GOA STATE INFORMATION COMMISSION
AT PANAJI

CORAM: Shri M. S. Keny, State Chief Information Commissioner

Complaint No. 518/SCIC/2010

Adv. Aires Rodrigues
T1-B30, Ribandar Retreat,
Ribandar – Goa ..... Complainant.

V/s.

1) Goa Cricket Association,
Through its Secretary,
Rizvi Sadan, 2nd Floor,
Near Municipal Market,
Panaji – Goa ..... Opponent No. 1.

2) Public Information Officer,
Sports Authority of Goa,
Indoor Stadium Complex,
Campal,
Panaji - Goa. ..... Opponent No. 2.

Complainant in person.
Opponent No. 1in person
Opponent No. 2 in person.
Adv. Mahesh Sonak for Opponent No. 1.

O R D E R
(07-10-2010)

1. The Complainant, Adv. Aires Rodrigues, has filed this Complaint praying that Respondent No. 1 be directed to furnish to the Complainant the information sought by him vide letter dated 12.07.2010 and that penalty be imposed on the Respondents till information is furnished.

2. The brief facts leading to the present Complaint are as under:

That the Complainant, vide his application dated 12.07.2010 addressed to the Public Information Officer, Sports Authority of Goa sought certain information from the Goa Cricket Association (GCA) under Right to Information Act, 2005 ('RTI' Act for short). That the Respondent No. 2 forwarded the said application to Respondent

…2/-

No. 1 with a request to provide the information sought. However, the Respondent No. 1 by letter dated 12.08.2010 refused access to or supply the information on the ground that the RTI Act 2005 does not apply to the GCA. That the Complaint is preferred u/sec. 18 (1) (b) of the R.T.I. Act as the Respondent has refused the Complainant access to information requested by him. It is the case of the Complainant that GCA is a Public Authority as defined in section 2(h) of the R.T.I. Act. That the GCA is a body which has been substantially financed directly or indirectly by the Government of Goa and the same has been mentioned in detail in para 3 and 4 of the Complaint. That since G.C.A. is Public Authority, refusal of information is contrary to RTI Act and that refusal is malafide and without reasonable cause. That GCA has not appointed PIO and accordingly the Complainant made an application to the Respondent No. 2 for information which has been refused. Being aggrieved the Complainant has filed the present Complaint.

3. The Respondents resist the Complaint and reply of the Respondent No. 1 is on record. It is the case of Respondent No. 1 that the Complaint is not maintainable. That the Respondent No. 1 is not "Public Authority" within the meaning of section 2(h) of the R.T.I. Act. That no PIO is designated in so far as Respondent No. 1 is concerned as Respondent No. 1 is not Public Authority under section 2(h) of the RTI Act. That Respondent No. 2 is not and cannot be regarded as Public Information Officer in so far as Respondent No. 1 is concerned. That Complaint is not maintainable without exhausting the remedy of First Appeal. On merits it is the case of Respondent No. 1 that the Respondent No. 1 is neither a local nor other authority within the territory of India or under the control of Government of India. That Respondent No. 1 is neither an instrumentality nor agency of the State. That Respondent No. 1 neither discharges the Governmental functions, nor the functions closely related thereto. That there is no deep and pervasive control in so far as the functioning of Respondent No. 1 is concerned.

…3/-

There are no statutory duties imposed upon the Respondent No. 1 and that it does not answer the definition of State within meaning assigned to the term under Article 12 of the Constitution of India. That the Respondent no. 1 is neither created by statute nor any part of its share capital held by the Government. That there is no deep and pervasive State control. That there is neither any special statute which established GCA nor is control exercised over GCA by the Government under any special statute applicable to GCA. It is the case of Respondent No. 1 that Respondent No 1 is by no means owned, controlled or substantially financed directly or indirectly by the funds provided by the Government. That the grant of lease by no means amounts to any substantial finance. Regarding grant of such lease, etc. are mentioned in detail in para 4 of the reply and about financial assistance is mentioned in detail in para 5 of the reply. That grant of lease by the Government does not make GCA a Public Authority under section 2(h) of RTI Act. That the GCA is not registered with SAG and GCA is unaware of any formal grant of recognition by SAG. That the GCA is a member of Governing Council of SAG is incorrect and in any case irrelevant and that GCA may be a member of General Body of SAG is entirely irrelevant for determining whether or not GCA is a Public Authority. It is further the case of the Respondent No. 1 that the instructions/guidelines contained the official gazette dated 08.07.2010 cannot be regarded as 'instructions' issued by the Government, in as much as there is no compliance whatsoever with the provisions of the Constitution of India. That there is no provision under the RTI Act 2005, which entitles or empowers the Government to issue instructions of the nature contained in the official gazette dated 08.07.2010. That the said instructions are clearly impermissible and ultra vires. That letter dated 19.05.2010 issued by SAG has no statutory basis. That there is no power vested in the Government or the SAG to issue letters or guidelines for the purpose of bringing within purview of section 2(h) of the said Act. That the said guidelines are attacked on various counts as mentioned in para 6(a) to (i). That there is no formal letter/order regarding

recognition by SAG qua the GCA and the GCA is unaware as to whether the SAG has any powers for grant of recognition and the GCA has not applied for any recognition to SAG. That any alleged unilateral recognition by SAG, cannot have the effect of making a sports organization a Public Authority within the meaning assigned to this term u/s. 2(h) of the RTI Act and that such interpretation would render the provisions of the RTI Act violative of article 19(1) (a) and 21 of the Constitution of India, which includes, inter alia, right to privacy. That GCA is not covered by any notification referred to in para 3 of the Complaint. That the letter dated 19.05.2010 was never addressed to them nor received by GCA. It is further the case of the Respondent No. 1 that parent body of GCA is the Board of Control for Cricket in India and the Honorable Supreme Court of India has ruled that BCCI does not answer the definition of "State" within the meaning of article 12 of the Constitution of India. That pursuant to the clarification sought for by the GCA, BCCI has replied vide letter dated 24.08.2010 that BCCI does not come under the purview of RTI Act as it does not receive any funding from the Government. That the Government of Goa has issued notification designating Public Information Officers and that no Public Information Officer has been designated in so far as GCA is concerned and that is because GCA does not answer the definition of Public Authority. That the Complainant at no stage has made any grievance with regard to non-designation of Public Information Officer or the Appellate Authority qua the GCA. That the Central Commission has also ruled that BCCI is not a Public Authority. In short, according to Respondent No. 1 the Complaint is not maintainable and that Complainant is not entitled to any relief prayed and that the Complaint be dismissed.

4. Heard the arguments. The Appellant learned Adv. Aires Rodrigues argued in person and the learned Advocate Mahesh Sonak argued on behalf of Respondent No. 1. Both the advocates advanced elaborate arguments. Both sides have filed written submissions/synopsis on record.

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5. Adv. Aires Rodrigues referred in detail to the facts of the case. He referred to the application seeking information addressed to the P.I.O. Sports Authority of Goa and reply thereto. He referred to the Gazette and submitted that the notification has not been challenged. He referred to section 2(h) Public Authority. He submitted about financial assistance and referred to lease, etc. on record. He referred in detail to various correspondences on record. He submitted on similar lines as mentioned in the Complaint. He relied on the following rulings: (i) M.P. Varghese, etc. etc. *v/s.* Mahatma Gandhi University & Others, etc A.I.R. 2007 Kerala 230; (ii) W.P. (c) No. 876/2007 Indian Olympic Association *v/s.* Veeresh Malik & Others, W.P. (c) 1212/2007 Sanskriti School *v/s.* Central Information Commission, W.P. (c) 1161/2008 Organizing Committee Commonwealth Games 2010 Delhi *v/s.* Union of India and (iii) Shri S.S. Chana (IFS Retired) *v/s.* Public Information Officer O/o. General Secretary, the Sutlej Club (Regd) (State Information Commission, Punjab).

The Complainant also filed Written Arguments (Points of Arguments of Complainant), which are on record.

6. Adv. Shri M. Sonak for Respondent no. 1 also advanced elaborate arguments. He submitted that Goa Cricket Association is not a Public Authority. According to him section 2(h) (a) (b) (c) are ruled out. He then referred to clause (d). He referred extensively to show that G.C.A cannot be brought in under section 2(h). According to him G.C.A is not controlled by Appropriate Government. He next referred to Lease Deed and submitted that they are normal conditions which are laid by lessor to lessee and lease deed is just a contract. He also submitted about right to privacy. According to him on the basis of lease deed there is no control. He next referred about recognition. According to him they are not aware about recognition and the same is unilateral. That Respondent No. 1 never applied for recognition or registration. He next referred in detail about financial control, assistance, etc.

Referring to M.O.U. he submitted that there is no control except for certain activities of G.C.A. According to him on the basis of entire material on record there is no control. He next referred about substantial finance. Referring to loan assistance he submitted that it cannot be called as substantial finance. According to him there is no control on finance. He referred to lease deed, etc. and submitted that there is absolutely no control and that Respondent No. 1 cannot come within the purview of section 2(h). He next referred to the guidelines and Government Gazette. According to him it is not notification but just guidelines and that guidelines are not issued by appropriate Government. He also submitted that 2(h) (d) cannot be by Gazette produced. He also referred to Article 166 of Constitution and submitted that all governmental actions should be in the name of Governor and guidelines are not issued by Governor. He also submitted that there is no provision under R.T.I. to issue guidelines by Government and that Assistant Secretary cannot make rules. According to him guidelines are nullities and as such to be ignored. He also submitted about maintainability of the Complaint. He relied on the following rulings: (1) Zee Telefilms Ltd and Another *v/s.* Union of India & Others (2005) 4 SCC 649; (2) Board of Control for Cricket in India and anr. *v/s.* Netaji Cricket Club and others (2005) 4SCC 741; (3) Ajay Hasia and Others *v/s.* Khalid Mujib Sehravardi & Others (1981) (1) SCC 722; (4) Panjabrao Deshmukh Urban Co-operative Bank Ltd (Dr.) *v/s.* State Information Commissioner & Others 2009 B.C.I. 24 (Nagpur Bench) and Shikshak Sahakari Bank Ltd. *v/s.* Murlidhar Pundalikrao Sahare & anr. 2010 (3) Bom. CR 225 (Nagpur Bench).

Adv. for Respondent No. 1 also filed the Written Arguments (Synopsis) which are on record.

7. In reply the Complainant submitted that guidelines and the said letter have not been challenged by the Respondent No. 1. He also referred to the judgment of Delhi High Court.

8. I have carefully gone through the records of the case, considered the arguments advanced by the parties and also considered the rulings on which both sides placed reliance. The point that arises for my consideration is whether the relief prayed is to be granted or not.

It is seen that, vide application dated 12.07.2010, the Complainant sought certain information from the PIO-Sports Authority of Goa. The information pertained to Goa Cricket Association (GCA). PIO/Respondent No. 2 transferred the said application u/sec. 6(3) of RTI Act to the Respondent No. 1 vide letter dated 16.07.2010, with a request to provide the information to him. By reply dated 12.08.2010 the Hon. Secretary informed the Respondent No. 2 that RTI Act or guidelines are not attracted and are not applicable to GCA and as such his request to furnish the information cannot be considered. It is seen that the Complainant did not exhaust the recourse to First Appeal. Instead, he has come by way of Complaint.

According to the Complainant GCA is covered by RTI and a Public Authority. This is disputed by Advocate for the Opponent. According to him they are not covered by the RTI Act and a private body and secondly they receive no funds from the Government.

The RTI Act defines the Public Authority under section 2(h) as 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, directly or indirectly by funds provided by the appropriate Government.

(ii) Non-Government Organisation substantially financed, directly or indirectly by funds as provided by the appropriate Government.

It is seen that the concept of Public Authority has been given very vide definition under the RTI Act. The definition covers all the areas of the Government including the legislature, executive and the judiciary. The organizations established by any law of Parliament or State Legislature are also 'public authorities' for the purpose of the Act. The PSUs and the organizations that are substantially financed, directly or indirectly by the Government are also included. In short, RTI Act is applicable to institutions or non-Government organizations if any one of the conditions mentioned in section 2(h) are satisfied to bring them under the definition of 'Public Authority'.

9. Now it is to be seen whether the Respondent No. 1 herein satisfies any one of the criteria mentioned under section 2(h) of the RTI Act. Admittedly they are not covered under any of the four categories mentioned in the main definition of "Public Authority". It would not be out of place to consider the other criteria mentioned under the inclusive definition of "Public Authority" that is whether controlled or non-governmental organization substantially financed directly or indirectly by funds provided by appropriate Government.

It is to be noted here that the word "includes" is generally understood in statutory interpretation as enlarging the meaning of the words or phrases in the body of the statute. I am fortified in this view by the observations of the Hon'ble Supreme Court in (i) C.I.T. Vs. Taj Mahal Hotel (1971) 3 SCC 550 and (ii) Mahalaxmi Oil Mills Vs. State of A.P. (1989) 1 SCC 164.

According to the Complainant Respondent No. 1/GCA is a State Sports Association recognized by S.A.G and it is specifically covered by notification dated

08.07.2010 which notification has not been challenged. Secondly GCA is a body which has been substantially financed directly or indirectly by the Government of Goa (Complainant has referred in detail both in the memo of complaint and written arguments.)

I shall take/refer to both these aspects together.

As per Exhibit C5 colly (page 22 of the Complaint) GCA is registered with Sports Authority of Goa (SAG) and GCA is a member of S.A.G. On page 26 (C/5) is the order dated 08.04.2008 which shows that GCA is a member and also member of Governing Council of SAG. Exhibit C-6 colly is a letter dated 14/19 May 2010 the same is addressed to the President/Secretary – All Associations. The same starts with the words: "In continuation to the recognition granted to your State Sports Association/Sports Club by SAG……" the same states about application of RTI Act. There is no challenge or protest to the same even from Respondent No. 1. The same is issued by Executive Director, SAG.

Page 33 is the copy of Official Gazette Government of Goa. This makes it crystal clear that all the Sports Organisations (Sports Clubs/State Sports Associations) recognized by SAG of Goa shall be covered under the provisions of RTI Act, 2005 with immediate effect. The gazette is dated 08.07.2010. None of the Associations/Clubs challenged or protested the same.

Letter dated 27/30.08.2010 on record is from Joint Director, PIO-SAG to the Secretary, GCA emphasizing the applicability of RTI Act and also mentioning about assistance to GCA including sports infrastructure.

There is other material on record, i.e. correspondence between GCA and SAG. Letter dated 19.08.2010 from Executive Director- SAG to Hon. Secretary GCA speaks of Organizing Committee to be formed. Letter dated 09.08.2010 addressed by Hon. Secretary to Executive Director SAG stating that BCCI does not permit forming of Organizing Committee. The said letter also refers about M.O.U. etc. Letter dated

23.08.2010 is from Hon. Secretary GCA to Executive Director SAG stating that a Local Organizing Committee has been formed.

Perusal of entire material on record i.e. correspondence, M.O.U., etc goes to show that there is some sort of control.

10. Next aspect is about funding/financing. I need not refer to this in detail as most of the points raised are not disputed i.e. lease deed and conditions therein are not disputed. Rupees fifty lakh taken for acquisition of land for GCA is not in dispute and refund of the said sum is also not in dispute. Permission given to utilize Cricket playfield is without charges is also not in dispute. Looking at the material on record the Government's control is as per the terms and conditions of lease. It appears from record that SAG has no financial, functional or administrative control over the GCA.

11. Adv. for Respondent No. 1 advanced elaborate arguments. Synopsis of arguments is on record. He also relied on various rulings, Xerox copies of which are on record. The main thrust of the argument of the Advocate for Respondent No. 1 GCA is not Public Authority and as such they are not obliged to furnish information.

It is interesting to note that the object of the RTI Act is to ensure greater and more effective access to information under the control of Public Authorities, in order to promote transparency and accountability in the working of every Public Authority. The basic postulate of accountability is that people should have information and the citizens should know the fact, true facts.

It is said that the key to the opening of every law is the reason and spirit of law – the intention of law maker/animus imponentis. The provisions of RTI Act have

to be interpreted keeping in view the statement of Objects and Reasons, the title and Preamble of the Act.

Without referring much to the reply in detail and also the arguments in detail I would straightaway come to the question whether GCA is Public Authority?

I do agree with the Advocate for Respondent No. 1 when he contends that GCA is neither established nor constituted by or under the Constitution, or any other law made by the Parliament or any other law made by State Legislature. GCA has also not been established or constituted by notification issued or order made by Appropriate Government. Again it is not owned by Appropriate Government. The only thing to be seen is "control" and "directly and indirectly funding". According to Advocate for Respondent No. 1 even these clauses are not at all attracted.

Complainant relied on the following rulings:

(i) In M.P. Varghese, etc. Vs. Mahatma Gandhi University and others AIR 2007 Kerala 230, it was held that private aided colleges controlled and substantially financed directly or indirectly by funds provided by appropriate Government answer the definition of Public Authority under section 2(h) of the Act. The relevant observations are in para 9.

(ii) W.P. (C) No. 876/2007 -
Indian Olympic Association V/s. Veeresh Malik & Others

W.P. (C) No. 1212/2007 –
Sanskriti School V/s. Central Information Commission.

W.P. (C) No. 1161/2008 –
Organizing Committee Commonwealth Games 2010, Delhi V/s. Union of India.

In all these petitions the petitioners were held as Public Authority. The relevant observations are in para 58 and 60. It was observed that what amounts to substantial financing cannot be straight-jacketed into rigid formulae of universal

application of necessity each case would have to be examined on its own facts. That the percentage of funding is not 'majority' financing, or that the body is an impermanent one are not material. Equally, that the institution or organisation is not controlled and is autonomous is irrelevant' indeed, the concept of non-government control in its establishment, or management. That the organization does not perform or pre-dominantly perform – "public" duties too, may not be material as long as the object for funding is achieving a felt need of a section of the public or to secure larger societal goals.

(iii) In S.S. Chana (IFS Retd.) V/s. PIO. O/o. the General Secretary, the Sutlej Club (Regd) (State Information Commission, Punjab) it is observed as :-

> "4. Accordingly, the ownership of the land was got verified through the office of the Deputy Commissioner, Ludhiana. It has emerged through inspection of revenue record that the land is owned by the Provincial Government. It has also come on record that certain funds were provided for the initial construction of this Club by the State. These facts leave no doubt that there is substantial financial assistance by the State Government to the Respondent Club. The fact that the valuable land upon which the Club has been constructed belongs to the Government and no rent/lease is paid by the Club to the Government shows that there is substantial financial assistance by the State to the Respondent. Funding may be direct or indirect. It may consist of contribution to revenue expenditure or providing the infrastructural facilities. In fact, the cost of providing prime land for the Club, as has been done in the case of the Respondent, would be much more than its normal revenue expenditure. Apart from providing the land free of cost for construction of the Club building, the government has also incurred a part of expenditure on the construction the Club. This militates strongly against the Respondent Club being a purely private body. In addition, as per Rule 24 of

the Constitution and Bye-laws of the Club, "The Deputy Commissioner of Ludhiana shall always be the President in his ex-officio capacity". As the ex-officio President, the Deputy Commissioner, a Public authority within the meaning of Section 2(h) of the Right to Information Act "can" access any information about the affairs of the Club. Therefore, information pertaining to the Club is accessible under Section 2(f) of the Right to Information Act.

5. In view of the foregoing, we are of the considered view that the Respondent Club is a Public Authority within the meaning of Section 2(h) of the Right to Information Act, 2005. Accordingly, the requisite information will be provided by 30.7.2010 to the Complainant."

12. Adv. for Respondent No. 1 relied on various rulings such as:

(1) Zee Telefilms Ltd and Another Vs/ Union of India and Others (2005) 4 SCC 649. It was held that BCCI is not a State within the meaning of Article 12 of Constitution of India.

He also relied on a decision of Chief Information Commissioner, Anil Khare *V/s.* Board of Control for Cricket for India (BCCI) in which it is held that BCCI is not a Public Authority.

(2) Board of Control for Cricket in India and anr. *v/s.* Netaji Cricket Club and others (2005) 4 SCC 741. In this case a two Judge Bench while discussing with regard to the status of the Board of Control for Cricket expressed the view that it exercises enormous public functions and represents the country in the International foray. Their Lordships further held that having regard to the enormity of power exercised by it, the Board is bound to follow the doctrine of 'fairness' and 'good faith' in all its activities and to fulfill the hopes and aspirations of the millions. It was also observed "We have referred to the said decision only to indicate that higher the authority, more the responsibility".

(3) Ajay Hasia *v/s.* Khalid Mujib Sehravardi & Others (1981) 1 SCC 722. In para 11 it is observed as under:

"11. We may point out that it is immaterial for this purpose whether the Corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The Corporation may be a statutory Corporation created by a statute or it may be a Government company or a Company formed under the Companies Act, 1956 or it may be a Society registered under the Societies Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a Corporation created by a statute but is equally applicable to a Company or Society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the Company or Society is an instrumentality or agency of the Government so as to come within the meaning of the expression "authority" in Article 12."

In Ajay Hasia's case the Hon'ble Supreme Court quoted with approval the test laid down in International Airport Authority's case. In Pradeep Kumar Biswas *v/s.* Indian Institute of Chemical Biology (2002) 5 SCC111 the majority judgment approved of the test specified in the case of Ajay Hasia. However, I need not advert to these decisions much.

13. It was also contended by Advocate for Respondent No. 1 BCCI is not a Public Authority and a fortiori, therefore, the G.C.A. which is affiliate of parent body/BCCI

cannot be a Public Authority. The argument appears to be attractive, however, the same does not stand the scrutiny of R.T.I. Act. State/Instrumentality of State as envisaged under Article 12 is not of the same genre as a Public Authority defined under section 2(h) of R.T.I. Act, 2005. The two are intrinsically different. I would respectfully state that decisions of the Hon'ble Supreme Court and Hon'ble High Court of Judicature at Bombay Nagpur Bench are not attracted in the sense the same speak of "deep and pervasive" control whereas under R.T.I. it is only "controlled".

In any case the eloquent reply to all these contentions is found in Krishak Bharti Co-operative Ltd & Others *v/s.* Ramesh Chander Bawa & Others 2010 (2) ID 1 (Delhi High Court). In this case the Hon'ble Delhi High Court considered and relied as many as 27 rulings. The relevant observations are in paras 19, 20 and 24.

> "19. The Learned Senior Counsel for the petitioners referred to case law concerning the interpretation by the Supreme Court and the High Courts of the expression "State" under Article 12 of the Constitution and whether a body is one which is discharging a public function for the purposes of Article 226 of the Constitution. In the considered view of this Court, neither case law is relevant to the questions that arise in the context of the R.T.I. Act. That is why this Court dwelt on the principles governing "contextual" interpretation. In the context of R.T.I. Act it may well be that a body which is neither a "State" for the purposes of Article 12 nor a body discharging public functions for the purposes of Article 226 of the Constitution might still be a Public Authority within the meaning of section 2(h) (d) (i) of the R.T.I. Act. To state it differently while a body which is either a State for the purposes of Article 12 or a body discharging public functions for the purpose of Article 226 is likely to answer the description of Public Authority in terms of section 2(h)

(d) (i) of the R.T.I. Act the mere fact that such body is neither, will not take it out of the definition of 'public authority' under section 2(h) (d) (i) of the R.T.I. Act. To explain further it will be noticed that in all the decisions concerning the interpretation of the word "State" under Article 12 the test evolved is that of "deep and pervasive" control whereas in the context of R.T.I. Act there are no such qualifying adjectives "deep" and "pervasive" vis-avis the word "controlled". To illustrate in Pradeep Biswas *v/s.* Institute of Chemical Biology 2002 (5) SCC 111, the Supreme Court summarized the 'test' as under (SCC at page 134):

"The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. **The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive.** If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body as State. ....."

It was also observed that what may be a 'public authority' for the purposes of the R.T.I. Act need not be 'State' under Article 12 or amenable to Article 226 of the Constitution.

In para 24 it is observed as under:-

"24. The second limb of section 2(h) (d) (i) of the R.T.I. Act requires an examination if any of the petitioners is "substantially financed by the appropriate Government? It is important to note that the word "financed" is

qualified by the word "substantially" indicating a degree of financing. Therefore, it is not enough for such bodies to merely be financed by the Government. They must be "substantially financed". In simple terms, it must be shown that the financing of the body by the Government is not insubstantial. The word 'substantial' does not necessarily connote majority financing. In an annual budget of Rs. 10 crores, a sum of Rs. 20 lakhs may not constitute a dominant or majority financing but is certainly a substantial sum. An initial corpus of say Rs. 10 lakhs for such an organization may be 'substantial'. It will depend on the facts and circumstances of a case. Merely because percentage-wise the financing does not constitute a majority of the total finances of that entity will not mean that the financing is not 'substantial'. ……".

"26. The approach of other High Courts in interpreting section 2(h) (d) of the R.T.I. Act is instructive. They have adopted a contextual and liberal interpretation keeping in view the purpose and object of R.T.I. Act."

14. I have perused some of the rulings on the point.

1. Anil Kashyap, Cricketers' Welfare Association *v/s.* P.I.O., O/o. the President Punjab Cricket Association Mohali 2008 [2] JD 216 (SIC Punjab). The question arose whether Punjab Cricket Association is a Public Authority within the meaning of section 2 (h) of R.T.I. Act and it was held that P.C.A. is a Public Authority within the meaning of section 2 (h) of the Act. The relevant observations are in para 13 and 14.

"13. The material culled out above is not exhaustive. From the facts as reproduced in para 12 hereinabove, one thing is absolutely clear that the factum of there being billions in the kitty of the Punjab Cricket Association is directly attributable to the infrastructure provided to it by the Government of

Punjab/its agencies. The issue that calls for immediate determination is as to what would amount to an organization being substantially financed by the Appropriate Government. The word 'substantial' connotes that the financial assistance, however, may consist of provision of funds for meeting the day-to-day administrative/ revenue expenditure or for bringing into existence assets of enduring nature, i.e. infrastructural facilities that enable the recipient to earn its own revenue. In the instant case, the P.C.A. may boast of earning millions on its own through holding of cricket matches in the stadium by way of sales proceeds of tickets, TV rights and sponsorship, etc. But the question that stares out in the face is, what has enabled the P.C.A to create huge amount of wealth. It is obviously the infrastructure provided by the State of Punjab, which has enabled the P.C.A. to be presently enjoying such a robust financial health. The Respondent submits that P.C.A has been hosting international matches right from its inception and that it would be wrong to contend that it is only after the construction of Mohali Stadium that P.C.A. has started holding international matches. The Respondent has given in a tabular form the details of the P.C.A. holding international matches and the profits earned by it prior to the construction of Mohali Stadium. From this the Respondent infers that the capacity to earn income through hosting international matches inheres in the P.C.A. independently of the Mohali Stadium. Assuming the factual basis of this submission to be correct for the sake of arguments it does not substantiate the plea of the Respondent that it is not a Public Authority under R.T.I. Act, 2005. The question here is not whether P.C.A. would be denuded of the capacity/ability to earn revenues through the holding of international matches without the provision of infrastructural facilities as has been made available to it at Mohali. The question rather is whether the provision of facilities at Mohali by the State of Punjab, which in monetary terms is by no means meagre or scanty amounts

to substantial financial assistance to the association. I have no doubt in my mind that providing more than 13 acres of prime land by the State Government to the P.C.A. only on a token rent of Rs. 100/- per acre, per annum and providing financial aid to the tune of more than 10 crores for the construction of the stadium and the club house is a clear instance of providing substantial financial assistance by the Government to the P.C.A. bringing it within the meaning of the term Public Authority as defined under section 2(h) R.T.I. Act, 2005.

14. It is also submitted by the Respondent that by providing land to the P.C.A. on long lease basis for construction of Cricket Stadium, the Government of Punjab has not done something unusual. The Respondent has set out a number of instances where various State Governments have made available similar facilities to the Cricket Associations within their jurisdictions. This submission also does not take the case of Respondent any further. If other cricket associations in the country have also been provided financial assistance by their respective State Governments, those cricket associations would also be Public Authorities under section 2(h) R.T.I. Act, 2005."

2. In Dara Singh Girls High School Gaziabad *v/s.* State of U.P. & Others 2008 [2] ID 179 (Allahabad H.C.) it is observed that whenever there is even an iota of nexus regarding control and finance of Public Authority over the activity of a private body or institution or an organization, etc. the same would fall under the provisions of section 2(h) of the Act. It was also observed that the provisions of the Act have to be read inconsonance and in harmony with its objects and reasons given in the Act which have to be given widest meaning..... (The relevant observations are in para 13, 14 and 15.)

3. In Tamil Nadu Road Development Co. Ltd *v/s.* Tamil Nadu Information

Commission & anr. 2009 [1] I.D. 85 (Madras H.C.) it was observed that this Court interprets the expression "Public Authority" under section 2(h) (i) liberally, so that the authorities like the Appellant who are controlled and substantially financed directly or indirectly by the Government come within the purview of R.T.I. Act.

All these go to show that some sort of assistance and control is sufficient for coming within the purview of section 2(h) of R.T.I. Act. Clause (d) (i) of section 2(h) R.T.I. Act does not require State Control to be "deep and pervasive". Under R.T.I. lesser degree of control would suffice. Even if the control is regulatory it will attract clause (d) (i).

15. Apart from all this, the important piece of evidence as far as this Commission is concerned is the official Gazette Government of Goa dated 08.07.2010 and letter dated 27/30/08/2010 addressed to Respondent No. 1.

The Gazette Government of Goa clearly mentions "All the Sports Organisations (Sports Clubs/State Sport Associations) recognized by the Sports Authority of Goa shall be covered under the provisions of R.T.I. Act, 2005 with immediate effect."

Again letter dated 27/30/08/2010 clearly mentions "In this connection your kind attention is invited to the fact that the SAG has been providing assistance to G.C.A. through various means such as sparing the services of coaches, sports infrastructure, as and when requisitioned by you". It also refers to M.O.U. signed etc.

Advocate for Respondent No. 2 attacked this Gazette part and letter on all fours. (This is mentioned in the synopsis on page 7 II (1) to (6)). According to him this is not by Appropriate Government and that they are merely guidelines.

It is to be noted that State Government is vested with powers to make rules to carry out the provisions of the Act in terms of section 27 of the R.T.I. Act. The rules, etc made by State Government are to be notified in the official gazette. These guidelines are binding on this Commission and are duly published in the official gazette. Advocate for Respondent No. 1 submitted that they are not properly made and ultra vires. Even assuming so this Commission has no powers to declare the same as ultra vires. This Commission is not a Court of plenary jurisdiction but exercises limited jurisdiction conferred by the R.T.I. Act, 2005.
It is pertinent to note here that Respondent No. 1 has not challenged the said guidelines in the Gazette. Good or bad the same stand unless declared otherwise. I have also perused the submissions of Respondent No. 1 from the synopsis of arguments and also arguments advanced on the same. However the same holds good in so far as this aspect is concerned.

16. Advocate for Respondent No. 1 submitted that Complaint is not maintainable. This contention is elaborately mentioned in the reply as well as synopsis of the arguments.

In the case before me the position is, the information is sought the same is transferred to Respondent No. 1 and the same is rejected on the ground that R.T.I. Act is not applicable. Thereafter the Complaint is filed under section 18 (1) (b). According to the Complainant it is refusal of access to information. To my mind even assuming the ground is not valid yet the fact remains that good or bad P.I.O. acted within law. The remedy lies of First Appeal. I have perused some of the rulings of Central Information Commission wherein matters were not entertained without approaching First Appellate Authority. In some, Complaints were entertained under certain circumstances.

According to the Complainant the Complaint is maintainable.

Under section 18(1) Complaint may be filed if sub-section (a) to (f) are attracted. Complaint can be filed in case the P.I.O. does not respond within the time limit specified under the Act. Complainant calls it denial, however, to my mind the same has backing of law.

I do agree with the Advocate for Respondent No. 1 on this count. But in the instant case I am inclined to entertain the Complaint firstly because of the factual matrix in this case and secondly because R.T.I. Act is a people friendly, user friendly Act and to deny information on such ground is not in true spirit of the Act.

However, this should not be cited as precedent.

In Life Insurance Corporation of India & Others *v/s.* Central Information Commission & Others (W.P. (C) No. 8708/2008 Delhi High Court) it was observed as under:-

> "Although the right to approach through separate channels appears to be distinct nevertheless if the forum before whom the power is vested happens to possess it – in this case the CIC undoubtedly possessed it, *ipso facto* would not render an order imposing penalty a nullity or irregularity. The reason for this is that in case one of the authorities conveys to the information seeker an impression that the facts or the information sought would be furnished and does not chose to do so, this expose it to action under Section 18(3). If in fact the information is not so available, it is open to the information seeker to also file a second appeal under Section 19. In both instances, he can approach the CIC. In the present case the second respondent did so by choosing the route of a complaint under Section 18 (3) on 24.11.2007."

Though facts are different yet Complaint is maintainable.

17. In view of all the above and particularly the guidelines in the Government Gazette I hold that Goa Cricket Association is a Public Authority within the meaning of section 2(h) R.T.I. Act, 2005. Consequently, R.T.I. Act is applicable to G.C.A.

18. Regarding penalty. Application is dated 12.07.2010. The same was transferred under section 6(3) on 16.07.2010. Considering this the reply is in time. So the question of penalty does not arise.

19. In view of all the above, I pass the following order:

O R D E R

Respondent No. 1 is directed to furnish to the Complainant the information sought by him vide his application dated 12.07.2010 within 30 days from the date of receipt of the order.

The Complaint is accordingly disposed off.

Pronounced in the Commission on this 07th day of October, 2010.

Sd/-
(M.S. Keny)
State Chief Information Commissioner