

Central Information Commission

File No.CIC/SS/A/2011/001245

File No.CIC/SS/A/2011/001246

File No.CIC/SS/A/2011/001565

Appellant : 1. Shri Subhash Chandra Agrawal
2. Dr. M. Haroon Siddiqui

Respondent : Indian Farmers Fertiliser Cooperative Limited
(IFFCO)

Date of hearing : 18 June 2013

1. Shri Subhash Chandra Agrawal is the Appellant in Appeal Nos.CIC/SS/A/2011/001245 and CIC/SS/A/2011/001246 and Dr. Siddiqui in Appeal No.CIC/SS/A/2011/001565. The Respondent in all these appeals is Indian Farmer Fertiliser Cooperative Limited, New Delhi (IFFCO hereinafter). As all the appeals concern the same matter, it has been decided to dispose them of through a common order that follows. The case wise position is as follows:-

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2. Appellant Subhash Chandra Agrawal vide his RTI Application dated 20-1-2011 had sought the following information from the PIO of IFFCO:-

“Please refer to full-page advertisements in many newspapers dated 18.1.2011 by IFFCO on death of its Chairman Late Shri Surinder Kumar Jakhar. I will be obliged if your honour kindly provides me detailed and complete information together with relevant documents/correspondence/file notings etc. on under-mentioned aspects.

1. Complete and detailed information on giving obituary-advertisements in newspapers on 18.1.11 (and on some other dates also) on death of IFFCO Chairperson Late Shri Surinder Kumar Jakhar mentioning also names of newspapers, size of advertisements (in terms of page size also), cost of advertisement in each of such newspaper etc. on the referred obituary advertisements.
2. File notings on decision taken to give such newspaper advertisements as referred in query number (1) above.
3. Name of the person/authority to give such newspaper advertisements as referred in query number (1) above.
4. Complete and detailed information on giving advertisements in newspapers on 20.1.11 (and on some other dates also) on holding prayer-meeting in memory of IFFCO Chairperson Late Shri Surinder Kumar Jakhar mentioning also names of newspapers, size of advertisements (in terms of page-size also), cost of advertisement in each of such newspaper etc. on the referred advertisements.
5. File notings on decision taken to give such newspaper advertisements as referred in query number (4) above.
6. Name of the person/authority to give such newspaper advertisements as referred in query number (4) above.
7. Complete and detailed information on other expenses done by IFFCO on death of its Chairperson late Shri Surinder Kumar Jakhar like including also holding prayer meeting on 20.1.11.
8. When was IFFCO established?
9. List of IFFCO Chairpersons mentioning their tenures ever since its constitution.

10. Complete and detailed information on electing IFFCO Chairperson.
 11. When late Shri Surinder Kumar Jakhar was appointed IFFCO Chairperson for first time?
 12. Complete and detailed information on making late Shri Surinder Kumar Jakhar as IFFCO Chairperson together with related file-notings/correspondence/documents etc. every time his tenure as IFFCO Chairperson was renewed including on his first being appointed as IFFCO Chairperson.
 13. Are IFFCO accounts audited by any government and/or constitutional agency including Comptroller & Auditor General of India.
 14. If yes, provide details of such agencies auditing IFFCO accounts and affairs.
 15. Role of Union government and/or any of its agency in affairs of IFFCO including its finance etc.
 16. Name of nodal Union Ministry looking into IFFCO affairs.
 17. Name of the Union Minister of nodal ministry looking into IFFCO affairs when late Shri Surinder Kumar Jakhar was made IFFCO Chairperson for the first time.
 18. Details of information, if any, provided on IFFCO website as mandatory under Section 4 of 'Right to Information Act'.
 19. Complete and detailed information on action taken against concerned one/s not complying with provisions of RTI Act including giving mandatory information under section 4 of RTI Act if compliance of RTI Act is not done by IFFCO.
 20. Any other related information.
 21. File notings on movement of this RTI petition as well."
3. Shri R.P.Singh, Director (HR & Legal) of IFFCO had responded to it vide letter dated 3.2.11 stating therein that IFFCO was not a Public Authority u/s 2(h) of the RTI Act.

Interestingly, on appeal, Shri R.P.Singh himself had dittoed his own earlier order vide letter dated 31.3.11. The grounds given by him are extracted below:

- a) Govt. of India has no equity in IFFCO. Role of Union Government and/or any of its agencies in the affairs of IFFCO is no more than that in case of any private fertilizer manufacturer.
- b) The concept of nodal Union Ministry, in our opinion, is applicable in the context of Public Sector undertakings and thus not applicable to IFFCO.
- c) Mr.Surinder Kumar Jakhar was elected as Chairman of IFFCO by the Board of Directors of IFFCO and he was not 'made' Chairman by any person or authority.
- d) IFFCO accounts are not audited by any Govt. or constitutional agency including Comptroller and Auditor General of India."

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4. Appellant Subhash Chandra Agrawal vide another RTI Application dated 20.1.2011 had sought the following information from the **PIO of Department of**

Agriculture and Co-operation:-

"Please refer to full-page advertisements in many newspapers dated 18.1.11 (and again 20.1.11) on death of its Chairman Late Shri Surinder Kumar Jakhar. I will be obliged if your honour kindly provides me detailed and complete information together with relevant documents/correspondence/file notings etc. on under mentioned aspects:

1. Role of Union government and/or any of its agency in affairs of IFFCO including finance etc.
2. Name of nodal Union Ministry looking into IFFCO affairs.
3. Name of the Union Minister of nodal ministry looking into IFFCO affairs when late Shri Surinder Kumar Jakhar was made IFFCO Chairperson for the first time.
4. Are IFFCO accounts audited by any government and/or constitutional agency including Comptroller & Auditor General of India.
5. If yes, provide details of such agencies auditing IFFCO accounts and affairs.
6. When was IFFCO established?
7. List of IFFCO Chairpersons mentioning their tenures ever since its constitution.
8. Complete and detailed information on electing IFFCO Chairperson.
9. When late Shri Surinder Kumar Jakhar was appointed IFFCO Chairperson for first time?
10. Complete and detailed information on making late Shri Surinder Kumar Jakhar as IFFCO Chairperson together with related file-notings/correspondence/documents etc. every time his tenure as IFFCO Chairperson was renewed including on his first being appointed as IFFCO Chairperson.
11. Complete and detailed information on giving obituary-advertisements in newspapers on 18.1.11 (and on some other dates also) on death of IFFCO Chairperson Late Shri Surinder Kumar Jakhar mentioning also names of newspapers, size of advertisements (in terms of page size also), cost of advertisement in each of such newspaper etc. on the referred obituary advertisements.
12. File notings on decision taken to give such newspaper advertisements as referred in query number (11) above.
13. Name of the person/authority to give such newspaper advertisements as referred in query number (11) above.

14. Complete and detailed information on giving advertisements in newspapers on 20.1.11 (and on some other dates also) on holding prayer-meeting in memory of IFFCO Chairperson Late Shri Surinder Kumar Jakhar mentioning also names of newspapers, size of advertisements (in terms of page-size also), cost of advertisement in each of such newspaper etc. on the referred advertisements.
15. File notings on decision taken to give such newspaper advertisements as referred in query number (14) above.
16. Name of the person/authority to give such newspaper advertisements as referred in query number (14) above.
17. Complete and detailed information on other expenses done by IFFCO on death of its Chairperson late Shri Surinder Kumar Jakhar like including also holding prayer meeting on 20.1.11.
18. Details of information, if any, provided on IFFCO website as mandatory under Section 4 of 'Right to Information Act'.
19. Complete and detailed information on action taken against concerned one/s not complying with provisions of RTI Act including giving mandatory information under section 4 of RTI Act if compliance of RTI Act is not done by IFFCO.
20. Any other related information.
21. File notings on movement of this RTI petition as well."

5. The Director and Nodal CPIO of the Department of Agriculture and Cooperation had transferred the RTI application to IFFCO vide letter dated 24.1.11.

6. The response, if any, of IFFCO is not available in the Commission's file.

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7. Appellant Dr. Siddiqui, vide RTI Application dated 18.5.2010, had sought the following information from the PIO of IFFCO:-

- “1. That I request you to kindly suitably direct your Phulpur unit to reply correctly my questions addressed to Jan Suchna Adhikari office of the E.D, IFFCO Phulpur dated 4.3.10 which is enclosed along with this application and marked annexure-2
2. That the qualification of present E.D of Phulpur Unit along with details of each par motions granted to him during his posting at Phulpur.
3. Whether before joining the IFFCO, the present E.D of Phulpur Unit and the present M.D of IFFCO has worked together in other organization. If yes, the details in this regard may kindly be furnished.
4. What is the criterion of appointment in IFFCO, in different departments and of different categories? The details may kindly be furnished as approved by the board or any other authority.
5. The photocopy of resolutions of the board for each extensions of the present M.D of IFFCO and the last date of expiry of extension.
6. Whether these extensions have been granted as per rule of the aforesaid act. If yes, the details may kindly be furnished.
7. The power of M.D for sanctioning the financial assistance to different social organizations and any procedure has been laid down by the board in this regard. If yes, the copy of procedure may kindly be furnished.
8. The total amount sanctioned and disbursed to different organization by the present M.D during his tenure with details of the amount and name of the beneficiaries may kindly be furnished.

9. The total amounts of loans taken by the government and the banks for implementation of various projects. The details may kindly be furnished.”
8. Shri Ghansham Dass, Dy. General Manager (PR) of IFFCO, vide letter dated 22.6.2010, had informed the appellant that IFFCO did not fall under the purview of RTI Act. On appeal, Shri R.P.Singh, Director (HRD), vide letter dated 8.7.2010 had affirmed the order of CPIO.
9. The above cited three appeals have been filed against the above mentioned responses.
10. The matter was initially heard by the Single Bench of IC(SS) on 21.11.2011 and 9.1.2012 but in view of the complex legal issues involved, the Chief Information Commissioner was requested to constitute the Full Bench to hear and decide the matter.
11. The Full Bench comprising of :-
- Smt. Annapurna Dixit, IC;
 - Shri Shailesh Gandhi, IC; and
 - Smt. Sushma Singh
- heard the matter on 18.4.2012 but the hearing remained inconclusive.
12. As two members of the Bench demitted the office in the intervening period, the Chief Information Commissioner constituted another Full Bench comprising of the following :
- i) Shri M.L.Sharma, Information Commissioner;
 - ii) Smt. Sushma Singh, Information Commissioner; &

iii) Shri Basant Seth, Information Commissioner.

13. The above said three appeals were heard by the Full Bench on 18 June 2013.

The following were present before the Commission:

Appellant(s) : Shri S.C.Agrawal
Dr.M.Haroon Siddiqui

Counsel for Appellant(s) : Shri Prashant Bhushan, Sr. Advocate

Respondent

IFFCO : Shri D.S.S.R. Moorthy, Sr. Manager (Law)
Ms.Veenu Dewan, Assistant (Legal)
Shri R.P.Singh, Director (HR & Legal)

Counsel for IFFCO : Shri Rajeev Bansal, Advocate

Deptt: of Cooperation & Agriculture : Dr. A.K. Misra, Chief Director
Shri Surendra, Dy. Director

14. In the appeal memo dated 21.7.2010 filed before the Commission, appellant Dr. Siddiqui has forcefully contended that IFFCO is a Multi State Cooperative Society registered under the Multi State Cooperative Societies Act, 2002, and is under the pervasive control of

the Ministry of Fertilizers. Paras 07, 08, 11, 12 & 15 of the appeal memo are extracted

below :-

“07. That the Indian Farmers Fertilizer Cooperative Limited (IFFCO) is a Multi Inter National level Cooperative engaged in manufacturing and marketing of Chemical fertilizers. The Society was registered in the year 1967 under Multi State Cooperative Society Act vide registration No. CR/1 71967 and presently have a membership of 39, 824 cooperatives as shareholders. IFFCO is presently operating five factories located at Aonla and Phulpur in Uttar Pradesh; Kalol in Gujarat and Paradeep in Orissa. IFFCO produced over 7.17 million tones of fertilizers in 2008-09 and contributed about 21.4% to the total Nitrogen the total P205 produced in India. IFFCO markets its fertilizer Service Agencies and Member Cooperative Societies. The IFFCO has made strategic investment in several joint ventures, Godavari Fertilizers and Chemicals Ltd. (GFCL) & Indian Potash Ltd. (IPL) in India, Industries Chimiques du Senegal (ICS) in Senegal and Oman Indian Fertilizer Company (OMIFCO) in Oman are important Fertilizer Joint Ventures. Indo Egyptian Fertilizer Co.(IEFC) in Egypt is under implementation. As part of strategic diversification, IFFCO has entered into several key sectors. Though ITGI, IFFCO has formulated new services of benefits to farmers, “Sankat Haran Bima Youjna provides free insurance cover to farmers along with each bag of IFFCO fertilizer purchased. The IFFCO has taken equity in National Commodity and Derivative Exchange (NCDEX) and National Collateral Management Services Ltd. (NCMSL). IFFCO Chattisgarh Power Limited that is under implementation is another foray to move into core area of power. The IFFCO today is leading player in Indian Fertilizer Industry and is making substantial contribution to the efforts of India Government to increase food grain production in the country.

08. That the strength of employees as per website information of IFFCO is 6757 as on March 31.03.09. As per my information, besides this more than 15000 are the contract employees engaged through various contractors.

11. That IFFCO is a Multi State Cooperative Society, registered under the Multi State Cooperative Act, 2002. Since IFFCO is dealing in large scale business in India and abroad, its account are audited and assessed to Income Tax and R.B.I. From the

perusal of the balance sheet as well as the profit and loss accounts of IFFCO, it is explicitly clear that IFFCO has received substantial amount of funds from the Govt. by way of subsidy.

12. That attention is further drawn to the fact that the IFFCO is a fertilizer production unit in the cooperative sector and as per item 5 of schedule II to rule 3 of the Government of India (Allocation of Business) rules is under the administrative control of the Department of Fertilizers among nine public sectors.

15. That in view of the promotion of transparency and accountability in functioning of service providers like IFFCO, it is in the social interest to disclose the desired information to obtain relevant feedback from the beneficiaries and effected persons for improving the quality of service. This observation was made by CIC vide its decision **No.3381IC/(A)/2008(File NO.CIC/MA/A/2008/01181 dated 20.10.2008)** in case of Shri Mukesh Babu Vammiki –vs- IFFCO.”

15. In addition to the above, Dr. Siddiqui has also filed a rejoinder reply dated 15.12.2011 reiterating the above position. Para 07 thereof is reproduced below:

“7. That in reply of paragraphs 10 to 12, it is stated that the averments made in the said para are against the facts and has been twisted, hence not admitted. The annexure enclosed in the above paras are not **self attested** as per requirement of the rules for submission of papers in the appeal, hence is not readable. However the appellant is submitting the correct facts regarding applicability of section 2(h)(a) to (d) to IFFCO as under :-

(i) That admittedly IFFCO was established in cooperative sector on 3rd November 1967. The capital for production unit was estimated at Rs. 90 crores and source of finance was as below :

	(Rs. in Crores)
A. Equity from Co-operative Members	09.00
B. Equity from Govt. of India	18.00

C.	Loan from Govt. of India	24.00
D.	Loan from U.S. AID(dollar loan)	<u>38.00</u>
		89.00
	Say,	90.00

I am enclosing herewith the history of IFFCO – origination down loaded by official website of IFFCO which will reveal the facts that initially the IFFCO was established with substantially financed by the Govt. of India.”

(ii) That, admittedly, the IFFCO is registered under the “MULTI State Cooperative Societies Act, 2002” which has been enacted by the Parliament of India, hence the society is covered under sub-clause (b) of clause(h) of section 2 of RTI Act and, therefore, is a public Authority, as held by this commission vide their order dated 18.03.2009. The photocopy of the said order of Shri M.I. Sharma, Central Information Commissioner, (File No. CIC/PB/2007/00397/LS) is enclosed here with and marked **annexure-2**. It is further submitted that the first appellat authority, Ministry of Chemicals & Fertilizers vide their order dated 12.10.2011 has also confirmed in their reply of my question No./3 that the administrative control of these Multi State Cooperative Society is governed by MSCS Act, 2002.

(iii) That, admittedly, the IFFCO is substantially financed by the Central Government towards the subsidy/grant to compensate the cost of the fertilizer for selling the Urea fertilizer at a price less than the costs of production. Beside this IFFCO is getting handsome financial Assistance from National Horticulture Mission, Government of India, Ministry of Agriculture, for annual Action Plan, hence is duly covered under section 2(h)(d)(i) & (ii) of the RTI Act and, thus, is a public Authority. The photocopy of the grant/subsidy received of the last three year i.e.(in thousand crores) as communicated to the appellat in their RTI reply by the Ministry of Chemicals and Fertilizers dated 09.02.2011 is enclosed here with and marked **Annexure-4**. Please also refer **A-6, A-7** of second appeal.

(iv) That the IFFCO is also an extension arm of the Central Government and is controlled under price and partial movement control of as per Demarcation of Responsibilities in Govt. of India published by Lok Sabha Secretariat, 2009. The photocopy of the publication is enclosed and marked **annexure-5**. Please also refer **annexure 8 & 9** of the second appeal. Some of the salient points of allocation of Business Rules, 1961, and Demarcation of Responsibilities in Govt. of India are reproduced below :

- **Administration of concession schemes and management of subsidy for controlled as well as decontrolled fertilizers including determination of retention price for urea, quantum of concession of de controlled fertilizers, costing of such fertilizers and pricing of phosphatic and potassic fertilizers**
- **Administration of Fertilizers(Movement Control) Order, 1960**
- **Administrative responsibility for fertilizer production units in the cooperative sector, namely, Indian Farmers Fertilizer Cooperative Limited(IFFCO) and Krishak Bharti Cooperative Limited(KRIBHCO)**

(At this juncture a brief reference may be made to the legal and ordinary meanings of the word “**control**”. The word “control” has been defined in Black’s Law Dictionary (6th Edn.) to mean “power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. The ability to exercise a restraining or directing influence over something.” The Shorter Oxford English Dictionary(5th Edn.) defines it as “the act of power of directing or regulating command, regulating influence” or “a means of restraining or regulating; a check; a measure adopted to regulate prices, consumption of goods etc.” In both senses, therefore, the key word is “influence” and not necessarily “domination”).

(v) That the Ministry of Chemicals & Fertilisers vide their letters dated 06.09.96 dated 22.11.96 has also confirmed that IFFCO is under control of the Govt. of India.

(vi) That the IFFCO himself has admitted vide their letters dated 13.10.96 that the persons in the service of IFFCO are public servants as per decision of the Government of India.

16. The appellant has filed a detailed representation dated 22.7.13 before the Commission which is taken on record. It is his contention that IFFCO is controlled by the Government in as much as by virtue of the provisions enshrined in the MSCS Act, it is always open to the Central Govt. to have majority shareholding in a MSCS which then becomes the specified

MSCS u/s 122 and as such the Central Govt. can issue directions to such MSCS. Besides, by virtue of section 123, the Central Govt. can supersede the powers of such MSCS. Furthermore, the Central Govt. has powers to make rules u/s 124 of MSCS Act which affect and control the functioning of a MSCS.

17. He has also referred to the powers enjoyed by the Central Registrar, an appointee of the Central Govt under sections 78, 79, 80, 81, 82, 83, 86, 89, 93, 115 and 117 of MSCS Act which, according to him, clearly demonstrate Central Govt.'s control over MSCS.

18. In addition to the above, he also submits that 7 out of 21 non-official members of the Board of Directors of IFFCO are ex-officio public authorities representing various State owned/controlled societies who, in turn, exercise control over the functioning of IFFCO by virtue of being members of the Board of Directors or through Representative General Body.

19. The appellant has also argued that IFFCO is substantially financed by the State. He has relied on following para of the Delhi High Court order passed in Krishak Bharti Cooperative Limited:-

“For the purposes of Section 2(h)(d)(i) for determining whether there is control over the entity or there is substantial financing of such entity by the appropriate government the approach should not be to ask if there is predominant or majority control or financing by the appropriate government. The financing may not be a majority one and yet be substantial. The provisions of the statute under which the entity is registered has also to be examined for this purpose. One other aspect that needs to be mentioned is that the control or substantial financing need not necessarily be in presenti. An entity had in the past been controlled or substantially financed by the appropriate government, and has ceased to be so at present,

need not cease to be a public authority. As long as the potential for being so controlled or substantially financed in future exists. Also, once an entity has been established or substantially financed by the appropriate government at any point in time it acquires the tag of a public authority for the purposes of the RTI Act.”

20. The appellant has also argued that IFFCO was cent per cent financed by the Central Govt. till recently. The Central Govt. remitted its equity in 2004, but the land, buildings and other infrastructure initially provided to IFFCO by the Central Govt. at negligible or subsidized rates still continues to be in possession of IFFCO. This signifies substantial financing.

21. The appellant has also contended that IFFCO is the receipt of Rs.15,840/- crore subsidy on urea and Rs.16,805 crore subsidy on de-controlled fertilizers during 2004-04 to 2008-09. Relying on Delhi High Court judgement dated 7.1.10 in Indian Olympic Association Vs. Veeresh Malik case, the appellant has contended that what amounts to substantial financing cannot be straitjacketed into rigid formulae, of universal application. Each case has to be examined on its own merits. Substantial financing does not mean majority financing. According to him, the huge subsidy amount means substantial financing of IFFCO.

22. Respondent IFFCO has also filed detailed representation dated 18.4.2012 before the Commission contending therein that IFFCO is not a public authority under section 2(h) of the RTI Act. Paras 05, 06, 07 thereof are extracted below :-

“5. That in support of the contentions of the Respondent, the following facts are most relevant :-

(i) No part of the share capital of IFFCO is held by the Government or any authority controlled by the Government.

(ii) No financial assistance is given to IFFCO by the Government of India or by any State Govt. or any organisation controlled by Govt. All finances of IFFCO are generated by it through its commercial activities.

(iii) IFFCO does not enjoy any monopoly status in its operations and activities. It is entirely operating in a commercial field and facing open competition as any other organization of similar nature will encounter.

(iv) IFFCO does not enjoy any state protection, of any nature whatsoever and is competing with other organizations, companies and bodies in the field of its activities.

(v) The Board of Directors of IFFCO are elected/nominated by the shareholders. The Government neither appoints the Directors of IFFCO nor exercises any control, much less any deep or pervasive control, either in the management or over the activities of IFFCO.

(vi) In the normal functioning of IFFCO, there is no participation or interference of the "State" or its authorities and all decisions are taken by the Board of Directors of IFFCO regarding the formulation of policy and conduct of its affairs.

(vii) IFFCO is only subject to the general regulatory laws framed by competent legislatures, which laws are only regulatory measures for the purposes of maintaining a healthy economic atmosphere in the country. The said laws apply to all bodies and organizations including private sector which are operating in the field in which IFFCO is having its activities and are not specific to it.

(viii) The activities being carried out by IFFCO are being carried out by many private organizations since inception and the same activity is being carried out by IFFCO in the co-operative sector.

(ix) The Government does not and cannot issue any directions to IFFCO to determine its policy as determination of policy is entirely the prerogative of the IFFCO.

(x) IFFCO has not been created by any statute. On the other hand, it is a cooperative society under the Multi-State Cooperative Societies Act, 2002, like various other cooperative societies similarly registered.

(xi) IFFCO is only amenable to the regulatory laws applicable to other cooperative societies and/or private commercial bodies and such regulation is not specifically exercised under any special statute which is applicable only to IFFCO.

(xii) The functions of IFFCO are “not public” functions; nor are they closely related to Governmental functions.

(xiii) The employees of IFFCO are not public servants under the ambit of section 2(c) of the Prevention of Corruption Act and are not amenable to Central Vigilance Commission.

(xiv) IFFCO is not subject to any audit by the Comptroller and Auditor General of India and its accounts are not subject to be placed before Parliament. On a conspectus of all the aforesaid facts, it is evident that IFFCO is neither financially, nor functionally nor administratively dominated by or is under the control of the Government. The State control, if any, is purely regulatory control as applicable to any other similar organization in the private sector.

6. It is submitted that IFFCO had repatriated **entire Government equity as far back as in 2004 itself and much before the promulgation of the Right to information Act, 2005**. The Respondent has already placed enough evidence on record in this regard. It is also submitted that Mr. Srikant Jena, the Hon'ble Minister of State in the Ministry of Chemicals & Fertilisers, Govt. of India, has in reply to unstarred question No. 4294 stated in the Lok Sabha on 19.08.2011 stated that IFFCO is not under control of the Ministry of Chemicals & Fertilisers, Govt. of India. A copy of unstarred question and reply is already on record.

7. From what has been discussed above, it is evident that the Government of India does not have financial interest of any deep or pervasive control in the affairs of Respondent/IFFCO. As such, the Respondent/IFFCO is not a “Public Authority”

under Section 2(h) of the Right to Information Act, 2005. Hence, the present appeal under Section 19(3) of the Right to Information Act, 2005 is misconceived and liable to be dismissed in limine.

In a nutshell, IFFCO is a multi state cooperative society, governed by Multi State Cooperative Societies Act, 2002. **There is neither Govt. equity in IFFCO, nor is it financed in any manner whatsoever by the Government. There is no Govt. nominee on the Board of Directors of IFFCO. There is no control of Govt. over IFFCO.** A Multi-State Cooperative Society, in which, the Government neither has a stake nor any control much less a deep and pervasive control, is neither a “Public Authority” under Section 2(h) of the Right to Information Act, 2005 nor a “State” or “other Authority” under Article 226 of the Constitution of India.”

23. In addition to the above, the IFFCO has relied on the following judgments of the High Courts and decisions of this Commission to buttress its case :-

(i) In **Dr. Punjab Rao Deshmukh Urban Cooperative Bank Ltd;** Vidharva Region –Vs- State Information Commission (AIR 2009 Bom 75), the Bombay High Court had held that as the share capital of the petitioner Bank was not provided by the Government; nor was it getting any financial assistance by the Government, the Bank could not be said to be under the direct control of the Government.

(ii) In **Thalapallam Services Cooperative Bank Ltd. –Vs- Union of India (AIR 2010 KER 6)**, the Kerala High Court had held that a Society can only be treated as a non-Governmental Organisation for the purpose of definition of public authority and cannot be held to be public authority for the purpose of RTI Act. The relevant para of the judgment is extracted below :-

“Going by the provisions of the Act, as held by us earlier, the Society can only be treated as non-governmental organisation for the purpose of definition of public authority. In other words, by virtue of the provisions of Kerala Co-operative Societies Act and the control of Registrar, the Society can not be held as public authority for the purposes of the R.T.I. Act. The control of the Registrar and the control of the State

Government are distinct and different. The words 'State Government' mentioned in Section 2(a) of the RTI Act defining the appropriate Government are not defined under the Act. So, this being a Central Act, the General Clauses Act, 1897, would apply. Going by Section 3(60) of the General clauses Act, the State Government means the Governor of the State. There is no control of the Governor in the Society. Therefore, if only the Society is substantially financed directly or indirectly by the funds provided by the State Government, it can be treated as public authority."

(iii) In **Preeti Goel –Vs- Chandigarh State Cooperative Bank Ltd.**

(File No. CIC/LS/A/2010/000657 and File No.

CIC/LS/A/2010/000658) decided on 16.9.2010, the Central Information Commission has held that a Cooperative Society can be said to be a public authority if it is substantially financed directly or indirectly by the funds provided by the appropriate Government. As the Society in- question has not received any funds either from the Central Government or the Government of UT of Chandigarh, it cannot be said to be public authority under section 2(h) of the RTI Act.

(iv) In **Vidar District Central Cooperative Bank Ltd. –Vs-**

Karnataka Information Commission, it was held that mere supervisory control exercised by the Registrar of Cooperative Societies cannot make the Bank a public authority. The Cooperative Bank is not a public authority because it is not substantially financed by the Government.

24. As to the question of subsidy being received by IFFCO, the contention of respondent

IFFCO is as follows :-

"It is submitted that in India, subsidy is received by all the countrymen in one form or the other. To cite a few examples: cooking gas, petrol, diesel, electricity, food, fertilizer, solar energy equipments, water and so on. If the receipt of subsidy becomes a criteria for deciding Public Authorities then all the citizens of their country could be termed as Public Authorities. Obviously, this could not have been the intention of the legislature while enacting the RTI Act. All Fertilizers manufacturing bodies whether in

the private sector/public sector or the co-operative sector are subject to a controlled price for sale of fertilizers to farmers. Government of India fixes a maximum retail price for fertilizers (which is less than the cost of production/import) by subsidizing the same at which it is sold to the farmers. This subsidy is by way of concession given by the Government of India to the end consumers i.e. the farmers. All fertilizer manufacturers/importers whether public sector, private sector or co-operative organizations are ***reimbursed normative difference between the Costs of Production incurred by them and the final price at which the fertilizers were sold to farmers. It is pertinent to note that all the costs of production were first incurred by the manufacturers/importers and later get the reimbursement of the same.*** In other words, the beneficiary is the consumer or the end user and not IFFCO. Hence, this receipt of subsidy from the Government of India is not a financial assistance, aid or any fund.

An argument was advanced that since the subsidy is paid out of tax payer's money, the citizens are entitled to know where this money goes. This is totally misconceived and misplaced argument. This argument can be applied only if the information is being sought from the Government who disburses subsidy and not from IFFCO. It is for the government to inform the citizens as to the basis of grant of subsidy. The receipt of subsidy can not be asked to furnish information under RTI Act.”

25. In nutshell, it has been argued by respondent IFFCO that it is a Multi State Cooperative Society in which the Government of India neither has a stake nor any control, much less a deep and pervasive control and, therefore, it is not a public authority under section 2(h) of the RTI Act.

26. In addition to the above, IFFCO has filed a detailed representation dated 17.7.13 before the Commission wherein it has more or less adduced the same grounds as those in the previous representation adverted to hereinabove. Even so, the important ones need to be mentioned herebelow.

27. First and foremost, there are no Govt. nominees on the Board of IFFCO. The Govt. neither appoints the Directors of IFFCO nor exercises any control in the appointment of Directors. It is not a fact that 10 out of 21 Directors of IFFCO are appointed by the State Govts., as argued by the appellant. The total strength of Board of Directors is 30, inclusive of 7 Functional Directors and 2 Co-opted Directors. According to IFFCO, 10 Directors are nominated by Apex Marketing Federations **“not as the representative of the State Govts. but in their capacity as members of IFFCO”**.

28. It has also been argued that there are many Apex Cooperative Federations on which State Govts. have no control at all. Gujarat Cooperative Federation and Maharashtra Cooperative Federation have been cited as examples in this regard.

29. It is also the contention of IFFCO that sections 7, 11, 40, 48, 51, 77, 78, 108, 122, 123 and 124 of MSCS Act are regulatory in nature and not vest the Central Govt. with the administrative control over IFFCO.

30. As to the question of subsidy being provided by the Central Govt., it is the contention of IFFCO that subsidy from the Govt. is a **compensation and not a financial assistance or grant**.

31. As to the question of land being allotted to IFFCO for initially setting up of its plants etc, IFFCO has contended that land in question was acquired in accordance with the provisions of Land Acquisition Act and due compensation was paid by IFFCO.

32. It has also been contended by IFFCO that the proposition put forth by the appellant that once an organization fulfills the criteria of being a public authority at any point of time, it would continue to be public authority, regardless of drastic change in the pattern of its financing, is fallacious and needs to be rejected at the very threshold. Many PSUs have been divested and sold off to the private sector by the Central Govt. By no stretch of imagination can they be said to be public authorities, as of today. Bharat Aluminium Co. Ltd., Hindustan Zinc Limited and Maruti Udyog Limited have been cited as examples in this regard.

33. As directed by the Commission, Dr.A.K.Misra, Chief Director (Coop) has filed an affidavit dated 11th July 2013, in which he has stated that IFFCO is a Multi State Cooperative Society governed by the provisions of MSCS Act, 2002 and is under the administrative control of Department of Fertilisers and that the said Department has informed the Department of Cooperation vide letter dated 27.10.2011 that IFFCO has refunded the entire Govt. equity and is no more under the administrative control of Department of Fertilisers. Paras 2, 3, 4 and 6 of the affidavit are reproduced below:

“2. That the Department of Agriculture & Cooperation, Ministry of Agriculture is the nodal Ministry for administration of Multi State cooperative Societies Act, 2002 and the central Registrar of Cooperative Societies is an officer appointed by the Central

Government to exercise the powers in relation to such societies and such matters as specified in the Notification of the Government.

3. That Multi State Cooperative Societies Act, 2002 envisages democratic functioning, self help and functional autonomy of Multi State cooperative Societies as per the provisions of the said Act.

4. That under the scheme of the said Act, a Multi State Cooperative Society in which central Government holds 51% and more share, it exercises control under Sections 48, 51, 77, 122 and 123 of the Act. Any Multi State cooperative Society in which not less than 51% of the paid up share capital or of total share is held by the Government lies in the category of specified Multi State Cooperative Society.

6. That IFFCO is Multi State Cooperative Society governed by the provisions of Multi State cooperative Societies Act, 2002. As per the Allocation of Business Rules, Government of India, the Indian Farmers Fertilizers Cooperative Limited (IFFCO) which deals primarily with fertilizers, lies under the administrative control of the Department of Fertilizers, Ministry of Chemical fertilizers, Government of India. The Department of Fertilizers vide O.M. No.28011/155/2011-RTI dated 27th October, 2011 has informed this Department that IFFCO has refunded the entire government equity and is no more under the administrative control of this Department. A copy of the O.M referred to above is annexed and marked as ANNEXURE-1.

34. During the hearing, Dr. Siddiqui has forcefully argued that IFFCO is a Multi State Cooperative Society. It was set up in 1967 for production of fertilizers. The Central Government had majority share in IFFCO till 2004. Most importantly, IFFCO has been receiving substantial amounts of funds from the Central Government by way of subsidy and

continues to do so. Therefore, it can be said to be directly financed by the Central Government and thus, qualifies to be public authority under section 2(h)(d) of the RTI Act.

35. Adv. Prashant Bhushan appearing for appellant Subhash Chander Agrawal has addressed the Commission at some length. His contention is that IFFCO is a public authority under section 2(h). His first and foremost submission is that IFFCO is heavily subsidised by the Central Government. The amount of subsidy is as follows :-

Year	Amount in crores
2003-04	1616
2004-05	2115
2005-06	1822
2006-07	2631
2007-08	3377
2008-09	4276

The quantum of total subsidy during this period is to the tune of Rs. 15,840 crores. This is Central Government funding. The IFFCO, therefore, can be said to be directly financed by the Central Government.

36. His further submission is that IFFCO is a Multi State Cooperative Society (MSCS) registered under the Multi State Cooperative Societies Act, 2002. There are various provisions in the said Act which empower the Central Registrar, an appointee of the Central Government, to exercise control over the MSCS registered under the said Act. Section 78 empowers the Central Registrar to hold an enquiry into the constitution, working and financial condition of MSCS under certain conditions. Besides, section 108 empowers the Central Registrar or any officer of the Government authorized by such Government to inspect the

books of accounts of every MSCS. Every Director and office bearer of such Society is obliged to produce relevant records before the Central Registrar or an officer designated by the Central Government for inspection. This demonstrates control of the Central Registrar and the Central Government over MSCS. IFFCO being a Multi State Cooperative Society registered under the MSCS Act, by inference, is under the control of Central Registrar/Central Government.

37. It is his further contention that under section 122 of the MSCS Act, the Central Government has the power to give directions to specific Multi State Cooperative Societies in public interest for the purposes of securing proper implementation of the Cooperative production and other developmental programmes approved or undertaken by the Central Government for securing proper management of business of such Societies. Section 123 empowers the Central Government to supersede the Board of any specified Multi State Cooperative Society which is persistently making defaults or is negligent in the performance of the duties imposed on it by the MSCS Act or the rules framed thereunder. It is, thus, his contention that the Central Registrar and the Central Government have enough authority over the Multi State Cooperative Societies so as to control their functioning. In short, the crux of his submissions is that the huge subsidy being provided to IFFCO demonstrates financing by the Central Government. Besides, the statutory provisions referred to above demonstrate visible control of the Central Registrar and the Central government on the affairs of IFFCO.

38. It has also been argued by Shri Prashant Bhushan that the constitution of Board of Directors of IFFCO is indicative of the Central Govt. control over it. As per bye-Laws framed under the provisions of MSCS Act, 2002, the Board of Directors of IFFCO shall not exceed 21 Directors, excluding functional Directors and Co-opted Directors. The composition of the Board of Directors is as follows:

- i) One nominee each of the Apex Marketing Cooperative Federation who has contributed Rs.2.00 crore individually as equity from 1.8.2000 through admission/additional contribution.
- ii) Eight Directors to be elected by the General Body.
- iii) Not more than three persons to be nominated by the Central Govt. based on equity share capital held by the central Govt.
- iv) The Board may nominate two experts in the field of management, Finance, Cooperation & Banking etc.
- v) The Managing Director, Finance Director, Marketing Director, Director (Technical), Director (Coop Dev.), Director(HRD) and Director (Joint Ventures) of IFFCO shall be ex-officio Directors.

It is his contention that Apex Cooperative Marketing Federations are often superseded and generally headed by senior State Govt. officials. Their large presence in the Board enables them to determine policies and exercise control over the organisation.

39. On the other hand, Adv. Rajeev Bansal appearing for IFFCO would submit that the Central Government had majority share capital in IFFCO until 2004 when the Central Government redeemed its share capital under section 35 of MSCS Act. Now, the Central Government has no stakes in IFFCO. IFFCO is purely a Multi State Cooperative Society

registered under MSCS, 2002, and is not recipient of any assistance from the Central Government or, for that matter, any State Government, directly or indirectly. He, therefore, repudiates the contentions made on behalf of the appellants that IFFCO is directly or indirectly financed by the Central Government.

40. As regards the provisions of section 78 of the said Act, he would argue that section 78 empowers the Central Registrar to cause an enquiry into the constitution, working and financial conditions of a Multi State Cooperative Society under certain conditions. It is simply a regulatory power. It does not confer omnibus powers on the Central Registrar. Besides, these powers can be exercised only when the conditions specified in sub section (1) are satisfied. Similarly, the Central Government's power to inspect or have inspected a Multi State Cooperative Society under section 79 is also regulatory in nature. This power cannot be exercised arbitrarily. It can be exercised only when certain conditions are satisfied. Similarly, the power of Central Registrar or an officer designated by the Central Government to inspect Books of Accounts of Multi State Cooperative Society fall in the same genre. In short, it is his contention that provisions of sections 78, 79 & 108 do not demonstrate control, let alone pervasive control of the Central Government.

41. Coming to sections 122 & 123 of the Act, Adv. Bansal would argue that these powers are exercisable by the Central Government only in respect of those societies in which not less than 51% of the paid up share capital of total shares is held by the Central Government as per explanation appended to section 123.

As the Central Govt. has no equity in IFFCO at present, these sections cannot be invoked.

Adv. Prashant Bhushan fairly concedes this point.

42. Coming to the subsidy element being provided to IFFCO, Adv. Bansal would submit that the cost of production of fertilizers by IFFCO is higher than the sale rate fixed by the Central Govt. Further, the cost of imported fertilizers is also higher than the sale rate. Subsidy is injected into the system with a view to enabling IFFCO to meet its cost of production plus 10% profit. This argument holds good for subsidizing the imported fertilizers. It is his contention that it is a policy decision of the Government for enabling the farmers to use more fertilizers for increasing agricultural output. In other words, it is his contention that subsidy is injected into the system for keeping the cost of fertilizers at a reasonable level in the open market so as to be within a reach of the ordinary farmers. In other words, subsidy is not in the nature of a grant to IFFCO; it is only a mechanism to bridge the gap between the cost of production and the rate of sale fixed by the Central Govt. It cannot be construed as financing of IFFCO by the Central Govt.

43. Shri A.K. Mishra, Chief Director(Cooperation) would submit that IFFCO is not a Public Authority in the eyes of his Ministry.

DECISION NOTICE AND REASONS

44. Section 2(h) of the RTI Act define public authority as follows :-

“(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 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;”**

45. It is quite obvious that out of the many ways a Public Authority can be established or constituted, those provided in (a), (b) & (c) above would not apply to IFFCO as it has not been established or constituted by or under the constitution, nor by any other law made by the Parliament or State Legislature. We have, therefore, to examine whether IFFCO can be said to be a body controlled or substantially financed directly or indirectly by the Central Government. We have, therefore, decided to frame the following two issues:

- (a) Whether IFFCO is controlled by the Central Government; and/or
- (b) Whether IFFCO is financed, directly or indirectly, by the Central Government.

46. We will now take up these issues one by one.

Issue No.1 : Whether IFFCO is controlled by the Central Government.

As noted above, Shri Prashant Bhushan has contended that u/s 78, the Central Registrar, an appointee of the Central Government, can hold an enquiry into the constitution, working and financial condition of a MSCS. Section 79 empowers the Central Govt. to inspect or direct any person authorized by it to make an inspection into the constitution, working and financial condition of a MSCS. Besides, u/s 108, the Central Registrar or an officer authorized by the Central Govt. may inspect books of accounts of a MSCS. It is his contention that the powers conferred on the Central Registrar/Central Govt. under the above section add up to virtual control of IFFCO by the Central Government.

We are, however, not inclined to accept this argument. Suffice to say that the powers conferred on the Central Registrar or the Central Government are merely regulatory powers. They do not establish control of the Central Govt. or the Central Registrar on the functioning of IFFCO. Moreover, the Central Registrar/Central Govt. cannot exercise powers in an arbitrary manner at their sweet will. These powers can be exercised only on the fulfillment of certain pre-conditions, as spelled out in these sections. Viewed in this light, we do not find any merit in this argument and reject the same.

47. As regards the powers exercisable by the Central Govt. u/s 122 and 123 of MSCS Act, suffice to say that these powers are available to the Central Govt. only when it has 51% paid up share capital in the Society. As noted herein before, the Central Govt. has remitted its stakes in IFFCO in 2004 and thus, these provisions have become irrelevant.

48. Let us now consider the issue of the alleged control of the Central Government on IFFCO by virtue of the composition of its Board of Directors. Suffice to say that Central Govt. can nominate three Directors subject to its stakes in the equity share capital. The Central Govt. had majority stakes in the equity share capital before 2004 but it remitted its stakes in that year. Consequently, there is no Central Govt. appointee in the Board of Directors. Coming to the question of nomination of representatives of Apex Cooperative Marketing Federations in the Board of Directors of IFFCO, suffice to say that it would be erroneous to presume that the nominees of Federations would always be serving officers of the Central Govt. Even private individuals can be nominated by the Federations. This argument, therefore, does not help the appellant's case.

Issue No.2 : Whether IFFCO is financed directly or indirectly by the Central Government.

49. It has been forcefully argued before us that the Central Govt. has been hugely subsidizing IFFCO ever since its inception in 1967 and continues to do so. It has been contended that this huge subsidy amount is nothing but direct financing of IFFCO by the Central Govt.

50. There is no doubt that IFFCO is being heavily subsidized by the Central Govt. The real question is whether the subsidy can be construed as direct financing of IFFCO as contemplated u/s 2(h)(d)(i) of the RTI Act.

51. Law Lexicon edited by Justice Y.V.Chandrachud (Second Edition, Reprint 2007)

defines the word subsidy as follows:

‘The money contributed by the State Govt., institution or person in behalf of any special object.’

52. The Concise Oxford English Dictionary defines the word subsidy as

- A sum of money granted from public funds, to help an industry or business keep the price of a commodity or service low
- The sum of money granted to support an undertaking held to be in the public interest.
- Grant or contribution of money

53. It has been contended by IFFCO that the subsidy given to it by the Central Govt. is by way of concession to the farmers. This subsidy is not unique to IFFCO. It is being given to all fertilizer manufacturers, regardless of whether they are in the public, private or cooperative sector. The idea behind provisioning of subsidy is reimbursement of normative difference between the cost of production incurred by the manufacturer and the price at which the fertilizer is being sold to the farmers. If the Govt. were not to subsidize production of fertilizers, the price of fertilizers would go up in the market, thereby placing it beyond the reach of farmers. This will have adverse effect on the agricultural production. For bringing the price of fertilizers within the reach of farmers, the Central Govt. has been consciously subsidizing production of fertilizers in the public sector as also in the cooperative sector.

54. In view of the above, we are of the opinion that subsidy is being given to IFFCO and other fertilizer manufacturers for meeting the difference between the cost of production and the sale price fixed by the Central Govt. The subsidy cannot be equated with outright grants. We are, therefore, inclined to reject the contention of appellants herein that grant of subsidy amounts to direct financing of IFFCO.

55. It has also been vehemently argued before us that the ratio of Delhi High Court judgement in Krishak Bharathi Cooperative Limited (KRIBHCO) vs. Ramesh Chandra Bawa applies in the present case. We are inclined to think otherwise. On a careful perusal of the aforesaid judgement, we find that KRIBHCO was held to be public authority primarily for the reason that the share capital of the Central Govt. in KRIBHCO was 48.38% of the total paid up share capital of KRIBHCO at the relevant time. However, this is not the case in the matter in hand. The Central Govt. does not have any stakes, let alone controlling stakes in IFFCO. Hence, the ratio of KRIBHCO does not apply in the present case.

56. In this context, appellant Shri S.C.Agrawal has extracted a para from the aforesaid judgement to buttress the argument that as IFFCO was substantially financed by the Central Govt. before 2004, it does not cease to be so as there is potential of it being substantially financed in future. We are not inclined to accept this argument as there are too many 'ifs' in it. To put it differently, this argument is conjectural in nature in as much as IFFCO may or may not be substantially financed by the Central Govt. in future. On the other hand, we are inclined to accept the argument of IFFCO that once an entity has ceased to be a public

authority it cannot be deemed to be a public authority unless there is a substantive change in the factual matrix. It may be pertinent to mention that a number of PSUs were divested by the Central Govt. not too long ago but they cannot be deemed to be public authority unless there is evidence of control or substantial financing by the appropriate Govt. In the factual matrix of the case, it is evident that the Central Govt. has no share capital in IFFCO as of now. Nor has it nominated any Director in the IFFCO's Board of Directors.

57. From the above discussion, it clearly emerges that IFFCO is a Multi State Cooperative Society registered under MSCS Act. The Central Govt. had high financial stakes in the paid up share capital till 2004 but remitted its capital in that year and does not have any stakes at present. It is, no doubt, true that IFFCO is getting huge amount of subsidy from the Central Govt. but, in our opinion, it is not unique to IFFCO; subsidy is also being given to private sector players. The provisioning of subsidy is to keep the sale price of fertilizers low in the open market so as to keep it within the reach of farmers. Subsidy is not a grant. It is only a mechanism to pay the difference between the cost of production and the sale price of fertilizers. We, therefore, hold that subsidy cannot be construed as substantial financing of IFFCO. We also come to the conclusion that statutory provisions mentioned herein above, conferring certain powers on the central Registrar/Central Govt. are regulatory in nature and do not establish control of the Central Govt. over IFFCO. In view of the above discussion, we have no hesitation in coming to the conclusion that IFFCO is not a public authority u/s 2(h) of the RTI Act. The appeals are, therefore, dismissed.

Order reserved & pronounced on 5th day of August, 2013.

Sd/-

(Sushma Singh)
Information Commissioner

Sd/-

(Basant Seth)
Information Commissioner

Sd/-

(M.L.Sharma)
Information Commissioner

Authenticated true copy . Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(K.L.Das)
Deputy Registrar

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