it means that there is no violation on the part.** The Respondent added that there is a clause in the lease deed which states that Govt. can cancel the lease if the terms and conditions are violated after following due procedure of law. **He added that they are willing to purchase the land at market value.** The Respondent reiterated that the land was given as an incentive to start the hospital in Tughlakabad which is a backward region at that time.

p) **Hearing held on 5.8.2015**, appellant is not present. Dr. Lily Gangmei, PIO, Directorate of Health Services, GNCTD, Delhi represents Public authority.

q) The Commission on 09.07.2015 held as under :-

In the above case, the PIO, Directorate of Health Services, Govt. of Delhi is directed to appear before the Commission on 05-08-2015 at 2.30 p.m. to explain to the Commission about the status of Batra Hospital & Medical Research Centre, M.B.Road, New Delhi and the terms and conditions of land allocation to the said Hospital. The PIO is also directed by the Commission to intimate the compliance status of those terms and conditions to the Commission within 15 days from the date of receipt of this letter.

### **Information from Directorate of Health Services**

r) Dr. Lily Gangmei, PIO has presented the letter, addressed to Batra Hospital, written by Sh. Y.V.V.J. Rajasekhar, Dy. Director (IL), Delhi Development Authority on 03.12.2004 of granting permission to sublet the institutional premises on plot no. 45, 46,47, institutional area, Meharuli Badarpur Road. The letter restated as under:

*"In continuation to this office letter of even No.4144 dated 11.11.04 it is to inform you that the hospital is required to do the following actions:-*

*(1) The Institute shall provide free bed to the extent of 25% of the total bed and free OPD to the poor/indigent patients.*

*(2) A representative of DHS, GNCTD will be a member in the Managing Committee of Society/Hospital."*

s) PIO also showed a letter dated 4.8.2015, wherein Dr. R N Das, I/C Patient Welfare Cell has provided the information in response to letter dated 30.7.2015 that:

*"1. The terms and conditions of land allocation to the said hospital:  
-Pertains to land owning agency.  
Compliance status of the terms and conditions:*

<i>Month</i>	<i>Year</i>	<i>Total</i>	<i>Free</i>	<i>Total</i>	<i>Total</i>	<i>Free</i>	<i>Free</i>
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		<b>beds</b>	<b>beds</b>	<b>OPD</b>	<b>IPD</b>	<b>OPD</b>	<b>IPD</b>
<i>April- June</i>	<i>2014</i>	<i>495</i>	<i>50</i>	<i>46894</i>	<i>---</i>	<i>11599</i>	<i>442</i>
<i>July-Sept.</i>	<i>2014</i>	<i>495</i>	<i>50</i>	<i>51503</i>	<i>---</i>	<i>10824</i>	<i>433</i>
<i>Oct.-Dec.</i>	<i>2014</i>	<i>495</i>	<i>50</i>	<i>36868</i>	<i>---</i>	<i>9607</i>	<i>416</i>
<i>Jan.-March</i>	<i>2015</i>	<i>495</i>	<i>50</i>	<i>48553</i>	<i>---</i>	<i>9444</i>	<i>387</i>

### The Law of 'Public Authority'

3. Having reviewed the strong contentions on either side, the nature of the public authority as per RTI Act has to be understood from the text of law and its interpretation by the judiciary.

a. Right to Information Act 2005 provided statutory right to access the information held not only by public authorities but also by the private bodies to a large extent, if not totally. Expansive definition of 'Public Authority' under Section 2(h) include within its scope NGOs substantially funded, bodies controlled by the Public Authority besides other public bodies.

b. The 'Public authority' for purposes of RTI Act need not be a 'state' as meant to be under Article 12 or amenable to Article 226 of Constitution - It was the **context of transparency and accountability, or accessibility of its working to public that controls interpretation of expression 'public authority'**, not amenability to judicial review of its decisions. (Krishak Bharti Cooperative Ltd, National Agricultural Cooperative Federation of India[W.P.(C) 6129/2007] are declared to be the Public Authorities by Delhi High Court in 2010)

c. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or

bodies performing public. The form of the body or institution is irrelevant; what is of relevance is the nature of the obligation imposed, the breach of which is complained against, or the enforcement of which is sought. (as per Justice Ravindra Bhat)

4. The “public authority” is defined in section 2(h) of the RTI Act, saying:

**Section 2(h)** “public authority means any authority or body or institution of self government established or constituted –

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government,

**and includes any**

- (i) body owned, controlled or substantially financed;
- (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.”

5. Justice Ravindra Bhat in Indian Olympic Association and others W.P.(C) Nos. 876/2007, 1212/2007, 1161/2008, made a very fine analysis of this section. Other Hon’ble Judges added to this interpretation with approval. The sum and substance of this is as follows: If the Parliamentary intention was to expand the scope of the definition "public authority" and not restrict it to the four categories mentioned in the first part, but to comprehend other bodies or institutions, the next question is whether that intention is coloured by the use of the specific terms, to be read along with the controlling clause "authority...of self government" and "established or constituted by or under" a notification.

6. Another significant aspect here is that even in the inclusive part, Parliament has nuanced the term; sub-clause (i) talks of a "body, owned, controlled or substantially financed" by the appropriate government (the subject object relationship ending with sub-clause (ii)). In the case of control, or ownership, the intention here was that the irrespective of the constitution (i.e it might not be under or by a notification), if there was substantial financing, by the appropriate government, and ownership or control, the body is deemed to be a public authority. This definition would comprehend societies, co-operative societies, trusts, and other institutions where there is control, ownership, (of the appropriate government) or substantial financing. The second class, i.e non-government organization, by its description, is such as cannot be "constituted" or "established" by or under a statute, or notification.
  
7. The term "non-government organization" has not been used in the Act. It is a commonly accepted expression. Apparently, the expression was used the first time, in the definition of "international NGO" (INGO) in Resolution 288 (X) of ECOSOC on February 27, 1950 as "any international organization that is not founded by an international treaty". According to Wikipedia [http://en.wikipedia.org/wiki/Non-governmental\\_organization](http://en.wikipedia.org/wiki/Non-governmental_organization).. accessed on 28-12-2009 @19:52 hrs) "...Non-governmental organization (NGO) is a term that has become widely accepted as referring to a legally constituted, non-governmental organization created by natural or legal persons with no participation or representation of any government. In the cases in which NGOs are funded totally or partially by governments, the NGO maintains its non-governmental status and excludes government representatives from membership in the organization. Unlike the term intergovernmental

organization, "non-governmental organization" is a term in general use but is not a legal definition. In many jurisdictions these types of organization are defined as "civil society organizations" or referred to by other names..."

8. Therefore, inherent in the context of a "non-government" organization is that it is independent of government control in its affairs, and is not connected with it. Naturally, its existence being as a non-state actor, the question of its establishment or constitution through a government or official notification would not arise. The only issue in its case would be whether it fulfills the "substantial financing" criteria, spelt out in Section 2(h). Non-government organizations could be of any kind; registered societies, co-operative societies, trusts, companies limited by guarantee or other juristic or legal entities, but not established or controlled in their management, or administration by state or public agencies.
9. It has to be understood that the requirement for an organization, which is not established by statute, or under the Constitution, but is a non-government organization, need not be constituted by or under a notification, due to the extended meaning of the expression "public authority" in terms of Section 2 (h) of the Act. (Paras 46, 47 of S Ravindra Bhat, J. in ***Indian Olympic Association & others case***)
10. If a body satisfies requirements of Clause (i) or (ii), conditions (a) to (d) need not be satisfied. Thus, when second part of Section 2(h) applies, satisfaction of conditions mentioned in (a) to (d) need not be examined. Equally, that the institution or organization is not controlled, and is autonomous is irrelevant; indeed, the concept of non-government organization means that it is independent of any manner of government control in its establishment, or management. That the organization does not

perform – or pre-dominantly perform – “public” duties too, may not be material, as long as the object for funding is achieving a felt need of a section of the public, or to secure larger societal goals. Thus according to this understanding following are public authorities:

- a) The body constituted by Constitution.
- b) The body constituted under constitution
- c) The body constituted by law made by Parliament
- d) The body constituted by law made by state legislature
- e) The body constituted by notification (falling under first part of definition)
- f) The body owned by appropriate government
- g) The body controlled by appropriate government
- h) The body substantially financed by appropriate government
- i) Non-governmental organizations substantially financed directly or indirectly by funds provided by appropriate government.

11. De Smith, Woolf and Jowell in the book *Judicial Review of Administrative Act* explained: “A body is performing a ‘public function’, when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so”.

#### **Meaning of ‘Substantially financed’**

12. Substantial means not minimal. Section 10(1) of the Rent and Mortgage Interest Restrictions Act, 1923, substantial is not the same as not unsubstantial i.e. just enough to avoid the *de minimis* principle. (*Palser v. Grimling* (1948) 1 All ER 1, 11 (HL). Substantial literally means solid,

massive etc, indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc. 'Substantial' = 'of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable. Black's Law Dictionary (6th Edn.), in substance; materially.' 'of ample or considerable amount of size; sizeable, fairly large, Shorter Oxford English Dictionary (5th Edn.)

13. Assuming 'substantial' should be added before "control", it does not mean complete or majority. SC agreed that word 'substantial' is not synonymous with 'dominant' or 'majority'. It is closer to 'material' or 'important' or 'of considerable value.' 'Substantially' is closer to 'essentially'. Still it stated T is not PA based on its opinion that there was no substantial control over it in. In fact, Kerala Government explained why Cooperative Banks should be public authorities in its circular.
14. Sanjiv Khanna, J cites Ravindra Bhat, J with approval in WP 4748 of 2007 (decided on 15.4. 2010) in ***National Stock Exchange of India Ltd v CIC & others***, explained majority test is not appropriate to decide whether or not a non-Government organization is substantially financed directly or indirectly by the appropriate Government. It has been explained that financing in percentage terms in relation to the total budget of a body is not important.
15. "Substantial" financing cannot be straight-jacketed into a rigid formula of universal application, learned counsels for the respondents submitted that the percentage of funding for the purposes of "Substantially financed" is not "majority" funding. (**Indian Olympic Association vs. Veeresh Malik & Ors., W.P(C) No. 876 of 2007 DHC decided on 07.01.2010**)

16. Honourable Supreme Court in its wisdom gave a significant judgment in ***Thalappalam Service Co-Operative Bank Ltd.*** case. It is highly relevant to understand this judgment in the context of whole RTI Act in general and Section 2(h) in particular. Kerala Government has issued a circular No.23/2006 dated 01.06.2006 through the Registrar, Co-operative Societies bringing in **all societies under the administrative control of the Registrar of Co-operative Societies, as public authorities under Section 2(h) of the RTI Act.** The Thalappalam Cooperative Bank refused to answer an RTI application and case went up to the State Information Commission, which held that respondent was public authority and that it violated RTI Act by refusing to answer. In a writ petition the Kerala High Court upheld the order of SIC that the Registrar has got all pervading control over the societies, including audit, enquiry and inspection and the power to initiate surcharge proceedings. In ***Thalappalam Service Co-Operative Bank Ltd. v. Union of India and others*** 2009(3) KHC 901 DB held that a society would be a "public authority" only if it is "substantially financed by the Government". The Division Bench which was hearing letters patent appeal, considered the Thalappalam 2009 judgment and doubting its correctness referred to the Full Bench. The Full Bench of Kerala High Court explained that without disclosure norms KCS Act cannot be implemented and in the circumstances the cooperative society may lead to its own destruction to the detriment of society at large. The Full Bench felt that irregular managements should not find a way to escape from answerability or accountability and said: **We feel the inclusive definition in the second part of the definition of "public authority" takes in any body directly or indirectly controlled by appropriate Government.**

Thalappalam Cooperative Bank appealed to Supreme Court. The Supreme Court examined the meaning and scope of 'control' as stated by Section 2(h) of RTI Act saying: "Control includes the power to take disciplinary action and all other incidental or consequential steps to effectuate this end (for Art 235) Judicial control by HC. (**State of West Bengal & another v. Nripendra Nath Bagchi, AIR 1966 SC 447**) It suggests check, restraint or influence and intended to regulate and hold in check and restraint from action. (**State of Mysore v. Allum Karibasappa & Ors. (1974) 2 SCC 498**)" Section 2(h) simply mentions 'control', there was no prefix of 'substantial'. The Supreme Court in Thalappalam case said that the control by the appropriate government must be a control of a substantial nature and mere **supervision or regulation** as such by a statute or otherwise of a body was not enough. Then it expanded it further to say the control must be deep and all pervasive. If that is the real intention of Parliament, why 'substantial' was not added as prefix to the word control? On facts, the apex court perceived that Registrar of Cooperative Societies had no 'substantive' control over Talappalam Coop Bank, and on question of law it prefixed 'substantial' before word 'control', which was not part of the original definition of RTI Act.

### **Test of substantial funding**

17. Hon'ble Supreme Court of India in **Thalappalam Service Cooperative Bank Ltd. & others v. State of Kerala & others** [2013 AIR SCW 5683] said:

"37. We often use the expressions "questions of law" and "substantial questions of law" and explain that any question of law affecting the right of parties would not by itself be a substantial question of law. In Black's Law Dictionary (6th Edn.), the word 'substantial' is defined as 'of real worth and importance; of considerable value; valuable.

Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material.' The word 'substantially' has been defined to mean 'essentially; without material qualification; in the main; in substance; materially.' In the Shorter Oxford English Dictionary (5th Edn.), the word 'substantial' means 'of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; solid; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough.' The word 'substantially' has been defined to mean 'in substance; as a substantial thing or being; essentially, intrinsically.' Therefore the word 'substantial' is not synonymous with 'dominant' or 'majority'. It is closer to 'material' or 'important' or 'of considerable value.' 'Substantially' is closer to 'essentially'. Both words can signify varying degrees depending on the context.

38. Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, **unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. (para 37-38)**"

18. Finally, the Supreme Court held that cooperative Societies registered under the Kerala Co-operative Societies Act will not fall within the definition of public authority. However, it said: "All the same, if there is any dispute on facts as to whether a particular Society is a public authority or not, the State Information Commission can examine the same and find out whether the Society in question satisfies the test laid in this judgment". Thus the Information Commissioners are free to examine each and every case of this kind separately and based on discretion their character has to be decided. Thus the issue of control and substantiality of the funding, direct or indirect, will decide the 'public' character of 'authority', and based on that a particular body can be held as public authority or not.

19. The Madras High Court in the case **New Tirupur Area Development Corporation Ltd. Vs. State of Tamil Nadu and Administrative Reforms AR III Department and Ors. [in W.P. No. 9794 of 2008]** dated 06.04.2010 stated that:

“...25. Under the RTI Act, quantum of the finance to hold a body being considered as substantially financed is not specified. That was why this Court in Tamil Nadu Road Development Company Limited rep. by its Director in charge, Chennai v. 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), in paragraph 16 observed as follows:

“16. In this context, the plea of the petitioner is that the said two amounts are meager which should not be treated as substantially financed. The word "substantial" is not defined in the Act. **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. The said financial assistance and also exclusive privilege conferred on the petitioner in exclusion of others to lay the road, which is one of the Governmental functions of public importance, this Court applying the provisions of Section 2(h) of the Act in harmony with its objects and reasons is of the view that the petitioner is a public authority...**

20. In decision dated 22.4.2010 in **Amardeep Walia –vs Chandigarh Lawn Tennis Association (File No. CIC/LS/C/2009/900377)**, the Central Information Commission held Chandigarh Lawn Tennis Association to be public authority. Para 19 of the order is extracted below:

“19. The gravamen of the above judgments is that for a private entity to qualify to be a public authority, **substantive financing does not mean 'majority' financing.** What is important is that the funding by the appropriate Government is achieving a **“felt need of a section of the public or to secure larger societal goals.”** The ratio of the above judgments, particularly of Delhi High Court, applies to the present case on all the fours. A huge property has been placed at the disposal of CLTA

by the Chandigarh Administration at a notional rental of Rs.100/per annum. Besides, grant of one lakh rupees was also given to CLTA in FY 200809.

Concededly, CLTA fulfills the felt need of a section of the society by way of imparting training to the budding tennis players. It is, therefore, held that CLTA is a Public Authority.”

21. In another decision dated 21.1.2011 in **Pradeep Bhanot –Vs Chandigarh Club, Chandigarh (File No. CIC/LS/A/2010/001184)**, the Central Information Commission held that the Chandigarh Club was a public authority. The broad facts in this case were that a plot of land measuring 3.85 lacs sq.ft. was leased out to the Club at the rent of Rs. 1,08,208/- per month w.e.f. 20.7.2005 to 19.7.2010 with annual increase of 5%. The Finance Department of Chandigarh Administration had submitted before the Commission that the aforesaid rent was not at par with the market rent. Considering the totality of circumstances, the Commission had concluded that Chandigarh Club was public authority under section 2(h). Paras 03 & 04 of the order are extracted below :

In this regard it is informed that the bodies like Chandigarh Club etc are providing the public service and while fixing the rate of rent in such bodies, this aspect is taken into consideration. In view of the public services being provided by these bodies, the said bodies cannot be termed as commercial sites. Due to this reason, the rent of Chandigarh Club was fixed as Rs 1,08,208/per month with effect from 20.7.2000 with annual increase of 5%. It is not out of place to mention here that other similarly situated bodies like Chandigarh Golf Club and Chandigarh Golf Association which are also providing the public services have been kept at par with Chandigarh Club while determining the rate of rent. In case we consider the Chandigarh Club as commercial site, then the rent comes out to be Rupees 31,57,400 per month. Keeping in view the urban character of the city, rent being charged from the Chandigarh Club is not at par with the market rent. Further, **by charging the rent at a lower rate, it will make amply clear that the Chandigarh Administration is indirectly financing the promotion of services being rendered by the Chandigarh Club.**

In view of the aforesaid circumstances and in view of the fact that said club is being indirectly financed for promotion of public services by the Chandigarh Administration the same is squarely covered under the definition of 'public authority' as defined under section 2 (h) (ii) of the RTI Act, 2005."

## Decision

22. Considering the law, interpretations as referred above and understanding the facts as contended by both the parties, the Commission comes to the following conclusions.
- a) The Respondent authority is a society which obtained very highly valuable land as an incentive and not at the commercial rate.
  - b) As agreed by the Respondents, they are a society which has responsibility to conduct itself as per the bylaws of society and as per Societies Registration Act, 1860.
  - c) Under Section 19 of Societies Registration Act, 1860, any person has 'right to inspect' and ask for 'certified copies'. This provision is covered by Section 2(f) of Right to Information Act, according to which the Information Commission can direct sharing of information as per the RTI Act, 2005.
  - d) The respondent hospital/authority agreed that they were given incentive, and explained the rates of incentive in paragraph 2 (o) above. Such incentive, as agreed to have been received by the Hospital, at which the land was given to the respondent authority, will amount to indirect substantial funding as the rate at which the land was valued, leased and rate of rent fixed is far less compared to market rate prevailing at the date of allotment.
  - e) The annual rent (i.e. **2.5%/5% depending on the nature of properties**) given by DDA can be termed as the indirect financial assistance provided by the government.

- f) Very fact that respondents now came forward to purchase the land it market value now, shows that the land was given at a very low rate. The respondent society or hospital has not presented any evidence to show that they are paying according to the re-assessed value of the land and rate of rent based on that. This means, the society is enjoying to have its entire hospital on the land paying the rental value as per the rates of value fixed up long long ago, which amounts to substantial funding indirectly. Whether it is called 'incentive' or 'subsidy' or 'concession', to that extent of low value, compared to market rate, the respondent authority has been indirectly financed which is 'substantial'.
- g) The Commission cannot accept the explanation (of respondents in para 2(p) referred above) that the subleasing of a portion of land to bank and restaurant should not be considered as 'breach' of condition of lease simply because the state government has not initiated any action.
- h) Besides the condition against subleasing, there are several other conditions, such as condition that there should be representatives of Health Services, Government of NCT Delhi in the managing committee of the society/hospital as referred above in para 2(d), and condition to provide free beds/treatment to prescribed percentage of patients will substantially control the management of the hospital/society in relation to the providing health services to poorer sections of the locality for which the so called incentive of land was provided. All these conditions are substantial conditions and breach of each is so potential that it can lead to cancellation of lease. The allegation that they have subleased part of leased land to bank and restaurant for commercial purposes was not refuted by the respondents. They only relied on an assumption that it might not be a

violation only because the state has not taken any action. This assumption as claimed by the respondents establish the breach of important term of the contract of lease, which according to law could be a potential cause to claim cancellation of lease. As per the information furnished by the Directorate of Health Services, referred above in para 2 (r) the free beds/treatment is given only to ten per cent of the patients but not to 25 per cent of patients.

- i) Apart from the above, as per DDA letter No. F 11(2)/78/iiD/4295 dated 03.12.2004 Batra Hospital and Research Centre is required to have representatives of Directorate of Health Services, govt. of NCT of Delhi in the managing Committee of the Society/Hospital. The Commission also wants to state that the respondents have not denied this stand of the appellant in their submissions and neither have denied the submission of the appellant that the Hospital directly or indirectly through the Society which runs it, have been claiming various Income Tax exemptions.
  - j) It is clear that by virtue of any one of these breaches, the state has legal authority to cancel the lease. If the state government chose to cancel the lease, the Hospital/society will struggle to exist. Thus according to the test laid down by Hon'ble Supreme Court in Thallapallam case referred above, the hospital/society is the public authority under Section 2(h) of the RTI Act.
23. Based on facts, law, evidence leading to the analysis referred above the Commission finds that the said Batra Hospital and Medical research centre is being indirectly financed for promotion of public services by the Government of NCT Delhi more particularly by DDA and hence the same is squarely covered under the definition of 'public authority' as defined under

section 2 (h) (ii) of the RTI act, 2005 after having passed the test laid down by the Supreme Court.

24. Additionally, as per the Division Bench of the Delhi High Court in the case *Delhi Sikh Gurudwara Management Committee v. Mohinder Singh in LPA 606 of 2010* dated 12/9/2012 which has stated that :

*“...if a body either owned by the appropriate Government or controlled by the appropriate Government or substantially financed directly or indirectly by the appropriate Government, it would become public authority. Any of the aforesaid requirements is sufficient, viz. either ownership or control or substantially financed...”*

25. However, in the present case the element of **both** substantial indirect finance and control by the appropriate government i.e. Govt. of NCT through DDA is established.

26. Thus, in view of the categorical position taken by the Appellant extracted above and the fact that there is vast differential between the monthly rental being paid by the Batra Hospital and Medical research centre and the commercial rent that the premises could fetch in the open market, Commission is of the opinion that the Batra Hospital and Medical research centre is being **indirectly financed** by the appropriate government i.e. Govt. of NCT through DDA. Thus, we hold that the Batra Hospital and Medical Research Centre is ‘public authority’ under Section 2 (h) (ii) of the RTI Act.

27. Hence, the Batra Hospital and Medical Research Centre is hereby directed to put in place a mechanism for servicing the RTI Act, 2005 within 4 weeks of receipt of order.

28. The case No.CIC/AD/C/2013/000276 is also disposed with the above directions/observations.

**(M. Sridhar Acharyulu)**  
Information Commissioner

Authenticated true copy

(Babu Lal)  
Dy. Registrar

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