

CENTRAL INFORMATION COMMISSION
BLOCK IV, OLD JNU CAMPUS, NEW DELHI 110067

Appeal No.163/ICPB/2006
F.No.PBA/06/158
November 28, 2006

In the matter of Right to Information Act, 2005 – Section 19
[Date of hearing: 16.11.2006 at 11.00 am]

Appellant: Shri Veeresh Malik, New Delhi

Public authority: Indian Olympics Association / Deptt. of Sports
Ms. Deepika Kachhal, Deputy Secretary & CPIO
Shri Madhukar Gupta, Secretary & Appellate Authority.
President, Indian Olympics Association, New Delhi.

Present : For respondent
Ms. Deepika Kachhal, Deputy Secretary, M/Sports
Mr. Shankar Kumar, Section Officer, M/Sports
Mr. S.K. Sharma, Project Officer, IOA
Mr. Lokesh Sawhney, Advocate

None Present on behalf of appellant

FACTS:

The appellant vide his application dated 20.4.2006 addressed to the CPIO, Indian Olympics Association, had requested for information:

- i. Full particulars of APIO, CPIO and appellate authorities at Indian Olympics Association, as per the requirements of the RTI Act as on date.
- ii. Full particulars and status of the latest audited accounts for Indian Olympics Association for the fiscal years 2004-05 and 2005-06.
- iii. Full particulars of expenses incurred by IOA in connection with visits by any persons to Melbourne or any other destination in connection with Commonwealth Games for the period from 1st Jan. to 15th April, 2006.

2. Since the appellant did not get any response, he filed this complaint. Comments were called for from the Ministry of Sports to ascertain whether it has declared IOA as a public authority. While giving details of the functioning of IOA, the Ministry has expressed its inability to decide whether IOA is a public authority or not and it has desired that this Commission should decide the same.

3. The matter was heard on 16.11.2006. The appellant has informed his inability to attend the hearing. The summary of the submissions of counsel for IOA is: IOA is not a public authority in the sense that it has not been established either by an Act of the Parliament or by any Notification by the Government. It is a Society established under the Societies Registration Act and it has got its own constitution, rules and regulations. It has not received any aid or grants from any Government and is totally autonomous subject to supervision by International Olympic Committee. It is affiliated to International Olympic Committee which is the owner of Olympic Games. The responsibility of IOA is to develop and promote Olympic spirit in India and is under obligation to comply with Olympic Charter. As per the Olympic Charter, while IOA may cooperate with Governmental or Non Governmental bodies, it cannot associate itself with any activity which would be in contradiction with Olympic Charter. There are no nominees of the Government in IOA. In view of the stringent provisions of the Olympic Charter, any interference in the functioning of IOA by a Government or bureaucracy would result in non participation of Indian Players in Olympic Games. In the past, various countries made attempts to encroach upon the autonomy of respective national Olympic Committees due to which Olympic Commission Association has passed a resolution known as Aomori Declaration which enjoins upon the member associations to maintain their own autonomy without any interference by the concerned Government. Thus, it is apparently clear that IOA is not a public authority in terms of Section 2(h) of the RTI Act and therefore the provisions of this Act are not applicable to IOA.

4. On behalf of the Ministry of Sports, it was submitted: IOA is responsible for promotion of sports activities in coordination with the Ministry of Sports. For promotion of sports activities, IOA uses stadium and other infrastructure facilities of Sports Authority of India, free of cost. Government of India is providing funds to IOA for specific projects which are mostly related to participation of Indian contingent in various multi disciplinary events like Asian Games, Commonwealth Games and Olympic Games. The funding relates to cost of air ticket, payment of out of pocket allowance, ceremonial dress for participants etc. Thus major activities of sports, under the auspices of IOA have been funded and facilitated by the Ministry. A reference to the annual accounts of IOA for the year 2003-2004 would reveal that out of total funds of IOA for the year of about Rs 396 lakhs, the contribution by the Central and State Governments amounted to about Rs 320 lakhs. Even when IOA bid for Commonwealth Games, the GOI provided funds to the tune of 80% for the bidding. However, the Government is not providing any funds for its day to day administration. Since the grants by the Government exceeds Rs.25 lacs, CAG conducts the audit of the accounts of IOA. IOC has been allotted an office space in Jawahar Lal Nehru Stadium for which IOC is not paying any rent. For construction of Olympic Bhavan, various State Governments have given over Rs.2.5 crores out of Rs.3.8 crores that has been spent on the building.

5. I have considered the matter carefully. To determine, for the purpose of RTI Act, whether an organization is a public authority or not, we have to have recourse to Section 2(h) of the said Act, which reads:

‘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 Legislatures;

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

and includes any –

(i) body owned, controlled or substantially financed;

(ii) non governmental organization substantially financed;

directly or indirectly by funds provided by the appropriate Government.

6. In the present case, IOA is not one established or constituted by or under the Constitution or by any Central or State Law or notification. Admittedly, it is a society registered under the Societies Registration Act, and has its own constitution, rules and regulations. In other words, it is a non governmental organization. Therefore, if at all RTI Act is applicable, it could be only if IOA is substantially financed either directly or indirectly by funds provided by the Government.

7. In this connection, I may refer to the Decision of this Commission in ***Mrs Navneet Kaur Vs Electronics and Computer Software Export Promotion Council (ICPB/A-8/ CIC/2006 dated 22/3/2006)*** wherein, a similar issue relating to a non governmental organization arose. In that case, it was contended that the Council was a non governmental organization and was also not funded by the Government. However, the Commission held that the Council was a public authority as the Council had been substantially financed by the funds provided by the Government. This Decision was challenged before the Delhi High Court, which upheld the Decision of this Commission by a judgment on 19.7.2006 (reported in MANU/DE/2768/2006) by observing *“For the purpose of Section 2(h) of the RTI Act, what is to be seen is whether the body is owned and controlled or substantially financed by the government. Whether the funding is for specific programs/projects carried on by the petitioner or funds are given not for any specific program to the petitioner will not make the petitioner not financed by the Government. The Government can give the funds without specifying as to how the funds are to be utilized: Specifying the manner in which the funds are to be utilized rather will show more control of the Government on the petitioner. Specifying the programs on which the funds are to be utilized does not negate the substantial funding of the petitioner as is sought to be canvassed by the learned counsel for the petitioner. I have no hesitation in holding that in the given circumstances, as has been done in the orders impugned by the petitioner, the petitioner is substantially funded by the Government”* From this judgment it is clear that if

it is established that a non governmental organization is substantially financed by the Government, then the provisions of RTI Act would be applicable to that organisation.

DECISION

8. In the present case, in terms of Olympic Charter, IOA has the exclusive powers for the representation of India at the Olympic Games and at the regional, continental or multi sports competitions patronized by the IOC. In other words, the main function of IOA is to act as the nodal agency for participation of Indian sports contingents in various international sports events. Whether the Government provides substantial funds either directly or indirectly to IOA to discharge its functions is the issue for consideration. The term “*Substantially financed*” is not defined in the RTI Act. When a term is not defined in an Act, the normal rule is to find the definition of the term in a relatable statute or legislation and apply the same. In the present case, as submitted by the Ministry, CAG conducts the audit of IOA and therefore, it would be appropriate to apply the definition given in Section 14(1) of CAG Act-1971 for the term “*substantially financed*”. According to this Section, when the loan or grant by the government to a body/authority is not less than Rs 25 lakhs and the amount of such loan or grant is not less than 75% of the total expenditure of that body/authority, then such body/authority shall be deemed to be substantially financed by such grants/loans. Direct funding could be by way of cash grants, reimbursement of expenses etc., and indirect funding could be meeting the expenses directly or in kind. The learned counsel for IOA did not challenge the details given by the Ministry of financial assistance given to IOA by the Government, from which it is clear that substantial funding not only for IOAs discharging its function but also towards construction of its building has been provided by the Government. I have also perused the annual accounts of IOA for the year 2003-04. In that year, of the total expenditure incurred of Rs.392 lakhs, the financing by the Central and State governments, either by way of grants or otherwise is found to be of about Rs 320 lakhs constituting roughly to 80%% of the expenditure. Thus, not only the financing by the Government is more than Rs.25 lakhs but the same constitutes more than 75% of the expenditure of IOA. I do not have the details of the government financing for earlier years, but considering the fact that, as submitted by the Ministry that the audit of IOA is being conducted by CAG, IOA must have been substantially financed by the Government in those years also. This would indicate that without the financial assistance of the Government, IOA is unlikely to be able to discharge its functions under the Olympic Charter. Therefore, since IOA is found to be substantially financed either directly or indirectly by the funds provided by the Government, I have no hesitation to hold that it is a public authority governed by the provisions of the RTI Act. IOA has contended that that in terms of Olympic Charter, IOA cannot be under the control of the Government or bureaucrats. Just because, it is a public authority in terms of RTI Act, it neither becomes a governmental organization nor can be treated to be under the control of the Government. Therefore the said contention is misplaced. The object of RTI Act is to bring

transparency and since IOA discharges public function in the sense, that it is the nodal agency through which alone citizens could participate in international sports, it should have no hesitation to keep its functions transparent. Being a public authority in terms of RTI Act, does not, and cannot, in any way compromise its position or functioning in relation to the Olympic Charter.

9. Accordingly I direct IOA to publish details as required in terms of 4(b) of RTI Act and also to designate CPIO and AA within a month from the date of this Decision. It will also furnish the information sought by the Complainant by the same date. Ministry of Sports shall ensure compliance of this Decision.

10. Let a copy of this decision be sent to the complainant, Indian Olympics Association and the CPIO Ministry of Sports.

Sd/-
(Padma Balasubramanian)
Information Commissioner

Authenticated true copy :

(Nisha Singh)
Joint Secretary & Addl. Registrar

Address of parties :

1. Ms. Deepika Kachhal, Deputy Secretary & CPIO, Department of Sports, Shastri Bhawan, New Delhi.
2. Shri Madhukar Gupta, Secretary, Department of Sports, Shastri Bhawan, New Delhi.
3. President, Indian Olympics Association, Gate No.25, Jawaharlal Nehru Stadium, New Delhi-110003.
4. Shri Veeresh Maik, D-61 Defence Colony, New Delhi-110024.