



Central Information Commission

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Website: www.cic.gov.in

Decision No. 6010/IC(A)/2010
F. No.CIC/WB/C/2009/000424

Dated, the 15th October, 2010

The matter was initially heard on 26.3.2010 by a Full Bench of the Commission headed by Prof M.M. Ansari, IC. The proceedings of the day are extracted below :-

“Appellant : Shri Shanmuga Patro
Respondent : Rajiv Gandhi Foundation
Date of Hearing : 26.3.2010
Date of Decision : 26.3.2010

FACTS :

Vide RTI application dated 3.2.2009, the appellant had requested for information on the following 03 paras regarding Rajiv Gandhi Foundation:-

- “(i) Copy of the Constitution of the Foundation;**
- (ii) Copy of the bye-laws and rules and regulation of the Foundation as updated till date; &**
- (iii) Copy of the documents showing organizational structure of the Foundation.”**

2. It appears that he was not provided any information and, hence, he has filed the present complaint before the Commission.

3. The matter is heard on 26.3.2010 by a Division Bench consisting of the following :-

- (i) Prof. M.M. Ansari, Information Commissioner;**
- (ii) Shri Satyananda Misra, Information Commissioner; &**
- (iii) Shri M.L. Sharma, Information Commissioner.**

4. The appellant is present. The Rajiv Gandhi (Foundation hereinafter) is represented by Ms Preeti Sahai, Head Strategic Initiatives, Shri Ajay Sharma, Manager (Admn); Advocate Joy Basu & Advocate Animesh Sinha. The matter is briefly heard. It is the submission of Advocate Basu that

Foundation is not a 'Public Authority' and, therefore, is not liable to disclose any information to the appellant. The legal ground advanced by him in this regard is that if the preamble of the RTI Act, 2005, is read with section 2 (h) and further co-related with Article 12 of the Constitution, it would emerge that the Foundation is not a 'Public Authority'. He has also drawn the Commission's attention to sub clause (d) of section 2 (h) of the RTI Act and submits that the Foundation has not been set up by a notification or order made by any Government and, therefore, is not a Public Authority. He, however, reserves the right to make detailed submissions before the Commission in the next hearing.

5. On a query raised by the Commission, Advocate Basu, however, would concede that the Foundation has received certain funds from the Government from time to time but the proportion of the funds is insignificant vis-à-vis its overall budget and from this angle it does not fall in the mischief of the expression 'substantially financed' as occurring in section 2 (h) of the RTI Act. According to him, the complaint is misconceived and deserves to be dismissed.

6. On the other hand, the appellant would submit that the Foundation has been receiving funds from the Central Government and, therefore, it may be deemed to be a 'Public Authority' in terms of the section 2 (h) of the RTI Act. It is also his submission that, concededly, the foundation is engaged in a large scale public activity and by virtue of such activity, it assumes the character of a Public Authority. The appellant has also presented the following materials before the Commission which are taken on record :-

- (i) 'RGF in pursuit of Rajiv Gandhi's Vision and Ideals'
(source : <http://planningcommission.nic.in>)
- (ii) 'Rajiv Gandhi Jal Mission (RGJM)'
(source : <http://planningcommission.nic.in>)
- (iii) 'Rajiv Gandhi Foundation - Sonia Vs Government'
(source : Out Look India)

7. Advocate Basu is hereby directed to furnish the annual audited Accounts of the Foundation right from its inception till 2008-09 along with a tabular statement indicating year-wise overall income of the Foundation and the component thereof received from the Central Government/State Government or the instrumentalities thereof. The above information may be submitted before the Commission in 06 weeks time.

8. The matter is adjourned to 14.5.2010 at 1030 hrs."

2. The matter is further heard on 29.9.2010. The following are present:-
Appellant Shri Shanmuga Patro, Advocate

Respondent (1) Shri Joy Basu, Advocate

- (2) Ms Preeti Sahai, C/o Rajeev Gandhi Foundation
- (3) Shri Ajay Sharma, C/o Rajeev Gandhi Foundation

3. As directed by the Commission, Advocate Joy Basu has furnished the Annual Audited Account of the Foundation right from its inception along with a tabular statement indicating year-wise overall income of the Foundation and the component thereof received from the Central Government/State Government or the instrumentalities thereof. He submits the requisite information which is taken on record.

4. Shri Patro also submits a very detailed representation dated 31.8.2010 which is taken on record.

5. Opening the arguments on behalf of the Foundation, Adv Joy Basu submits that the foundation is not a 'public authority' in terms of section 2 (h) of the RTI Act. His first submission is that the Foundation has not been constituted by or under the constitution; or by any other law made by Parliament or State Legislature. It is the culmination of the endeavor of a few friends and admirers of Shri Rajiv Gandhi to organize themselves and taking appropriate steps for the establishment of the Foundation to promote his ideals. His second submission is that the Foundation is not owned or controlled by the Central Government or State Government. His further submission is that the Foundation is an NGO which is not substantially financed, directly or indirectly, by the Central Government or any State Government, inasmuch as the average percentage of Government funds to the total overall projects expenditure of the Foundation is less than 4%. The rest of the funds are generated from private entities. Consequently, the financial assistance from the Government is so minimal that the Foundation does not assume the character of public authority in terms of section 2(h) of the RTI Act.

6. His further submissions are as follows :-

- RGF is a completely independent and a stand-alone body and has been constituted in the form of a Trust under the Indian Trusts Act, 1882.
- RGF is a non-profit organization, which is not associated with any aspects of commercial activity for commercial gain. It was an entity to commemorate, through voluntary action, late Shri Rajiv Gandhi's vision for modern India.
- A joint reading of the Constitution of India and the RTI Act (its section 2(h)), leads to the conclusion that RGF is neither a State nor an instrumentality of the State, or other public authority or other authority.
- The Preamble to the RTI Act specifically refers to Governments and their instrumentalities, an expression which does not include voluntary organizations. The context in which the expression has been used in the RTI Act, can be understood only with reference to Article-12 of the Constitution of India and the interpretations by Supreme Court in a series of cases.
- A body can become the instrumentality of the State under Article-12 "if it is financially, functionally and administratively dominated by or under the all pervasive control of the Government. On the other hand, where the control of the Government is merely regulatory, whether under any statute or otherwise,

it would not serve to make the body 'State'." (Sreekant Vs. Vasant Rao. Supreme Court cases 682).

- RGF is a non-profit organization; it is not owned by Government or any of its instrumentalities. Government cannot either appoint or remove trustees of RGF, not to talk of deep and pervasive control. No State instrumentality has any control over the Foundation.
- None of the qualifying attributes spelt-out in Section 2(h) applies to the RGF. If it were so, all private firms and companies, which receive subsidies, for example, fertilizer subsidies, would be public authorities. The space for voluntary or private action will just cease to exist.
- Similarly, companies in the private sector with substantial shareholding by public entities or State instrumentalities would have been made public authorities through interpretation by Courts. This has never happened. Any other interpretation of the law would make it entirely unworkable.

7. Adv Basu has relied on certain decisions of this Commission to buttress his point. He relies on CIC decision in Gp Capt M Kapoor Vs DGMI dated 29.1.2007, wherein it was held that the Army Welfare Housing Organisation (AWHO) is not a 'public authority' u/s 2 (h) of the RTI Act essentially on the ground that the Society is an autonomous body and the fact that it received some grants from the Government sporadically would not lend it the attributes of a public authority.

8. He also relied on this Commission's decision dated 5.1.2008 in **Mohd Safdar Imam Vs Indian Institute of Welfare** wherein it was held that the Institute was not a public authority mainly because it received not more than 20% grants in aid from the Government.

9. As noted above, the appellant has filed a detailed representation running into 421 pages to establish that RGF is a public authority. His principal submissions may be crystalised as follows :-

- (i) The RGF was set up on an appeal made by then Vice President of India (late Dr Shankar Dayal Sharma) primarily, to promote literacy and application of science and technology in the service of the poor and deprived sections of the society. Subsequently, the formation of RGF was declared by the Govt of India through budget speech by the then Finance Minister. The Govt of India had also created a corpus for running the affairs of RGF.
- (ii) RGF is functioning from a sprawling premises measuring 9,319 sq yards and a palatial building has been constructed thereon. This piece of land is situated in the heart of city. The land was initially allotted by the Govt at a normal price to the Jawahar Bhawan Trust on perpetual lease dated 22.9.1998. Later, based on the request made by the said Trust, the Ministry of Urban Development vide letter dated 28.12.1995 accepted the usage of the said land and building by RGF for absolutely free. The rental value of this real estate in the open market would be huge. (No amount has, however, been specified).
- (iii) The RGF was registered on 21.6.1991 with MHA under Foreign Contributions (Regulation) Act, 1996 w.e.f. 2.8.1991. This enables RGF to

- receive foreign contributions. Besides, RGF is registered u/s 12A of the Income Tax Act, 1961. This registration enables RGF not to pay tax for its income.
- (iv) RGF is also registered u/s 80G of the Income Tax Act with consequential benefits.
 - (v) RGF is also entitled to avail exemption from payment of Customs Duty and Central Excise Duty in terms of Government notifications dated 23.7.1996 and 01.3.1997
 - (vi) During the period FY 1999-2000 and FY 2007-08 RGF had total income of 8,49,02,607/- out of which grants were of Rs 31,06,859/-; donations of Rs 11,03,000/-; project related income of Rs 1,51,98,740/-; foreign contribution of Rs 1,67,58,255/- and interest accrual of Rs 4,87,35,753/-. These components constitute 3.65%; 1.29%; 17.90%, 19.73% and 57.40% of the total income respectively.
 - (vii) Referring to the particulars of the trustees of RGF, the appellant has mentioned in his representation that 'whos's who' of India is represented in RG, viz. Chairperson, National Advisory Council; Chairperson, Planning Commission; Home Minister and Finance Minister and the like. Besides, there has been no change in the Board of Trustees, Governing Council and Research Advisory Council of RGF in last 10 years.
 - (viii) RGF has been acting as a designated authority and an extended arm of the Government to advise on issues of public importance. The appellant has cited several instances wherein RGF has collaborated with the Government and its instrumentalities in matters like Empowerment of the Panchayati Raj Institutions, Right to Education, Public Health Systems and Processes and Disabled Related Policies etc.
 - (ix). The Govt of India has a permitted All India Service officers to join RGF on deputation basis from time to time.

10 Based on the above submissions, the appellant has tried to persuade the Commission to declare RGF to be is a 'public authority' in terms of section 2 (h) of the RTI Act.

11. The response of the respondents on the above points is as follows :-

- It is their contention that the issuing of an appeal by then Vice-President of India, Dr.Shankar Dayal Sharma in 1991 for generous donations to RGF and the mention of the RGF in the then Finance Minister's budget speech on 24.07.1991 could not be factors leading to any decision regarding whether RGF is a public authority. The context in which these two events occurred was the death of Shri Rajiv Gandhi on 21.05.1991 and the emotional response the country made to his martyrdom. The appeal by Dr.Shankar Dayal Sharma was in his personal capacity. He never associated himself with the RGF as Vice-President. The decision of the Government to provide Rs.100 crores to RGF over five years made in 1991 was politely turned down by RGF. Such incidental factors could not be considered for declaring RGF a public authority.

- They have negated appellant's point that RGF has received substantial funding from the Government. They have particularly rejected his contention that all funds received by RGF belong to "we the people of India". They have reiterated their point that the direct grant of the Government did not exceed 4% of the total receipts of RGF.
- Respondents have laboriously pointed out that appellant is entirely wrong in claiming that any land-grant was made to RGF. RGF was housed in the premises standing on the land granted to Jawahar Bhawan Trust (JBT), who allowed RGF to function from a part of its premises. As tenant, RGF contributes and shares the common expenditure on maintenance and service, etc. of the premises and it also shares with JBT the property tax paid. The JBT was created through a mandate and Deed of Declaration of Trust given by Article XIX (i) of the Constitution of the Indian National Congress and was entirely independent of the Government. The perpetual lease dated 22.09.1988 was granted by the Land & Development Office to JBT and not to the RGF.
- RGF registering itself under the Foreign Contributions (Regulation) Act (FCRA) has nothing to do with its designation as public authority. Such registration is necessary for obtaining funds from abroad.
- The income tax relief provided to RGF could not be construed as indirect funding by the Government. Hundreds of other such entities are granted these concessions to encourage them to carry out public-related activities. Even private individuals are its beneficiaries. Do they all become public authorities?
- Respondents have described as untenable the appellant's argument that mere association of the Prime Minister of India, NAC Chairperson, Planning Commission's Deputy Chairman, Home Minister and Finance Ministers with RGF alters its decidedly private character to make it a public authority. They are at pains to point out that these personalities were associated with RGF in their personal capacity and drew no remuneration from RGF. None holds any ex-officio position in RGF. They were associated with the Foundation because of their affection for late Shri Rajiv Gandhi and as a token of their tribute to his martyrdom.
- As regards deputationists from the Government working in RGF, respondents have pointed out that the RGF accepted personnel from diverse sources, including Government, and paid all salaries and wages. Mere deputation of officers by the Government to the RGF does not alter its character from private to public authority. Further, such deputation is permissible under the AIS rules.

- On the similarity between Jawaharlal Nehru Memorial Fund (JNMF) and RGF, respondents have stated that this is nothing more than a warped reasoning. The JNMF is situated in Teen Murti House, which is a Government property. It receives substantial funding from various Ministries, unlike RGF — which receives only a miniscule grant. 50% of the total expenditure of JNMF is met by the Government. JNMF, in its constitution, functioning and location is entirely different from RGF.
- They have rebutted appellant’s arguments that RGF works in close liaison with the Government. It is argued that even assuming that it is correct, for the sake of argument, it could not be interpreted to mean that privately created entities can not occupy independent space in addressing the socio-economic issues of the country, when they act in unison with the Government.
- They have also rebutted appellant’s argument that mere fact of the RGF being engaged in public activities and in promoting public welfare, would be enough reason for it to be declared a public authority. No entity in this country shall at then remain private or non-governmental, if this criteria were to be applied.

DECISION & REASONS

10. Public Authority has been defined in clause (h) of section 2 of the RTI Act. Clause (h) is extracted below :-

“(h) public authority” means any authority or body or institution of self- government established or constituted—

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government,

and includes any—

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;”

It is plain that RGF does not fall in sub clauses (a), (b) & (c) of clause (h). As per sub clause (d), to qualify for Public Authority, an entity should be owned, controlled or substantially financed, directly or indirectly, by the Government. It is nobody's case that RGF is owned by the Government. Nor is it controlled by the Government in as much as its control vests in a Board of Trustees which is an elected body. Next question comes whether it is 'substantially financed' by the Government. As noted herein above, the contribution of the Government is less than 4% of the total average income of RGF since its inception. It, therefore, cannot be said to be 'substantially financed' by the Government.

11. In this context, it may be apt to refer to the Hon'ble Punjab and Haryana High Court judgment dated 25.2.2008 in DAV College Trust and Management Society & Ors. –Vs- Director of Public Institutions & Ors. The operative para of the judgment is extracted below :-

“A perusal of the definition of ‘public authority’ shows that ‘public authority’ would mean any authority or body or institution established or constituted apart from other things by the notification issued by an order made by the appropriate Government. It is to include even any body owned, controlled or substantially financed or non-Government Organisation substantially financed directly or indirectly by the funds provided by the appropriate Government. It is undisputed that the petitioners are receiving substantially grant-in-aid from the Chandigarh Administration. Once a body is substantially financed by the Government, the functions of such body partake the character of ‘public authority’. The definition of expression public authority would include any organisation/body owned, controlled or substantially financed directly or indirectly by funds provided by the Government or even the non-government organization which is substantially financed. The petitioner has claimed that they are getting only 45% grant-in-aid after admitting that initially the grant-in-aid paid to them was to the extent of 95% which was given initially allowing the petitioner to build up its own infrastructure and reducing the grant-in-aid later would not result into an argument that no substantial grant-in-aid is received and, therefore, it could not be regarded as ‘public authority’. Therefore, we do not find any substance in the stance taken by the petitioner that it is not a ‘public authority’ ”

It is noteworthy that 45% grant in aid was held to be appropriate to declare DAV Institutions as Public Authority. Viewed in the light of this judgment, RGF cannot be said to be Public Authority by any stretch of imagination as the Government contribution is less than 4%, as noted herein above.

12. Another point that has been canvassed by the appellant is that the RGF is functioning from a sprawling premises which belongs to the Central Government and this amounts to indirect funding of RGF. As per submission of the respondents, the property in-question was allotted to Jawahar Bhawan Trust (JBT) by the Ministry of Urban Development in 1988. It is JBT which allowed

RGF to function from a part of its premises. It is also respondent's claim that RGF contributes and shares the common expenditure on maintenance and services etc. of the premises with JBT. The perpetual lease dated 22.9.1998 was granted by Land & Development Office to JBT and not to RGF. In other words, it is the respondent's claim that the property in-question has not been directly placed at the disposal of RGF by the Central Government and the RGF is functioning from the present premises pursuant to an understanding reached between JBT and RGF.

13. There is yet another way of looking at this issue. The property in-question was leased out to JBT by the Central Government. This property is being used by RGF with some kind of approval of the Government. For argument's sake, even if it is assumed that the Government has placed this property at the disposal of RGF, the question is whether its rental value at market rate is such that it would render RGF into a Public Authority. No submissions have been made about the current rental value of the property in-question by the parties. However, going by the considerable annual income/receipts of RGF, even if market rental value is attributed to the property in-question, in our opinion, it would not render RGF into Public Authority. We, therefore, are not inclined to accept the submission of the appellant that RGF is a Public Authority by virtue of its functioning from the premises in-question.

14. As regards the question of deputation of All India Services officers to RGF, needless to say, this is being done as per All India Service Rules. Only one AIS officer is presently working in RGF and his salary etc. are being paid by RGF and not by the Central or State Government. Hence, nothing much turns on this point.

15. The appellant has also relied on the decisions of this Commission's decision in Sanskriti School case and Commonwealth Games Organising Committee etc. We have perused the relevant decisions and find that the ratio of the above decisions does not apply to the present case in as much as contribution of the Central Government in the aforesaid two institutions was very high as compared to the miniscule contribution of the Central Government in RGF.

15. In view of the above discussion, we come to the conclusion that RGF is not a Public Authority in terms of section 2(h) of the RTI Act.

16. However, before parting with the matter, we would like to mention that RGF has been constituted by the admirers of late Shri Rajiv Gandhi to promote his ideals and for socio-economic and cultural advancement of people. The nature of its activities is such that it directly impacts the people. Hence, we would suggest to the Board of Trustees of RGF to consider and continue to voluntarily placing maximum information regarding the activities of RGF on its website viz. constitution of RGF, its Bye-Laws, Rules and Regulations, its Annual

Income and Expenditure, the nature of works undertaken/completed by it and such like information. It may be clarified that this would, however, be without any prejudice to our conclusion that RGF is not a Public Authority under the RTI Act.

Decision reserved and pronounced today dated 15th October, 2010.

Sd/-
(Satyananda Misra)
Information Commissioner

Sd/-
(M.L. Sharma)
Information Commissioner

Sd/-
(Prof. M.M. Ansari)
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.

(M.C. Sharma)
Deputy Registrar

Name & address of Parties:

1. Shri Shanmuga Patro, Advocate, 90/4 (GF), Krishna Nagar, Safdarjung Enclave, New Delhi-110029.
2. Ms. Preeti Saha, Head-Strategic Initiatives, Rajeev Gandhi Foundation, Jawahar Bhawan, Dr. Rajendra Prasad Road, New Delhi-110001.