

CENTRAL INFORMATION COMMISSION
AUGUST KRANTI BHAWAN
NEW DELHI

No.CIC/LS/C/2011/001107 &
CIC/LS/A/2011/001848
19 June, 2014

ADJUNCT ORDER

Name of appellant : Lt. Gen. S.S. Dahiya (Retd.)

78, Vasant Enclave, New Delhi-110057

Respondents :

1. CPIO, Ministry of Defence
Air Hq. Vayu Bhawan,
Rafi Marg, New Delhi 110106
- 2.The Appellate Authority,
Air Office in-charge Administration
Air Hqrs. Vayu Bhawan,
Rafi Marg, New Delhi – 110106
- 3.Secretary

Air Force Sports Complex (AFSC)

Air Force Station

Race Course, New Delhi – 110003.

Date of Hearing: 17.6.2014

The appellant was present in person alongwith Shri Subhiksh Vasudev,
Advocate.

For Air Force Sports Complex :

1. Shri Jinender Singh, Hony. Secretary.
2. Shri Ankur Chhibber, Advocate

For Air Force :

1. Shri Arup Shyam Chowdhury, Under Secretary & CPIO
2. Shri C. Ravindra, DDG, DE.

FACTS :

Vide its order dated 25th October, 2011, the Central Information Commission had
observed as follows :

“6. Before discussing the desirability of disclosure of information under the above two heads, we would like to consider the plea of the respondent that the Air Force Complex is not a public authority in itself. We do not find any merit in this claim for the simple reason that, by their own admission, the management of the Sports Complex is vested in the 412 Air Force Station and it comes under the overall control of the DOA in the Air Headquarters. In other words, the Sports Complex is not only located on Government land it is also managed and controlled by the superior officers of the Air Force. This squarely brings it within the ambit of a public authority as defined in Section 2(h)(d)(i). Besides, in any case, the information sought is not from the Sports Complex but from the CPIO of the Indian Air Force.”

2. Aggrieved by above observations, Air Force Sport Complex filed a writ petition No.WP (C) No.741/2012 in the Hon'ble Delhi High Court who observed that AFSC was not impleaded as party before CIC hence by their order dated 10.2.2014 remanded back the matter to the Commission with the direction to decide afresh whether AFSC is a public authority under section 2(h) of the RTI Act.

3. On the date of hearing held on 28th March, 2014, the Commission directed Shri Chhibber, Learned Counsel of AFSC, to file written submission, inter alia, indicating about the constitution of AFSC, its rules and bye-laws, list of members of governing body,

their duties and remuneration , sources of finance for last three years ,documents reflecting relation between the AFSC and the land on which the AFSC is located and criteria for membership etc. Notices were also issued to the Director General of Defence Estates and the Ministry of Defence.

4. Directorate General , Defence Estates (Lands) , Ministry of Defence has enclosed submissions dated 25.04.2014 of Sh N.V. Satyanarayana , Defence Estate Officer, Office of Defence Estates Officer (DEO),Delhi Circle,Delhi Cantt.in response to CIC order dated 28.3.2014. According to the submissions made by DEO, as per their records ,Air Force authorities are in occupation of 126.948 acres of Ministry of Urban Development (MoUD) land at Air force Station , Race Course, New Delhi. According to DEO, out of 100 Acres allotted to Ministry of Defence (MoD) for construction of Race Course area , 52.80acres was formally transferred to MoD and apparently Air Force Sports Complex is located exactly on MoUD land under the occupation of Air Force Station. Along with this letter, several annexures were also added which explain the ownership of land is vested in MoD and MoUD over which the AFSC is located and its activities are being carried on.

5. Shri Ankur Chhibber , Advocate representing AFSC has annexed AFSC rules and bye-laws to his written submission dated 30.4.2014 which explain that top most officers of Defence Services are having total control of the management of AFSC. In support of his

claim that AFSC is not a public authority, Shri Chhibber has heavily relied on the judgement of Supreme Court dated 7.10.2013 in the case of Thalappalam Ser. Coop. Bank Ltd. and Ors Vs. State of Kerala and ors.

During hearing, he submitted a sealed cover said to be containing certain more information which he claimed to be confidential. The Commission after perusing the document found that it contained information sought in earlier hearing held on 28/03/2014 in general terms and on the request of Learned Counsel of the appellant a copy was provided to him. Shri Chhibber contended that AFSC was not a public authority as they were not substantially financed directly or indirectly by the appropriate Government. He further stressed that AFSC was running according to rules and bye-laws laid down by its Governing Council and funds were generated through monthly subscription fees from the members. In support of the same he cited the decision of Hon. Supreme Court of India in Thalappalam Ser. Coop. Bank Ltd. & Ors. Vs. State of Kerala & Ors decided on 07/10/2013. He also submitted that Hon. Delhi High Court in the matter of Air Vice Marshal J.S. Kumar Vs Governing Council of Air Force decided on 2nd January, 2006, had held that AFSC is not a State under Article 12 of the Constitution of India.

Further, he also submitted that Uttaranchal High Court in its decision dated 9.2.2010 in the case of Asian Education Charitable Society & Or V/S State of Uttrakhand , had held that

for a body to come within purview of Section 2 (h) of the Act it should be formed vide a notification or an order of the appropriate Government and either it should be owned , controlled or substantially financed by appropriate Government. Since AFSC is a private body consisting of its members and not financed by the Government, it is not a public authority under the Act.

6. The advocate for the appellant submitted that the entire land on which the AFSC is situated is owned by Government and no rent is being paid for the same. Moreover, the Governing Council members are the serving officials of the Air Force. In other words, there is substantial financing and control by the Government which qualifies them to be a 'public authority' under section 2(h)(d)(i) of the RTI Act2005. He also submitted that if the Government land on which AFSC is situated is withdrawn, the AFSC will cease to exist. And in support of this, he relied upon the decision of the Hon. Supreme Court in the case of Thalappalam Ser. Coop. Bank Ltd. & Ors. Vs. State of Kerala & Ors.

DECISION

7. The Hon'ble Supreme Court in the case of Thalappalam Ser. Coop. Bank Ltd. & Ors. Vs. State of Kerala & Ors. had held that –

“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...”

The Commission observes that the judgment of Supreme Court in Thalappalam Case will apply to those private bodies only in the presence of materials showing that they are governed , controlled or substantially financed by the appropriate Govt. Hence , this judgment of Supreme Court will not be of any support to AFSC. According to the Appellant, AFSC is a public authority because there is enough material to show that AFSC was substantially financed by the appropriate Govt. to adopt the expression used by SC in Thalappalam case. The contention of Sh Chhibber that cooperative society do not fall under the expression ‘State’ as per Article 12 also will not be of any help because AFSC without being a State under Article 12 could be a public authority under RTI Act and this was held by Supreme Court in Thalappalam case .The relevant para is extracted below:

“18. We have, on facts, found that the Co-operative Societies, with which we are concerned in these appeals, will not fall within the expression "State" or "instrumentalities of the State" within the meaning of Article12 of the Constitution and hence not subject to

all constitutional limitations as enshrined in Part III of the Constitution. We may, however, come across situations where a body or organization though not a State or instrumentality of the State, may still satisfy the definition of public authority within the meaning of Section 2(h) of the Act, an aspect which we may discuss in the later part of this Judgment.”

The Para 38 of the above said judgment explains what is substantial funding . Funding should be so substantial to the body which practically runs by such funding and but for such funding ,it would struggle to exist . Applying this yardstick to AFSC, Commission holds that AFSC cannot exist if appropriate Govt. withdraws the permission to use the land. AFSC is conducting its activities only because the land was permitted to be used by its owners MoD and MoUD . Hence the yardstick suggested by Supreme Court would make the AFSC a Public Authority U/S 2 (h) (d) (i) of RTI Act.

8. The Commission is of the view that there is substantial financing as the land on which the AFSC is located is owned by the Government of India and if the AFSC is not permitted to function on the said land , it will cease to exist. Moreover, the management of AFSC is in the hands of the serving Air Force officers and hence the body is controlled by the appropriate government.

9. In view of above, the Commission declares AFSC to be a public authority under Section 2(h)(d)(i) of the RTI Act, 2005, and they are accordingly directed to appoint Public Information Officer/First Appellate Authority within 30 days of this order.

Sd/-

(M. Sridhar Acharyulu)

Information Commissionner

Sd/-

(Sharat Sabharwal)

Information Commissioner

Sd/-

(Rajiv Mathur)

Chief Information Commissioner