

Complaint No. CIC/MP/C/2015/000044

Complaint No. CIC/SH/C/2016/000123

Date of Hearing : 30.11.2016 & 26.12.2016

Date of Decision : 13.11.2017

Shri R K Jain V/S Indian Bank Association (IBA)

Ms. Ita Bose V/S Indian Bank Association (IBA)

In response to the RTI applications filed by the above named complainants, the IBA refused to provide the information stating that they are not a Public Authority as defined under section 2(h) of the RTI Act. Aggrieved with the reply of the IBA , both the complainants filed complaints under section 18 of the RTI Act to the Central Information Commission (CIC) praying that an enquiry be conducted in the matter and the IBA should be declared as public authority. Therefore, the only question before the Commission is whether the IBA is a Public Authority under the provisions of section 2 (h) of the RTI Act, 2005.

2. I have gone through the decision dated 20.10.2017 of the Information Commissioner, Shri M. Sridhar Acharyulu, declaring IBA as public authority under section 2(h) of the RTI Act, 2005 on the two grounds which are direct/indirect financing and the substantial control by the appropriate Government. I entirely agree that IBA is a public authority under section 2(h) of the RTI Act, 2005. However, I do not agree to the extent that IBA is directly or indirectly financed by the appropriate Government. Further, I do not subscribe to the issue of show cause notice to the deemed CPIO as mentioned in para 67 of the order because the status of IBA as public authority is being decided now only. Therefore, show cause notice to the deemed CPIO is of no relevance.

3. Therefore, I proceed to record my decision as follows:

Submissions of Sh R K Jain, Complainant

4. The Managing Committee of the IBA comprises of 29 member banks of which around 18 banks are public sector banks. Thus the IBA is a body which is controlled by the appropriate Government and thereby fall under the definition of public authority as given in section 2(h) (i) of the RTI Act. Further, the IBA acts as an "advisory body" or "think tank" for banks. It tenders its advice on several important matters, such as, award of punishment to the employees of banks, implementation of provisions of statues e.g. RTI Act, Human Resources of the banks etc. It shows that it performs 'public function', thereby satisfying the requirement to be declared as public authority under the RTI Act. He further submitted that the IBA is an 'Agency' or 'instrumentality' of the State (Public Sector Banks in the present case). The IBA also negotiates wage settlements on behalf of its member banks - majority of which are the public sector banks who mandate it to do so, with the Bank Unions / Associations under Industrial Disputes Act, 1947. Besides, being an agency and instrumentality of the State and under the control of the appropriate Government, the IBA is also substantially financed by the appropriate Government. All the expenses of the IBA, which is a non-profit making Association of Banks, are shared by the member banks, majority of which are public sector banks. It receives an annual subscription of nearly 4 crores from more than 100 Indian and foreign banks. Besides this, the IBA collects other funds from its members. As per the information displayed on the official website of the IBA, it has 189 members. Thus, the IBA also meets the criteria of substantial financing by appropriate Government and thereby falls under the definition of public authority as defined in section 2(h) of The RTI ACT.

5. The complainant, Shri R.K. Jain, during the hearing had produced certain documentary evidences in support of his contention that the IBA is a public authority and stated that the IBA performed various activities indirectly as per instructions of the Reserve Bank of India (RBI) and Department of Financial Services (DFS). He produced a letter No. 4/3/2012-SCT(B)/Welfare dated 30.12.2013 from DFS addressed to the Chairman, IBA to issue necessary guidelines to the public sector banks regarding pay fixation of ex-servicemen/Ex-ECOs/SSCOs in a uniform way to avoid disparity in pay



fixation across public sector banks. He stated that the RBI entrusted the IBA with the following tasks: (i) drafting a Master Joint Lenders' Forum (JLF) agreement between all lenders in respect of Special Mention Accounts (SMA) with an aggregate exposure (AE) exceeding Rs. 100 crores; (ii) constituting an Independent Evaluation Committee (IEC) to carry out evaluation of Techno-Economic Viability study and the proposed restructured packages for AE exceeding Rs. 500 crores; and (iii) put a database on the IBA's website in respect of delinquent third party service providers such as Advocates, Chartered Accountants and Valuers reported by the lender banks. The IBA took a decision to implement the task assigned by the RBI. So the IBA has to work in consultation with Ministry of Finance and RBI for achieving common objectives. He further stated that the IBA is a major stake holder and part of the administrative structure for monitoring Mission Document of Pradhan Mantri Jan Dhan Yojana (PMJDY). Under the PMJDY, the Government had assigned the job to the IBA to have a monitoring committee to review the progress on weekly basis. The information for monitoring was to be extracted from the DFS portal and adequate publicity needed to be carried out in structured manner based on different tiers at Central level, State level and Districts/Local level structure. The mechanism for public was to be devised by the IBA and NABARD in coordination with banks and other stake holders. A common fund had to be contributed by the banks for publicity in States. State level Bankers Committees would coordinate based on broad guidelines of the IBA/NABARD. Under the heading of roles of major stakeholders of the scheme the IBA was assigned the role of coordination in financial inclusion efforts with all banks, key monitoring role in financial literacy campaign; coordination in publicity and campaign, coordination in centralized handling of customers' grievances/issues through toll free numbers in coordination with banks; a dedicated desk to be set up for monitoring of implementation of the scheme. The Finance Ministry had directed LIC to immediately operationalize the benefit of live cover under PMJDY and the LIC had been asked to expeditiously enter into a memorandum of understanding with the IBA. He further stated that the Department of Financial Services vide letter No. 7/07/2016-P&C dated 22.01.2016 addressed a letter to the Chairman, IBA along with heads of public sector banks issuing guidelines regarding the study visit of the Select Committee of Rajya Sabha on



Prevention of Corruption (Amendment) Bill, 2013 to Mumbai and Kolkata from 12th to 18th February, 2016. He added that the IBA functions on the principle of 'mutuality' where 'members' of the 'association' are one and the same.

Submissions of Ms Ita Bose, Complainant

6. As on 01.06.2015, the Managing Committee of the IBA consisted of 31 members out of which 19 members are Chairman cum Managing Directors of public sector banks or public authorities under RTI Act. Thus 61.29 % of members of managing committee are public servants or belong to public authorities . Therefore, the IBA is a body which is being managed and controlled by public servants of Govt. of India, since Chairman and Managing Directors (CMDs) are employees of Central Govt.

6.1 The Reserve Bank of India has been quoted in Economic Times of 15.06.2015 stating that Public Sector Banks had 73.2 % and 73.9% market share in loans and deposits respectively as of 31.03.2014. Since all 27 public sector banks contribute to funds of the IBA based on working fund of individual bank as at the end of previous financial year, the total inflow of funds to the IBA from public sector banks (PSBs)/ public authorities (PAs) would be substantial when compared to total inflow of funds from all the bank-members (which include public sector, private sector, foreign and cooperative banks). Thus, major share of operational and capital expenses of the IBA are provided by PSBs/PAs. The IBA recovers annual subscription, expenses for bipartite wage revisions, consultation and advice, legal charges and contribution for acquiring immovable properties, like office etc. from member banks based on working fund of each bank. Since PSBs/ PAs control 73% of working funds of all banks, hence inflow of funds to the IBA from PSBs/PAs would be near about 70 % of total inflow. Thus, the IBA is substantially funded by PSBs/PAs.



6.2 The IBA is a society or voluntary organization and it provides expertise to member banks in host of matters relating to service conditions of employees, periodical wage revision, formulation of policies for banks, execution of govt. directives/schemes/policies, legal issues of member banks, customer service defending banks in courts by being party to litigation, technology for banks, recovery of loans, approval of transport companies, security printers, couriers for banks including PSB etc. Thus, the IBA has substantial contribution in functioning of public sector banks. The advice of the IBA is followed by public sector banks in toto by getting formal approval of Board of Directors and/or Central Govt. The IBA provides expertise to Government of India in the matter of banking industry and execution of govt. policies and schemes. The IBA is associated with Pradhan Mantri Jandhan Yojana (PMJDY) and other social schemes. The IBA plays a public role in the matter of banking industry of the country and its working, advice, decisions affect large number of employees of banks and customers of banks including trade, industry, common citizens, marginalized segment of society, etc. Hence, there is need for transparency in its working in view of legislative intent and preamble of RTI Act.

Submissions of the IBA - Respondent

7. The IBA is an unregistered, voluntary association of banks or of likeminded people. The IBA is not a statutory body nor has it been incorporated under any law. The IBA was formed on 26th September 1946 by 22 banks coming together to discuss issues of common interest. It may be noted that all these banks were private banks at that time. Over the years, the membership grew. It was just a turn of events that some of these banks were nationalized in the year 1970. However, the working of the IBA has continued in the same manner over the years. Currently, the IBA has Public Sector Banks, Private Sector Banks, Foreign Banks, Urban Co-operative Banks, Asset Reconstruction Companies, Credit Rating Companies, Credit Guarantee Funds, Financial Services Companies, Credit Bureaus and others as Members. As on 30th September 2016, the membership of the IBA stood at 239 of which 137 were Ordinary



Members and 102 Associate Members. Of the 137 Ordinary Members, only 27 i.e. less than 20% are Public Sector Banks. Of the total 239 banks, public sector members are 27 PSB and 38 RRBs which is just 27% of total membership. The key Officers of the IBA such as Chairman, Deputy Chairman and Honorary Secretary of the IBA are elected by the Members of the Managing Committee and rules of the Association do not specify that only Public Sector Bank Chairman can become Chairman /Deputy Chairman/ Honorary Secretary. Further, funding of the IBA is by way of Basic Annual Subscription collected from all members of the Association in terms of their working fund and is not sectoral specific i.e. private or public . Further, the IBA's vision is "To work proactively for the growth of a healthy, professional and forward looking banking and financial services industry, in a manner consistent with Public Good". However, working for public good alone does not make an institution a Public Agency. The IBA is a premier service organization representing all banks in India. Therefore, the Government, the Reserve Bank of India or any other trade or industry body /association find it convenient to use the IBA as a single point of contact while interacting with the banking industry. The IBA provides certain pooled services to its members. The pooled service can be anything - wage negotiation, contribution to publicity under Pradhan Mantri Jan Dhan Yojana / Pradhan Mantri Mudra Loan Yojana, representing cases in Courts of industry interest, price discovery of technological investments and so on, and the service may cover all sectors of banks or some specific sector as the case may be. In PMJDY and PMMLY initiatives, Public Sector Member Banks and Private Sector Member Banks including Foreign Banks with more than 20 branches participated.

7.1 It is evident based on all the facts brought out that the IBA is purely a voluntary Association of Banks or of likeminded people, working in common interest, using collective wisdom to arrive at consensus based decisions for the benefit of its members. The expenses of the association are shared among the members in a fair manner. It is neither substantially owned nor controlled nor financed by the Government nor is it under the control of the Government. Therefore, the IBA does



not fall within the definition of a public authority as defined in Section 2(h) of the RTI Act and accordingly the IBA is not a public authority.

Analysis and Decision

8. Definition of public authority is provided in section 2(h) of the RTI Act, which is reproduced below:

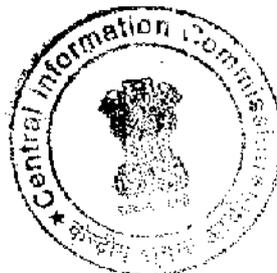
"public authority" means any authority or body or institution of self government established or constituted,-

- (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 organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;*

8.1 It is noted that funding of the IBA is by way of basic annual subscription from all members of the Association. The members of the IBA consist of public sector as well private banks and financial institutions. There is no direct or indirect flow of funds from the Central Government or the State Government.



8.2 In the above context, the Delhi High Court, in the case of Hardicon V/S Madan Lal (W. P. (C) No. 6946/2011 decided on 12.03.2015), had observed that flow of funds from banks to contribute to shareholding of Hardicon Ltd. cannot be said to be direct or indirect funding by the Government. The operative paras are reproduced below:

"15. The CIC held that as 61.5% of equity of the petitioner was subscribed by government owned entities and the same would meet the criteria of substantial financing by an appropriate Government. I find it difficult to agree with the said conclusion. Admittedly, the Government - whether it be State Government or Central Government - has not provided any direct funding to the petitioner. The question whether the entity has been indirectly financed is to be determined on the facts of each case. In this case, there is no material to indicate any flow of funds from any government to the petitioner. In order to hold that an entity has been indirectly financed by an appropriate Government, first of all, it is necessary to find that the Central Government has parted with some funds for financing the authority/body; and secondly, the said funds have found their way to the authority/body in question. The link between the financing received by an entity and an appropriate Government must be clearly established.

16. In this case, there is no material to indicate that any of the funds received by the petitioner owed their source to either the Central Government or the State Government. The constituent shareholders of the petitioner are independent entities and whose source of funds are not limited to the Central Government/State Government. Although, substantial part of equity of nationalized banks is held by the Government, the sources of funds available to the bank are not limited to the Government alone. Banks receives substantial deposits as a part of their business. In addition, the banks also generate substantial income from their commercial activities. Such funds are also deployed by banks by lending and investing in other entries. Since the funds received by the petitioner by way of subscription to its equity cannot be traced to any Government. The conclusion that the government has indirectly provided substantial finance to the petitioner is not sustainable."

8.3 In view of the above observations of the Delhi High Court, the IBA cannot be said to have been directly or indirectly financed by appropriate Government.



9. So far as control part of appropriate Government is concerned it is noted that the IBA is an agency or instrumentality of the State. The appropriate Government controls it as majority of Managing Committee members are Managing Directors of Public sector Banks, who in turn are Government of India employees. As on 6.5.2017 total Managing Committee members are 28 out of which 15 are from Public Sector Bank i.e. more than 50 %.

COMPOSITION OF THE MANAGING COMMITTEE FOR THE YEAR 2016-17 (w.e.f 6th May 2017) as per the website of the IBA:

CHAIRMAN

Shri Rajeev Rishi : Central Bank of India

DEPUTY CHAIRMEN

Smt. Arundhati Bhattacharya : State Bank of India

Smt. Chanda Kochhar : ICICI Bank Ltd.

Shri Arun Tiwari : Union Bank of India

HONORARY SECRETARY

Shri Jatinderbir Singh : Punjab & Sind Bank

MEMBERS REPRESENTING PUBLIC SECTOR BANKS

Shri Ashwani Kumar : Dena Bank

Smt. Usha Ananthasubramanian : Allahabad Bank

Shri Animesh Chauhan : Oriental Bank of Commerce

Shri Kishore Kumar Sansi : Vijaya Bank

Shri Arun Shrivastava : Syndicate Bank

Shri Kishor Kharat : Indian Bank

Shri Rakesh Sharma : Canara Bank

Shri P S Jayakumar : Bank of Baroda

Shri Suresh N Patel : Andhra Bank

Shri R K Takkar: UCO Bank

Shri Mahesh Kumar Jain: IDBI Bank Ltd.



MEMBERS REPRESENTING PRIVATE SECTOR BANKS

Shri Aditya Puri : HDFC Bank Ltd.

Smt. Shikha Sharma : AXIS Bank Ltd. (Co-Opted)

Shri Shyam Srinivasan : The Federal Bank Ltd.

Dr. N Kamakodi : City Union Bank Ltd.

Shri Chandra Shekhar Ghosh : Bandhan Bank Ltd. (Co-Opted)

MEMBERS REPRESENTING FOREIGN SECTOR BANKS

Shri Pramit Jhaveri : Citibank N.A.

Shri Ravneetsingh Gill : Deutsche Bank AG.

Ms. Kaku Nakhate : Bank of America, N. A.

Shri Madhav Nair : Mashreq Bank PSC

MEMBERS REPRESENTING CO-OPERATIVE BANKS

Shri Chintamani Nadkarni : N K GSB Co-operative Bank Ltd.

Shri Vinod G Dadlani : The Kalupur Commercial Co-op. Bank Ltd.

Smt. S.M. Sandhane : The Saraswat Co-operative Bank Ltd.

10. We also note that IBA performs various activities, which are entrusted to them by the Government or the Reserve bank of India. The functions performed by the IBA are mentioned in para 5 above in the submissions of the IBA, which are the important public functions. In our view, the IBA works as an instrumentality of the State. For determining whether an organization is an agency or instrumentality of the 'State', *Mathew, J. in Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi (1975) 111 SCR 399* propounded following indicia:

"...(2) Another factor which might be considered is whether the operation is an important public function.

(3) The combination of State aid and furnishing of an important public service may result in a conclusion that the operation should be classified as State agency. If a given function is of such public importance and so closely related to governmental agency, then even the presence or absence



of State financial aid might be irrelevant in making a finding of state action.

(4) The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the government for carrying on a business for the benefit of the public."

The court further highlighted the test give in the *Ramana Dayaram Shetty* 1979 SC R (3)1014 which were stated in following terms:

"... (3) It may also be a relevant factor... whether the corporation enjoys monopoly status which is state conferred or state protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a state agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of the Government.

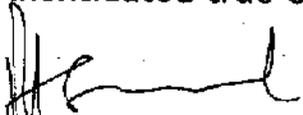
(6) Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of government."

11. Taking into account that the IBA performs functions as State agency and its majority control vests in Government of India appointed Managing Directors of Public Sector Banks, the IBA qualifies to be a public authority under the RTI Act, 2005. The Commission, therefore, directs the IBA to designate an official of the IBA as the CPIO at the earliest as per provisions of Section 5 of the RTI Act, 2005 and also to comply with Section 4 of the RTI Act, 2005 within four weeks of the receipt of the order of the Commission.

Sd/-

(Manjula Prasher)
Information Commissioner

Authenticated true copy.


Registrar



Address of the parties:

Shri R.K. Jain,
1512-B, Bhishm Pitamah Marg,
Wazir Nagar,
New Delhi-110003.

Ms. Ita Bose,
30, Rabindrapalli,
Lucknow-226016.

Shri V. Ramachandran,
Officer on Special Duty,
Legal & Operations,
Indian Banks' Association (IBA),
World Trade Centre Complex,
Centre-1, 6th Floor, Cuffe Parade,
Mumbai-400005.

Senior Adviser,
Corporate & International Banking,
Indian Banks' Association (IBA),
World Trade Centre Complex,
Centre-1, 6th Floor, Cuffe Parade,
Mumbai-400005.

OTC



IN THE CENTRAL INFORMATION COMMISSION, NEW DELHI

Before the Bench of Shrimati Manjula Prasher & Prof. M. SRIDHAR ACHARYULU
Central Information Commissioners

RK Jain vs. Indian Banks Association
Ita Bose vs Indian Banks Association

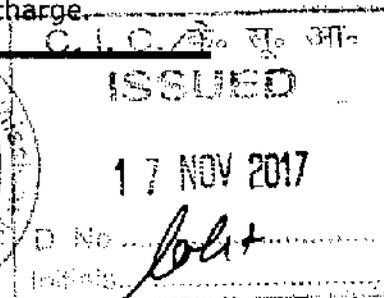
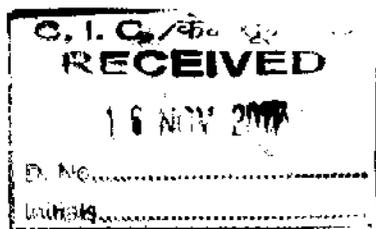
Complaint No.CIC/MP/C/2015/000044
Complaint No.CIC/SH/C/2016/000123

Dates of Hearing: 30.11.2016, 26.12.2016
Date of Submission of documents: 28.02.2017
Date of Decision: 20.10.2017

Decision by M. Sridhar Acharyulu

Brief Facts:

1. Shri R. K. Jain and Shrimati Ita Bose have separately filed RTI applications seeking information from Indian Bank Association (IBA). The IBA refused to provide information to both the applicants claiming that IBA was not a public authority.
2. Shri RK Jain filed a complaint dated 9.2.2015 u/s 18 of RTI Act against Indian Banks Association (IBA) Mumbai for the denial of information on his two RTI applications both dated 16.10.2014. The complainants also requested referring matter to a larger bench and declaring IBA as a public authority under RTI Act and directing them to provide the asked information. RK Jain sought the information from Indian banks Association, Mumbai as follows:
 - a) Certified copy of documents reflecting Legal status of IBA.
 - b) List of present office bearers along with their date of joining.
 - c) Composition of managing committee of IBA for the first year i.e. from when it is formed.
 - d) Date of its formation and name of the founding members.
 - e) Source of funds and contribution received by IBA in the first 5 years since the formation of IBA.
 - f) Address of IBA head office and regional office along with documents reflecting whether premise is rented or granted free of charge.



- g) Name of auditors and PAN of IBA.
 - h) Memorandum of association of IBA.
 - i) Source of funding the IBA and details of donation/contribution received since the date of its inception.
3. Both the complainants contended that rejection of the request by respondent is illegal, arbitrary, malafide and contrary to the provisions of RTI Act, 2005. They claimed that the IBA is a body which is controlled by the appropriate Government and thereby falls under the definition of public authority as given in section 2(h)(i) of the RTI Act, and said "respondent has failed to appreciate this fact moreover, the respondent incorrectly and illegally refused to provide information to the complainant. Hence, the impugned order is liable to be set aside". Shri V. Ramachandran, officer on special duty, Legal & Operations from Indian Banks Association rejected the application by letter dated 7.11.2014 claiming that Indian Banks Association was not a public authority within the meaning of section 2 (h) of RTI Act citing CIC order dated 06.8.2008 in appeal no. 2622/ICPB/2008 in which it was held that IBA was not a public authority under RTI Act as it was neither substantially funded by the Government nor under the control of Government.
4. Shri K Unnikrishnan Deputy Chief Executive of Indian Banks' Association claimed that the Hon'ble Delhi High Court on 19.01.2015 in the case of **Virendra Yadav V. CPIO** held that IBA was not public authority. He has also submitted the following points:
- i) **Legal Status:** IBA is an unregistered, voluntary association of Banks or like-minded organizations. It is neither a statutory body nor has it been incorporated under any law. IBA was formed on 26th September 1946 by 22 banks coming together to discuss issues of common interest. It may be noted that all these banks were private banks at that time. Over the years, the membership grew. It was just a turn of events that some of these banks were nationalized in the year 1970. However, the working of IBA has continued in the same manner over the years.



- ii) **Ownership:** Currently, IBA has Public Sector Banks, Private Sector Banks, Foreign Banks, Urban Co-operative Banks, Asset Reconstruction Companies, Credit Rating Companies, Credit Guarantee Funds, Financial Services Companies, Credit Bureaus, RRBs and others as Members. As on 30th September 2016, the membership of IBA stood at 239 of which 137 were Ordinary Members and 102 Associate Members. Of the 137 Ordinary Members, only 27 i.e. less than 20% (19.70%) are Public Sector Banks (including Associate Banks of SBI). Of the total 239 banks, public sector members are 27 PSB and 38 RRBS, which is just 27% of total membership.
- iii) Members of the Managing Committee are elected representatives of the member banks and attend the Managing Committee meetings in their individual capacity and their views are not bank specific. No bank is permanently represented on the IBA Managing Committee.
- iv) Key Office Bearers of IBA such as Chairman, Deputy Chairmen and Honorary Secretary of IBA are elected by the Members of the Managing Committee and Rules of the Association do not specify that only the CEO of a Public Sector Bank can become Chairman/Deputy Chairman/ Honorary Secretary.
- v) **Functions of IBA:** The IBA follows a consultative approach, with Standing Committees and Working Groups, constituted to deliberate on current issues and simplify and standardize operational aspects arising out of regulatory guidelines. The IBA also sets up separate Sectoral Committees to represent Public Sector Banks, Private Sector Banks, Foreign banks, Urban Co-operative Banks and Regional Rural Banks (RRBs) to discuss sector specific issues.

All matters in the IBA are decided by consensus approach and not by majority voting - whether in the Meetings of the IBA Managing Committee or Standing Committee or any other Committee/Group. Therefore, there is no control or influence of a single person/bank/sector of banks/sector or members on the decisions of the Association.



Even while decisions are arrived at a consensus, recommendations of the Committees of IBA are only advisory in nature and are not binding to any Members.

- vi) **Funding of IBA:** Funding of IBA is by way of **Basic Annual Subscription (BAS)** collected from all Members of the Association in terms of their Working Fund and is not sector specific.
- vii) In 2015-16, 90% of the revised BAS was collected from every member. Accordingly, IBA received Rs. 88213500 from the 196 institutions who were Members then. Of this, the share of Public Sector Banks was **43%**. In 2015-16, RRBs were not yet the members of IBA.

Proceedings before the Commission:

- 5. The division bench of Commission heard the matter on 30.11.2016 and subsequently on 26.12.2016. In pursuance of directions dated 30.11.2016 of the Bench, additional documents and submissions were made by the parties on 28th February 2017 and on 14.3.2017. Shri R.K. Jain was present. Shri V. K. Khanna represented Shrimati Ita Bose. Shrimati Rama Menon, officer on special duty and Shri Srikant Johari represented IBA. The Bench of CIC heard submissions from both the parties.

Analysis:

- 6. The single most issue before the Commission is "whether Indian Banks' Association (IBA) is a public authority within meaning of section 2(h) of RTI Act", precisely, whether IBA is directly or indirectly funded by Government, and whether there is any nexus between Indian Banks Association and Reserve Bank of India along with Ministry of Finance Union of India.
- 16. The Respondent IBA referred to CIC decision PBC/07/316 in appeal No. ICPB/2008 **Ashok Kumar Gupta vs Indian Banks Association** dated 06-08-2008 (<https://indiankanoon.org/doc/1568911/>) for asserting that IBA is not a public authority under RTI. Countering this contention Ms Ita Bose has argued that "once 'not a public authority' cannot remain as non-public authority for entire life of organization" and due to various factors, a private



entity could become a public authority later. She pleaded that this order would not stop the Bench to consider the IBA as a public authority because the CIC in 2008 order overlooked the fact that majority of members of Managing Committee, including Chairman and Secretary are from PSB/PA who are public servants being Chairmen-Cum-Managing Directors of PSB/PA, thereby resulting into control and management by Government through these members. Funding pattern and source of funds have not been analyzed in depth, especially percentage of share in fund received from the Government through PSB/PA vis-à-vis total funds received by IBA from its members. Composition of managing committee and funding pattern has remained constant over a long period of time since 1969, when banks were nationalized. Hence even in 2008, the IBA was managed and controlled by PSB/PA through Chairmen-cum-Managing Directors as Chairmen, Vice Chairmen and Secretary and majority members of managing committee.

17. Complainant Shri R.K. Jain contended: "The respondent has erred in relying on the CIC's decision in **Ashok Kumar Gupta vs Indian Banks Association** dated 6-8-2008. The said decision of the CIC (Single Bench) is *per incuriam* as much as it had been passed in ignorance of the provisions of law along with the judicial pronouncements and the factual matrix of the case. However, the respondent has failed to appreciate this fact; hence the impugned order is liable to be set aside. In examining the matter, the learned Single Bench of CIC in note dated 14-5-2008 had recorded that "*I still feel IBA cannot claim that it is not a public authority. In other words, IBA should also be responsible to the citizen for giving information under RTI Act.*" However, later changed its mind on the basis of incomplete and insufficient details/information produced/submitted by IBA before it and delivered the aforesaid decision in ignorance of the provisions of law and judicial pronouncement. Hence, the impugned order of respondent relying on the said verdict of CIC is incorrect and illegal and liable to be set aside". He also contended that a reasoned order of the CIC has persuasive value, though it could not be considered as 'precedent' in strict terms. Exercising the independent discretion, a Commissioner can differ with earlier decision of the CIC, if there are sufficient reasons to differ with. This is because the



Commission is a quasi-judicial tribunal without any hierarchy or appellate powers within. The Constitutional Courts held that no review power is vested in the Commission. The Commission can decide the disputed question between the parties and that shall be final be binding as per Section 19(7).

18. The Complainant Ms. Ita Bose, has cited following CIC decisions in support of her contention:

- i) CIC/SS/C/2013/000275 dated 25-06-2015 of Full Bench
- ii) CIC/SS/A/2013/002956/KY & CIC/SS/A/2013/002846/KY
Dated 09-07-2015-FB
- iii) CIC/LS/C/2011/001107 & CICLS/A/2011/001848 dt 19-06-2014-FB
- iv) CIC/SG/A/2011/003688/17641 dated 12-03-2012
- v) CIC/DS/A/2011/000802 dated 09-01-2012
- vi) CIC/LS/C/2012/000714 dated 13-04-2015
- vii) No. 2623/ICPB/2008-F. No. PBC/07/193 dated 06-08-2008
- viii) CIC/SM/A/2010/000873, CIC/SM/C/2009/000200 dtd 13-01-2012
- ix) CIC/SG/C/2011/001273/17356 dated 14-02-2012
- x) CIC/AD/C/2010/001336 dated 20-09-2011

19. The respondent IBA has heavily depended on the Delhi High Court order in **Virendra Yadav v CIC WP(C) 495/2015** saying that IBA was held not to be a public authority. Applicant sought information from Department of Financial Services, which suggested appellant to approach IBA. Justice Rajiv Shakdar's order did not declare IBA as no public authority. The complainants contended that this decision was not on merits for the following reasons.

- a) the IBA was not a party before the High Court,
- b) the RTI application in that case was not addressed to IBA,
- c) the issue whether IBA was public authority was not pleaded before the High Court,
- d) the order does not mention anywhere section 2(h) of RTI Act,
- e) the issue that IBA has been kept out of bounds of RTI Act was advanced by the Petitioner himself and not decided by the High Court,



- f) the paragraph quoted by the Respondents does not conclusively decide that IBA was not a public authority,
- g) The High Court just referred to the decision of the Commission without examining the ambit of public authority under Section 2(h), before the High Court no relief was prayed by the Petitioner that IBA may be directed to conform to the provisions of the RTI Act.

20. The RTI Act defines "public authorities" in Section 2(h) -

A "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.**

21. On a reading of Section 2(h), the expression "public authority" can mean:

- a) an authority or a body or an institution of self-government established or constituted by or under the Constitution,
- b) an authority or a body or an institution of self-government established or constituted by a law made by Parliament,
- c) an authority or a body or an institution of self-government established or constituted by a law made by the State legislature,
- d) an authority or a body or an institution of self-government established or constituted by a notification issued or order made by the appropriate government.

22. The Hon'ble Delhi High court in **National Stock Exchange of India Ltd. V. CIC & Ors. W.P.4748 of 2007 dated 15-4-2010** has held that "The three conditions, i.e., owned, controlled and substantially financed are distinct in alternative and not cumulative. The nature and type of activity and functions undertaken by the organization are inconsequential and immaterial. 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."

23. The complainants explained: The IBA provides expertise to member banks in service related matters like periodical wage revision, formulation of policies, execution of Government directives/schemes/policies, legal issues of member Banks, customer service, defending banks in courts by being party to litigation, technology for banks, recovery of loans, approval of transport companies, security printers, couriers for banks including PSB, etc. The IBA makes substantial contribution in functioning of entire public sector banks and its advice is followed by public sector banks into getting formal approval of Board of Directors and/or Central Government.
24. They pointed out that the objectives of the IBA explain its association with Government and governance of banking matters, its importance and public nature. The objectives are published on its Website. Some aspects relevant to the present case are:

To give financial assistance to individuals or bodies, from out of its own funds, or by collection from its members, or from any other source, and for the purpose of such collection, to accept grants, donations, etc. in cash or kind from Government, its members, other organizations, members of the public, etc. and to collect subscriptions, membership and other fees and to levy fees or charges for the use of the facilities and to raise funds in any manner to strengthen the financial position of the Association, from time to time, for the purpose of providing education, training and facilities for imparting basic, advance knowledge and techniques in games, sports, cultural activities, social activities, fine arts, etc. and to give donations, technical and other assistance, sports equipment, sports facilities and expert guidance to organizers for this purpose whether its members or not and to conduct, organize, participate or to associate itself in State-Level, National, International Tournaments and competitions pertaining to sports, cultural activities, social activities, fine arts, held in or outside India.

To act as an agent or a representative of a member or members in respect of matters connected with any of their operators working or administration.

To maintain close co-ordination and liaison with Reserve Bank of India, All Financial Institutions, Chambers of Commerce, Organizations of Banking Industry, Management or Educational Institutes, Universities and such other Organizations for realizing the subject and purposes of the Association.

25. From the website of IBA, their submissions and documents, it appears that the Managing Committee of the IBA consists of 31 members, of which 16 are from PSBs, 3 from the Cooperative Banks and 2 from the Associate State



Banks. The Chairman of IBA has always been a Chairman of a PSB. The Chairmen of PSBs are public servants, being appointed by the GOI. The PSBs and Associated State Banks are undoubtedly Public Authorities under the provisions of the Act.

26. The Chairman, 2 out of 3 Deputy Chairpersons and 14 Managing Committee members are from PSBs. Individually, they are accountable and answerable to the public. It shall be a conflict, contrary and defeat on the object of the RTI Act if these members i.e. Chairmen (public servants appointed by MOF) of Public Authorities are granted immunity from accountability, under the umbrella of IBA.

State and state instrumentality

27. Hon'ble Supreme Court held in ***Bank of India & Anr. V. K Mohandas & Ors. Civil Appeal No. 1942 of 2009; 27-3-2009***, that public sector banks are 'State' within the meaning of Article 12 of the Constitution of India. As the Managing Committee of IBA comprises 29 member banks, of which around 18 banks are public sector banks, it can be reasonably inferred that a body consisting of 18 'state's operates as the 'state.
29. The Punjab & Haryana High Court in ***DAV College Trust and Management Society & Ors Vs The Director of Public Institution & Ors (Civil Writ petition No. 2626 of 2008)*** laid down that a crucial touchstone for determining 'whether an organization qualifies to be a public authority (PA)' is 'whether it performs a public duty'.
30. The IBA performs an important role in the decision making process of banking industry and in that sense performs 'public function', one of the important factors or requirements making a body a public authority under the RTI Act.
31. The IBA thus, is an 'agency' or 'instrumentally' of the State (Public Sector Bank PSB in the present case). One of the objectives of IBA, as displayed on its website, is "to act as an agent or a representative of a member or members in respect of matters connected with any of their operations working or administration." The documents submitted by both the parties



show that Government of India through its Department of Financial Services has entrusted the IBA with the responsibility of issuing guidelines in the matter of employment of public sector banks. This is a public function. The Reserve Bank of India also has entrusted the IBA with several tasks, besides soliciting the advice of IBA in matters concerning the implementation of law (e.g. RTI Act). This establishes that the IBA functions as an agency of the State.

32. Also, the IBA negotiates wage settlements on behalf of its member banks – majority of which are the public sector banks – who mandate it to do so, with the Bank Unions/Associations under Industrial Disputes Act, 1947. Thus, the IBA also functions as an agent/representative of its member banks in order to resolve the industrial disputes arising between employer and workmen. If not resolved it may hamper the public functions which are being discharged by the banks with the workmen resorting to strike. Thus the functioning of the IBA is also of public importance that makes it liable to be accountable to the public.
33. The IBA enters into Bipartite Wage Settlements with the recognized and registered Trade Unions. These settlements are registered under Rule 58 of Industrial Disputes (Central) Rules, 1957 and therefore have a statutory force. Thus the IBA has an onerous responsibility to maintain the sanctity of statutorily enforceable rules.
34. The Annual Report of the IBA spells out the vision of the Association as follows:

"To work proactively for the growth of a healthy, professional and forward looking banking and financial services industry, in a manner consistent with public good" (emphasis supplied).

35. The role and functions of the IBA have been well crystallized in its Annual Report under the head Focus and Priorities. It also admitted its critical role in coordination of project PMJDY. It has been asked by the GOI to issue necessary guidelines in the matter of Pay fixation of Ex-servicemen re-employed in banks. Not only the banks, other ministries, departments e.g.



Ministry of Defence too rely on such lists of transporters, empanelled by the IBA. Therefore, the procedure cannot be hidden from the public who are the ultimate beneficiaries.

36. While determining whether an organization is an 'agency' or 'instrumentality' of the 'State', the Hon'ble Supreme Court in **Sukhdev Singh & Ors. V. Bhagatram Sardar Singh Raghuvanshi** AIR 1975 SC 1331, <https://indiankanoon.org/doc/974148/> held as under:

.....Another factor which might be considered is whether the operation is an important public function. The combination of state aid and the furnishing of an important public service may result in a conclusion that the operation should be classified as a state agency. If a given function is of such public importance and so closely related to governmental functions as to be classified as a government agency then even the presence or absence of state financial aid might be irrelevant in making a finding of state action. If the function does not fall within such a description, then mere addition of state money would not influence the conclusion....

.....The ultimate question which is relevant for our purpose is whether such a corporation is an agency or instrumentality of the government for carrying on a business for the benefit of the public.

37. The Hon'ble Supreme Court in its decision dated 27-3-2009 **Bank of India & Anr vs. K. Mohandass & Ors.** Civil Appeal No. 1942 of 2009 has declared every public sector bank as "state" within meaning of Article 12 of the Constitution of India.
38. The Institute of Banking Personnel Selection (IBPS) enjoys a monopoly status as far as recruitment of officers and Clerks are concerned. The IBA officials are members of the Governing body of IBPS. The same is verifiable from the official website of IBPS. It shall defeat the very purpose of the Act, if IBA officials on the board of IBPS are granted immunity from being accountable to the governed vis-à-vis other members of the board who are public authorities and answerable to the public. The IBA, at the request of member banks, represents and finalizes wage settlements on behalf of banks. As the number of employees is highest in PSB/PA, out of total bank employees' strength in the country, the IBA plays a public role in banking industry and its working advice or decisions affect large number of employees and customers of banks including, trade, industry, common citizens besides marginalized segment of society etc., hence need for transparency. The



evidence is the copy of circular dated 29.06.2015 of the IBA addressed to Banks furnished by the complainants. The most important factor that explains the unique feature of the IBA is that it enjoys the monopoly status vis-à-vis Ministry of Finance, in the banking management.

39. The GOI and the Ministry of Finance vide Order No. F. No. 9/18/2009-IR had constituted a Committee chaired by Dr. A. K. Khandelwal, popularly known as Khandelwal Committee. Sh. M V Nair, Chairman, IBA was appointed its member. The IBA was directed to provide secretarial assistance and bear the expenses incurred towards stay another incidentals connected with the functioning of the Committee. The IBA has made active contribution in the Prime Minister's Jan Dhan Yojana scheme, which reflects an important character of being a public authority as it is closely associated with the administrative structure for monitoring the scheme. The fact that **Insurance Companies Association** has similar functions and it made similar contributions, which lead to declaring it as public authority. The purpose of the IBA is welfare and not commercial, it does not have profit-earning motives.
40. The documents reveal that the IBA provides expertise to Government of India in banking regarding execution of govt. policies and schemes. An advertisement released by Department of Financial Services, Ministry of Finance, Government of India jointly with IBA shows this. The letter No. 10/30/7/2010-IR dated 25-07-2012 of Ministry of Finance addressed to IBA shows that the IBA works closely with Central Govt. in the matter of banking.
41. The complainants pointed out that the news published through several TV portals and newspapers regarding the reduction of the exchange limit of currency notes from banks from Rs. 4,500 to Rs. 2,000 and declaring Sundays open for senior citizens to facilitate exchange of currency notes was actually circulated by the IBA. The Complainants also explained that during demonetization drive the IBA exercised the power to issue directives; for instance, the chairman of IBA Rajiv Rishi said that only senior citizens can exchange old notes on Saturday i.e., (19.11.2016). Also, IBA has a role in advertising details of bank function and deposit of currency etc. This was



confirmed when Shri K. Unnikrishnan, Deputy Chief Executive from Indian Banks' Association (IBA) submitted on 28.2.2017 in response to addendum received from complainant Ms. Ita Bose on 6.2.2017 that IBA being association of Banks facilitates issue of advertisements on behalf of all its member banks to avoid multiple advertisement by different banks. He also stated that during Demonetization of old notes it was observed that due to crowd, senior citizens were facing problems thus, in order to give them comfort, the IBA advised member banks to restrict exchange of currency only to senior citizens, in consultation with member banks. The chairman in an interview informed this to general public that on Saturday banks will work normally and no note exchange will be done except for senior citizens. The role of IBA, post demonetization, establishes that fact that IBA is functioning as a proxy to the GOI, with its concurrence.

42. Bombay High Court said in writ petition No. 378 of 2009 in **Shaunak H. Saitya v/s. Union of India and ors** dated 30-11-2010 is also relevant. It was held: A direct **state agency or its instrumentality** or an association of such public bodies cannot escape from being transparent. If they claim that they are non-profit agency working for financial progress of the nation through agencies of banks, transparency is the way to prove that commitment. The RTI becomes both moral and legal obligation. The Supreme Court hearing SLP on this case on 2.9.2011(<https://indiankanoon.org/doc/1548289/>) has set aside the order of Bombay High Court and restored the order of CIC, which directed disclosure, except the record that was not held by it.
43. The member banks express their inability and helplessness to implement the orders of the Hon'ble Apex court, High courts and Tribunal, in the absence of specific 'advice', opinion, concurrence or guidelines of IBA. (Letter dated 22/09/2016 issued by Bank of Baroda). In the eyes of Banks, IBA is a statutory authority, and its 'advice' as above the law decided by the competent courts. The Supreme Court in **Ajay Hasia v. Khalid Mujib Shehravardi & Ors**, [AIR 1981 SC 487) held on 13th Nov 1980 dealt with question whether a body is financially, functionally, administratively



dominated, by or under the control of the Government. The Constitution Bench judgment, where PN Bhagwati, J spoke for the court, laid down the test as follows:

.....(1)..... *If the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.*

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character.

(3) It may also be relevant factor whether the corporation enjoys monopoly status which is State-conferred or State-protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government....."

44. The apprehension of the respondent IBA that the Private and Foreign Banks shall discontinue their membership, if IBA is brought under the purview of RTI Act and forced to submit to the Transparency law, is ill founded and without any basis.

Control

45. The complainants presented various factors that establish the control of state over the IBA: "The PSBs and PSICs are under the control of Ministry of Finance. So is the Indian Bank Association (IBA). The Government of India treats the IBA at par with the PSBs & PSICs. Admittedly, the Government assists and lends its name to IBA. It is also amenable to writ jurisdiction of High Court under Article 226 of the Constitution of India".
46. The Commission's attention is drawn to the letter D O No. 10/30/7/2010-IR dated 25/07/2010 addressed to the then Chairman, IBA Sh. Alok K Mishra. The contents of the letter are sufficient to establish that IBA is under the control of Ministry of Finance. The IBA was directed to withdraw the words "on superannuation" from its earlier communication, which led to avoidable

huge litigation. The following documents submitted to this Bench reflect similar controls:

- a. A copy of the OM No. 10/16/2011-Welfare (SCT-(B) dated 22/08/2013
- b. A copy of F. No. 4/5/2/2003-IR dated 11/08/2014
- c. Coy of DO F. No. 18/2/2013/-IR dated 07/08/2014
- d. A copy of F. No. 4/4/2014-Welfare dated 03/07/2014
- e. A copy of Letter No. 3/2/2016-Welfare dated 28/06/2016

47. The Chairman of Bharatiya Mahila Bank (BMB), Ms. Usha Nathan gave on oath of secrecy, a declaration that is in the nature of a body of Government of India. The Table of Fee and Expenditure produced by the BMB for the period of 1.04.2011 to 30.4.2011 reflects IBA'S name along with Union of India, Ministry of Finance and Indian Overseas Bank. The IBA is also responsible for dissemination of information of important results and information which is directly controlled by Government of India.
48. The Chairman in the management of IBA is held by Chairman and Managing Directors of any Public Sector Bank. At present Chairman & Managing Director of the 'Indian Bank' holds the top post i.e. Chairman in the management of IBA. Likewise, out of three posts of Deputy Chairmen in the Managing committee of IBA, two are currently held by public sector banks i.e. the UCO Bank and the Oriental Bank of Commerce. The Chairman & Managing Director of 'UCO Bank' including the Chairman & Managing Director of 'Oriental Bank of Commerce' formed the Deputy Chairmen in the Managing Committee of IBA. The post of Honorary Secretary of IBA is also held by the Chairperson of the 'State Bank of India'. Besides this Dena Bank, IDBI Bank Ltd; Central Bank of India; Corporation Bank; Bank of Maharashtra; Andhra Bank; Union Bank of India; Punjab & Sind Bank; Bharatiya Mahila Bank Ltd; Allahabad Bank; Indian Overseas Bank; United Bank of India; State Bank of India; State Bank of Mysore are members of the Managing Committee of IBA.
49. As on 01-06-2015 Committee of the IBA comprises 31 members out of which 19 members are Chairmen-cum-Managing Directors of public sector banks or



public authorities under RTI Act. Thus 61.29% of members of managing committee are public servants or belong to public authorities under RTI Act. All decisions of IBA are taken by public servants while other members have insignificant say in decision making by IBA. Chairman, two out of three Dy. Chairmen and Hon Secretary are from public sector banks or public authorities as on 01-06-2015. At least from 1977 till date, Chairmen of IBA were then serving Chairmen cum Managing Directors of public sector banks, as per website of IBA in link of past chairmen at <http://www.iba.org.in/past-chairmen.asp>. Thus IBA is a body which is being managed and controlled by public servants of Govt of India, since CMDs are employees of Central Govt.

50. The Banks Sports Board, established by the IBA is a registered society under the Societies Registration Act. In **Zee Telefilms Ltd & Ors V. UOI** (2005) 4 SCC 649 the Hon'ble Supreme Court has held:

.....Any organization or entity that has such pervasive control over the game and its affairs and such powers as can make dreams end up in smoke or come true cannot be said to be undertaking any private activity. The functions of the Board are clearly public functions, which, till such time the State intervenes to takeover the same, remain in the nature of public functions, no matter discharged by a society registered under the Registration of Societies Act. Suffice it to say that if the government not only allows an autonomous/private body to discharge functions which it could in law takeover or regulate but even lends its assistance to such a nongovernment body to undertake such functions which by their very nature are public functions, it cannot be said that the functions are not public functions or that the entity discharging the same is not answerable on the standards generally applicable to judicial review of State action.....BCCI may not be a State under Article 12 of the Constitution but is certainly amenable to writ jurisdiction under Article 226 of the Constitution of India.

51. Further, in **Krishak Bharti Cooperative Ltd v. Ramesh Chander Bawa** dated 14/05/2010, (<https://indiankanoon.org/doc/159896809/>) the Hon'ble Delhi High Court has held:

.....In the considered view of this court, since Sec 2(h)(d)(i) RTI Act uses the word "controlled without any qualification as to the degree of control, it is not enough to show that there is "no deep or pervasive control" over these entities by the appropriate Government. The question is not whether there is "deep" control, whether there is "dominance" by the appropriate government or whether the government nominee directors are in "majority". If they are in doubt, it would indicate that the entity is "public authority" but if they are not, that does not mean that the entity is on that ground not a public



authority for the purposes of the Act.....It is the context of transparency and accountability, of accessibility of its working to the public that controls the interpretation of the expression "public authority", not the amenability to judicial review of its decisions. If one asks the wrong question in the context of the RTI Act one is likely to get the right answer. In the present cases, the petitioners would have to show that there was or is no control or there is unlikely to be control; whatsoever over their affairs by the appropriate government if they want to escape the definition of "public authority" under the RTI Act."

52. The respondent IBA failed to convince the Bench that there was no control of the appropriate government over its affairs. The Complainants explained that besides being an agency and instrumentality of the State under the control of appropriate Government, the IBA is also substantially financed by the appropriate Government.

Issue of substantially funding

53. The Delhi High Court while upholding the decision of the commission declaring the **Electronics and Computer Software Export Promotion Council v. CIC**, (in LPA 1802/2006 & CM 11865/2006) a public authority under the provisions of the RTI Act has held:

For the purpose of Section 2(h) of the RTI Act, what is to be seen is whether the body is owned and controlled or substantially financed by the government. Whether the funding is for specific programs/projects carried on by the petitioner or funds are given not for any specific program to the petitioner will not make the petitioner not financed by the Government. The Government can give the funds without specifying as to how the funds are to be utilized: Specifying the manner in which the funds are to be utilized rather will show more control of the government on the petitioner. Specifying the programs on which the funds are to be utilized does not negate the substantial funding of the petitioner as is sought to be canvassed by the learned counsel for the petitioner. I have no hesitation in holding that in the given circumstances, as has been done in the orders impugned by the petitioner, the petitioner is substantially funded by the Government "(emphasis supplied)

54. **Public Sector resources:** Page 5 of written submissions dated 30.11. 2016, the Basic Annual Subscription BAS for the year 2015-16 from member banks to IBA is as follows:



Sr No	No of Banks	Share of Banks	Amount	%
1	27	Public Sector Banks	37980000	43
2	22	Private Sector Banks	19350000	22
3	38	Foreign Banks	15165000	17
4	45	Cooperative Banks	10755000	12
5	64	Associate Members	4963500	6
	196	Total	88213500	100

It is well admitted that 43% of expenses of IBA are shouldered by the PSBs. The burden of 43% of expenses are recovered from 19.7% members i.e., PSBs. This amount excludes the contribution made by the Cooperative banks, foreign banks and private banks. Thus, 43 percent of BAS, which is higher than any other individual division, is contributed by public sector banks. Entire share of Cooperative Banks cannot be considered as the share of private banks. Depending on the context and finances each cooperative bank needs to be examined to determine its status as public or private authority. Some of them could be public authorities. If their share 12 per cent is removed from the total, hypothetically, the public sector banks share would be 43 out of 88, which is 'substantial'. The fact that even the foreign and private banks including cooperative banks are custodians of public funds, and letter and spirit of RTI demands them to be accountable. They cannot interpret statistics to escape accountability.

55. Full Bench of CIC in **S.C. Agrawal v CIDC** (CIC/SS/C/2013/000275) decided on 25.6.2015, held CIDC as public authority. The CIDC was holding 38.4% of corpus (Rs 2.47 out of 6.43 Cr). In this case initial contribution during the formative years was considered very substantial. The corpus aided the CIDC in building up its own infrastructure and the edifice of the petitioner's substratum was built by state funding. Thus "substantial" does not mean 'majority', but in the context of financing, the material contribution for formation and sustenance will be 'substantial'.

56. **Publicity Advance:** (a) The written submission of the complainant Shrimathi Ita Bose stated that an advance received for which value is still to be given of Rs 50356472/- (Rs 5.03 crore) includes Rs 13646220 (Rs 1.36 Cr) being unspent amount for joint publicity of Public Sector Banks from Govt. of India, Ministry of



Finance, Department of Economic Affairs (Banking Division) vide letter dated 22.10.1993 received in April 1999. (b) The GoI Ministry of Finance, Deptt of Financial Services vide Letter F No 1/16/2014/FI(c-69421) dated 24.9.2014 directed the IBA to create a corpus of Rs 75 Crore with IBA on behalf of its member banks towards expenses that would be incurred on media campaign for PMJDY which was launched on 28th August 2014 by Hon'ble Prime Minister. Shrimathi Ita Bose's written submission in paras 10 to 22 substantiated that the IBA is substantially and indirectly financed by the Government. (c) The IBA has admitted in paras 18 of its submissions that the corpus for joint publicity for PMJDY by IBA & DFS was raised from all the stake holders involved in the project Banks including Public as well as Private Banks, LIC, NPCI, General Insurance Companies, NABARD and PFRDA. PMJDY being a mission mode project coordinated by DFS, they lent their name to the advertisements. At the behest of Ministry of Finance, a retreat for two days was held on 4th & 5th March 2016. The Managing Committee of IBA decided to share the expenditure by the participating Public Sector Banks.

57. Free Accommodation in 20 Cities: In terms of Annual Report of IBA for the year 2004-05, IBA has 20 Local Chapters functioning at Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Chandigarh, Chennai, Delhi, Goa (Panaji), Guwahati, Hyderabad, Jaipur, Kochi, Kolkata, Lucknow, Ludhiana, Mumbai, Patna, Pune, Vadodra and New York. All the Local Chapters were housed in the buildings of PSBs and manned by public servants whose salary & perks were paid from public funds. No rent is paid by the IBA. It is an admitted fact that the Delhi Chapter of IBA is housed in 5, Sansad Marg, New Delli-110001. No rent is paid by the IBA for the same. The maintenance and cost of infrastructure is paid by the Punjab National Bank.

58. Qualitative test in deciding "substantiality" of finances: In **A Ramanathan & ors v. Indian Potash Ltd (IPL)** dated 09/07/2015, reliance was placed on the case of **Mangalore SEZ Ltd** in which the Hon'ble Karnataka High Court had held:



Since 49.96% holding of the petitioner is by Governmental organizations, having regard to the object sought to be achieved by the RTI Act, in my considered opinion, the provision of Section 2(h) has to be read to take within its sweep all funds provided by the appropriate Government, either from its own bag or funds which reach the authority through the appropriate Government or with its concurrence or its clearance. Thus, the funds received by the IBA directly from the bag of GOI for discharging various functions establish the fact that the IBA is substantially financed by the GOI. The funds received through the PSBs also have the concurrence of the GOI.

59. In **Indian Olympic Association v. Veeresh Malik**, the Hon'ble High Court of Delhi has observed:

The quantitative test may not be appropriate. For instance, in a project for Rs 10000 crore, if the Central Government commits, and infuses Rs.1000 crore, such amount cannot be termed insubstantial, because it is a small percentage of the overall value of the project.

Further, observations of Delhi High Court in **Krishak Bharti Cooperative Ltd Vs Ramesh Chander Bawa** dated 14/05/2010, are relevant to analyse the test for substantial financing also. In **Shikha Singh v. Tuberculosis Association of India**, (File No: CIC/AD/C/2010/001271 dated 29/1/2011) the Hon'ble Commission has observed:

5.....While considering the question of substantiality of finance, the aspect of public interest cannot be overlooked because the funds, which the Government deal with, are public funds. They belong to the people. In that eventuality, wherever public funds are provided, the word "substantially financed" cannot possibly be interpreted in narrow and limited terms of mathematical, calculation and percentage). Wherever the public funds are provided, the word "substantial" has to be construed in contradistinction to the word "trivial" and where the funding is not trivial to be ignored as pittance, then to me, the same would amount to substantial funding coming from the public funds. Therefore, whatever benefit flows to the respondent organization in the form of any grant, donation, subsidy, land or any other direct or indirect funding would amount to substantial finance by the funds provided directly or indirectly by the appropriate Government for the purpose of RTI Act in this behalf.

The Hon'ble Delhi High Court, while deciding the case of **Mother Dairy Fruit & Veg Pvt Ltd Vs Halim Ali**, [WP No 3110/2011 dated 02/02/2015] has held:

37. It is relevant to note that the expression "substantially financed" is suffixed by the words "directly" or "indirectly". Thus, the finances indirectly provided by an appropriate Government would also have to be considered,



while determining whether a body has been substantially financed by an appropriate Government. The test to be applied is whether funds provided by the Central Government, directly or indirectly, are of material or considerable value to the body in question. In the present case, the basic infrastructure of the petitioner's undertakings was promoted by funds provided by the Central Government; whether the said funds found their way through NDDB or otherwise is not material.

While deciding a similar case, the Delhi High Court held in **Indian Olympic Association v. Veeresh Malik & Ors**" WP(C) No.876 of 2007, decided on 7.1.2010:

"...grants by the Government retain their character as public funds, even if given to private organizations, unless it is proven to be part of general public policy of some sort..... The model chosen by the government of ensuring spread of welfare and its benefits, include functioning through non government agencies, who are tasked and assisted for this purpose. The crucial role of access to information here cannot be understated. It is in this context that Section 2 (h) recognizes that non-state actors may have (responsibilities of disclosing information, which would be useful, and necessary for the people they serve, as it furthers the process of empowerment, assures transparency and makes democracy responsive and meaningful.

60. The demand letter of IBA dated 01/04/2014 addressed to CMD Bank of Maharashtra, where by a demand of Rs 8,42,700/- was made to purchase a building for the IBA. The respondents have unambiguously asserted that members and the Association are one and the same. Hence, if 43 percent of its members are public authorities, and 12 per cent could be public authorities, the IBA cannot claim to be a different character.

61. According to the order of the Supreme Court in **Thalappalam** case, the Commission is the appropriate authority to decide if the character of a body qualifies as public authority or not. The respondents, who contend that they are not a public authority, have a burden to establish that they are not. The Supreme Court in **Thalappalam** case has propounded a litmus test that if the substantial assistance provided by the state is withdrawn, body should not be able to function in which case that body has to be considered as substantially funded and thus, it has to be declared as the Public Authority". The respondent IBA shall cease to exist but for 43% of funds provided by the - PSBs.



62. Besides 43% public sector resource, tax concessions, publicity funding, accommodation in twenty cities without rent makes the IBA totally dependent upon the Government and public sector banks for survival and functioning.
63. Reserve Bank of India has been quoted in Economic Times of 15-06-2015 stating that Public Sector Banks had 73.2% and 73.9% market share in loans and deposits respectively as of 31-03-2014. Since all 27 public sector banks contribute to funds of the IBA based on working fund of individual bank as at end of previous financial year, the total inflow of funds to IBA from PSB/PA would be substantial when compared to total inflow from all the bank-members [which include public sector, private sector, foreign and coop banks]. As an example please refer enclosed copy of letter No. Acts/BAS/OrdMem/21 dated 01-04-2014 of IBA to Bank of Maharashtra, [*Working fund means fund deployed by a bank in its business. The amount of working fund so deployed is usually arrived at by subtracting the aggregate amount of contra items from the total liabilities of the balance sheet*]. Thus major share of operational and capital expenses of IBA is provided by PSB/PA.
64. The IBA recovers annual subscription, expenses for bipartite wage revisions, consultation and advice, legal charges, and contribution for acquiring immovable properties like office, etc. from member banks based on working fund of each bank. Since PSB/PA control 73% of working funds of all banks, hence inflow of funds to IBA from PSB/PA would be near about 70% of total inflow.
65. The CIC order in the case of **Ashok Kumar Gupta Vs IBA** (<https://indiankanoon.org/doc/1568911/>) on August 6, 2008, cannot be used as a shield to keep the IBA out of the RTI fold. For reasons explained in Complaint dated 28/08/2015, the above order is not applicable because the functions of IBA has enlarged manifold since 2008. Post introduction of PMJDY, PMMY & such citizen centric welfare schemes of GOI, the demonization policy of the government, there hardly remains any field which is untouched by the IBA. A File Noting received from RBI is sufficient to establish that IBA plays a significant role in deciding the accounting standards to be followed by the banks while making contribution towards Pension and Gratuity. Salary fitment of ex-servicemen reemployed in banks, payment of conveyance allowance to deaf & dumb employees, declaring DA

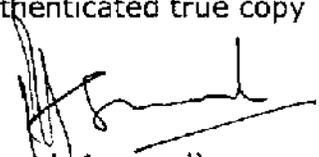


65. rate for the serving and retired employees, wages for bank employees, compassionate appointments, etc. the IBA plays the role of the Central Government.
66. A similar case decided by the full bench of Hon'ble Commission in **Nisar Ahmad Shaikh & Ors Vs LIC Housing Finance Ltd & Ors** (CIC/AT/C/2007/0216 dated 28/10/2009) is relevant. The full bench allowed the Complaints/Appeals and declared the respondents as Public Authority. Moreover, in spite of a single bench order keeping the respondents out of the purview of Act the decisions taken by the IBA have industry wide ramifications and affect every citizen of this country. Hence, the IBA is expected to function in a transparent manner and should be accountable to the public.
67. For reasons discussed above, and based on RTI Act and judicial decisions explained, the Indian Banks Association is hereby declared as a public authority under Section 2(h) of RTI Act 2005 and directs Mr. V. Ramachandran, deemed PIO, to show cause why maximum penalty should not be imposed against him for wrongfully denying the information sought within 21 days from the date of receipt of this order. The Commission under Section 19(8)(a)(ii) requires the IBA to appoint CPIO and to provide the information sought to both the complainants within 30 days from date of receipt of this order.

Sd/-

Prof. Mr. M. Sridhar Acharyulu
Central Information Commissioner

Authenticated true copy


(Piyush Agarwal)
Registrar



o/c